

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 2 November 2020	Committee Clerk
Meeting time: 10.00	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 Legislative Consent Memorandum on the UK Internal Market Bill:
Evidence session
10.00–11.00 (Pages 1 – 109)
Jeremy Miles MS, Counsel General
Sophie Brighthouse, Deputy Director, Policy, Welsh Government
Gareth McMahon, Senior Government Lawyer, Welsh Government

[Legislative Consent Memorandum](#)

CLA(5)–31–20 – Briefing

CLA(5)–31–20 – Paper 1 – Welsh Government briefing

CLA(5)–31–20 – Paper 2 – Legal Advice Note

CLA(5)–31–20 – Paper 3 – Research Service: Update on the Bill's progress in the House of Lords

CLA(5)–31–20 – Paper 4 – Research Service: Updated Bill summary



CLA(5)–31–20 – Paper 5 – Letter from the Secretary of State for Wales, 3 October 2020

3 Motion under Standing Order 17.42 to resolve to exclude the public from Item 4

11.00

4 Legislative Consent Memorandum on the UK Internal Market Bill: Consideration of evidence

11.00–11.15

Break [11.15–11.20]

5 Proposed negative instruments that raise no reporting issues under Standing Order 21.3B

11.20–11.25

(Pages 110 – 111)

CLA(5)–31–20 – Paper 6 – Proposed negative statutory instruments with clear reports

5.1 pNeg(5)32 – The Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020

5.2 pNeg(5)34 – The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

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

11.25–11.30

(Page 112)

**CLA(5)–31–20 – Paper 7 – Statutory instruments with clear reports
Negative Resolution Instruments**

6.1 SL(5)637 – The School Teachers’ Pay and Conditions (Wales) Order 2020

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

11.30–11.40

Negative Resolution Instruments

7.1 SL(5)636 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020

(Pages 113 – 131)

CLA(5)–31–20 – Paper 8 – Report

CLA(5)–31–20 – Paper 9 – Regulations

CLA(5)–31–20 – Paper 10 – Explanatory Memorandum

CLA(5)–31–20 – Paper 11 – Written statement, 14 October 2020

7.2 SL(5)639 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020

(Pages 132 – 145)

CLA(5)–31–20 – Paper 12 – Report

CLA(5)–31–20 – Paper 13 – Regulations

CLA(5)–31–20 – Paper 14 – Explanatory Memorandum

CLA(5)–31–20 – Paper 15 – Letter from the Minister for Finance and Trefnydd, 16 October 2020

CLA(5)–31–20 – Paper 16 – Written statement, 15 October 2020

7.3 SL(5)642 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020

(Pages 146 – 162)

CLA(5)–31–20 – Paper 17 – Report

CLA(5)–31–20 – Paper 18 – Regulations

CLA(5)–31–20 – Paper 19 – Explanatory Memorandum

CLA(5)–31–20 – Paper 20 – Letter from the Minister for Finance and Trefnydd, 23 October 2020

CLA(5)–31–20 – Paper 21 – Written statement, 22 October 2020

Made Affirmative Resolution Instruments

**7.4 SL(5)638 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales)
(Amendment) (No. 19) Regulations 2020**

(Pages 163 – 191)

CLA(5)–31–20 – Paper 22 – Report

CLA(5)–31–20 – Paper 23 – Regulations

CLA(5)–31–20 – Paper 24 – Explanatory Memorandum

CLA(5)–31–20 – Paper 25 – Letter from the First Minister, 16 October 2020

CLA(5)–31–20 – Paper 26 – Written statement, 16 October 2020

**7.5 SL(5)641 – The Health Protection (Coronavirus Restrictions) (No. 3) (Wales)
Regulations 2020**

(Pages 192 – 254)

CLA(5)–31–20 – Paper 27 – Report

CLA(5)–31–20 – Paper 28 – Regulations

CLA(5)–31–20 – Paper 29 – Explanatory Memorandum

CLA(5)–31–20 – Paper 30 – Letter from the First Minister, 21 October 2020

CLA(5)–31–20 – Paper 31 – Written statement, 19 October 2020

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

11.40–11.45

**8.1 SL(5)607 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales)
(Amendment) (No. 8) (Caerphilly) Regulations 2020**

(Pages 255 – 258)

CLA(5)–31–20 – Paper 32 – Report

CLA(5)–31–20 – Paper 33 – Welsh Government response

**8.2 SL(5)611 – The Health Protection (Coronavirus Restrictions) (Functions of
Local Authorities) (Wales) Regulations 2020**

(Pages 259 – 265)

CLA(5)–31–20 – Paper 34 – Report

CLA(5)–31–20 – Paper 35 – Welsh Government response

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

(Pages 266 – 270)

CLA(5)–31–20 – Paper 36 – Report

CLA(5)–31–20 – Paper 37 – Welsh Government response

8.4 SL(5)630 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

(Pages 271 – 275)

CLA(5)–31–20 – Paper 38 – Report

CLA(5)–31–20 – Paper 39 – Welsh Government response

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

11.45–11.50

Affirmative Resolution Procedure

9.1 SL(5)635 – The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

(Pages 276 – 361)

CLA(5)–31–20 – Paper 40 – Report

CLA(5)–31–20 – Paper 41 – Regulations

CLA(5)–31–20 – Paper 42 – Explanatory Memorandum

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

11.50–12.00

10.1 SICM(5)31 – The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

(Pages 362 – 398)

CLA(5)–31–20 – Paper 43 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 44 – Regulations

CLA(5)–31–20 – Paper 45 – Explanatory Memorandum

CLA(5)–31–20 – Paper 46 – Written statement

CLA(5)–31–20 – Paper 47 – Commentary

**10.2 SICM(5)32 – The Quality and Safety of Organs Intended for Transplantation
(Amendment) (EU Exit) Regulations 2020**

(Pages 399 – 423)

CLA(5)–31–20 – Paper 48 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 49 – Regulations

CLA(5)–31–20 – Paper 50 – Explanatory Memorandum

**CLA(5)–31–20 – Paper 51 – Letter from the Minister for Health and Social
Services, 15 October 2020**

CLA(5)–31–20 – Paper 52 – Written statement

CLA(5)–31–20 – Paper 53 – Commentary

**10.3 SICM(5)33 – The Public Procurement (Amendment etc.) (EU Exit) Regulations
2020 which contain amendments to section 155 (2) and (3) of the Equality
Act 2010**

(Pages 424 – 497)

CLA(5)–31–20 – Paper 54 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 55 – Regulations

CLA(5)–31–20 – Paper 56 – Explanatory Memorandum

CLA(5)–31–20 – Paper 57 – Written statement

CLA(5)–31–20 – Paper 58 – Commentary

**10.4 SICM(5)34 – The Common Fisheries Policy (Amendments etc.) (EU Exit)
Regulations 2020**

(Pages 498 – 559)

CLA(5)–31–20 – Paper 59 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 60 – Regulations

CLA(5)–31–20 – Paper 61 – Explanatory Memorandum

**CLA(5)–31–20 – Paper 62 – Letter from the Minister for Environment, Energy
and Rural Affairs, 22 October 2020**

CLA(5)–31–20 – Paper 63 – Written statement

CLA(5)–31–20 – Paper 64 – Commentary

10.5 SICM(5)35 – The Plant Health (Amendment etc.) (EU Exit) Regulations 2020

(Pages 560 – 661)

CLA(5)–31–20 – Paper 65 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 66 – Regulations

CLA(5)–31–20 – Paper 67 – Explanatory Memorandum

CLA(5)–31–20 – Paper 68 – Letter from the Minister for Environment, Energy and Rural Affairs, 22 October 2020

CLA(5)–31–20 – Paper 69 – Written statement

CLA(5)–31–20 – Paper 70 – Commentary

10.6 SICM(5)37 – The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

(Pages 662 – 739)

CLA(5)–31–20 – Paper 71 – Statutory Instrument Consent Memorandum

CLA(5)–31–20 – Paper 72 – Regulations

CLA(5)–31–20 – Paper 73 – Explanatory Memorandum

CLA(5)–31–20 – Paper 74 – Letter from the Minister for Environment, Energy and Rural Affairs, 27 October 2020

CLA(5)–31–20 – Paper 75 – Written statement

CLA(5)–31–20 – Paper 76 – Commentary

11 Written statements under Standing Order 30C

12.00–12.15

11.1 WS–30C(5)174 – The Persistent Organic Pollutants (Amendments) (EU Exit) Regulations 2020

(Pages 740 – 745)

CLA(5)–31–20 – Paper 77 – Written statement

CLA(5)–31–20 – Paper 78 – Commentary

11.2 WS–30C(5)175 – Pesticides (Amendment) (EU Exit) Regulations 2020

(Pages 746 – 752)

CLA(5)–31–20 – Paper 79 – Written statement

CLA(5)–31–20 – Paper 80 – Commentary

11.3 WS–30C(5)177 – The Ozone–Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) (EU Exit) Regulations 2020

(Pages 753 – 757)

CLA(5)–31–20 – Paper 81 – Written statement

CLA(5)–31–20 – Paper 82 – Commentary

11.4 WS–30C(5)178 – The State Aid (Revocation etc.) (EU Exit) Regulations 2020

(Pages 758 – 764)

CLA(5)–31–20 – Paper 83 – Written statement

CLA(5)–31–20 – Paper 84 – Commentary

11.5 WS–30C(5)179 – The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020

(Pages 765 – 768)

CLA(5)–31–20 – Paper 85 – Written statement

CLA(5)–31–20 – Paper 86 – Commentary

11.6 WS–30C(5)181 – The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020

(Pages 769 – 772)

CLA(5)–31–20 – Paper 87 – Written statement

CLA(5)–31–20 – Paper 88 – Commentary

11.7 WS–30C(5)182 – Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2020

(Pages 773 – 778)

CLA(5)–31–20 – Paper 89 – Written statement

CLA(5)–31–20 – Paper 90 – Commentary

11.8 WS–30C(5)183 – The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020

(Pages 779 – 782)

CLA(5)–31–20 – Paper 91 – Written statement

CLA(5)–31–20 – Paper 92 – Commentary

11.9 WS–30C(5)184 – Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020

(Pages 783 – 793)

CLA(5)–31–20 – Paper 93 – Written statement

CLA(5)–31–20 – Paper 94 – Commentary

**11.10 WS-30C(5)186 – The Plant Health (Phytosanitary Conditions) (Amendment)
(EU Exit) Regulations 2020**

(Pages 794 – 797)

CLA(5)-31-20 – Paper 95 – Written statement

CLA(5)-31-20 – Paper 96 – Commentary

**11.11 WS-30C(5)189 – The Control of Mercury (Amendment) (EU Exit) Regulations
2020**

(Pages 798 – 803)

CLA(5)-31-20 – Paper 97 – Written statement

CLA(5)-31-20 – Paper 98 – Commentary

**11.12 WS-30C(5)190 – The REACH etc. (Amendment etc.) (EU Exit) Regulations
2020**

(Pages 804 – 808)

CLA(5)-31-20 – Paper 99 – Written statement

CLA(5)-31-20 – Paper 100 – Commentary

**12 Inter-Institutional Relations Agreement between the Senedd and
the Welsh Government: Annual Report**

12.15–12.20

(Pages 809 – 817)

CLA(5)-31-20 – Paper 101 – Inter-Institutional Relations Agreement between
the Senedd and the Welsh Government, Annual Report 2019–2020

CLA(5)-31-20 – Paper 102 – Written statement, 26 October 2020

13 Papers to note

12.20–12.25

13.1 Letter to the Llywydd: Scrutiny of Covid-19 regulations

(Pages 818 – 820)

CLA(5)-31-20 – Paper 103 – Letter to the Llywydd, 22 October 2020

**13.2 Letter from the Chair of the Climate Change, Environment and Rural Affairs
Committee to the Minister for Environment, Energy and Rural Affairs: The
draft Framework Outline Agreement (FOA) for Hazardous Substances
Planning**

(Pages 821 – 824)

CLA(5)–31–20 – Paper 104 – Letter from the Chair of the Climate Change, Environment and Rural Affairs Committee, 26 October 2020

13.3 Letter from the Counsel General: Drafting of Welsh Bills

(Pages 825 – 828)

CLA(5)–31–20 – Paper 105 – Letter from the Counsel General, 28 October 2020

13.4 Letter from the Counsel General: Joint Ministerial Committee (EU Negotiations)

(Page 829)

CLA(5)–31–20 – Paper 106 – Letter from the Counsel General, 29 October 2020

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

12.25

15 Legislative Consent Memorandum on the Non–Domestic Rating (Lists) (No. 2) Bill: Consideration of draft report

12.25–12.30

(Pages 830 – 834)

CLA(5)–31–20 – Paper 107 – Draft report

16 Scrutiny of regulations arising from the UK’s exit from the European Union – Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

12.30–12.40

(Pages 835 – 845)

CLA(5)–31–20 – Paper 108 – Letter from the Minister for Finance and Trefnydd, 29 October 2020

CLA(5)–31–20 – Paper 109 – Revised Protocol

CLA(5)–31–20 – Paper 110 – Letter from the First Minister, 16 September 2020

CLA(5)–31–20 – Paper 111 – Letter to the First Minister, 23 July 2020

Date of the next meeting – 9 November 2020

Document is Restricted

Document is Restricted

Document is Restricted

Document is Restricted

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

Document is Restricted

Ref: 215SOS20

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk**Mick Antoniw MS**Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff, CF99 1SN3rd October 2020*Daw Mick.***UK Internal Market Bill**

Thank you for the letter of 18 September regarding application of the Sewel Convention to the UK Internal Market Bill.

The Government remains fully committed to the convention on legislative consent. As you note, the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill. In line with usual practice the UK government ministers responsible for the Bill wrote to the Minister for Economy, Transport and North Wales ahead of the Bill's introduction to set this position out in detail and ask that he begin the process for seeking the Senedd's consent.

We are working closely with the Welsh Government as the Bill progresses through Parliament to understand and respond to the concerns outlined in the legislative consent memorandum published on 25 September. It is very much the Government's intention that this work will result in a recommendation that the Senedd supports the Bill.

I am copying this letter to the Secretary of State for Business, Energy and Industrial Strategy, the Minister of State for the Constitution and Devolution, the Minister for Small Business, Consumers and Labour Markets, the Chairs of the External Affairs and Additional Legislation Committee, Finance and Constitution Committee, Committee for the Executive Office, the Welsh Affairs Committee, the Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.

Simon Hart
**Rt Hon Simon Hart MP**
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Agenda Item 5

Proposed Negative Statutory Instruments with Clear Reports

2 November 2020

Pn(5)32 – The Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed

These Regulations make technical amendments to the Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 (“the 2019 Regulations”) to update cross-references to provisions in the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 (“RPQ Regulations 2019”), which arise as a result of amendments made by the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) Regulations 2020.

The 2019 Regulations made amendments to the School Teachers' Qualifications (Wales) Regulations 2012 in relation to the recognition of teachers' qualifications in Wales in accordance with the RPQ Regulations 2019.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018, Education Act 2002

Sift Requirements Satisfied: Yes

Pn(5)34 – The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed

The purpose of the Environment (Miscellaneous Amendment) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) is to ensure retained EU law operates effectively once the UK leaves the EU.

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) made amendments to the Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433) which transposed the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality in Europe.



Regulation 2(5)(a) of the 2019 Regulations makes reference to Directive 2008/1/EC concerning integrated pollution prevention and control. This Directive is no longer in force.

Regulation 3 of these Regulations amends the 2019 Regulations by substituting reference to Directive 2008/1/EC with reference to Directive 2010/75/EU concerning industrial emissions (integrated pollution prevention and control).

The Regulations also amend articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



Agenda Item 6

Statutory Instruments with Clear Reports

2 November 2020

SL(5)637 – The School Teachers’ Pay and Conditions (Wales) Order 2020

Procedure: Negative

The Order makes provision for the remuneration and conditions of employment of school teachers in Wales, to be determined by reference to section 2 of the School Teachers’ Pay and Conditions (Wales) Document 2020 and guidance on school teachers’ pay and conditions (“the Document”).

The Order will come into force on 6 November 2020. Provisions on teachers’ pay and conditions under section 2 of the document will have retrospective effect from 1 September 2020.

Parent Act: Education Act 2002

Date Made: 13 October 2020

Date Laid: 15 October 2020

Coming into force date: 06 November 2020



SL(5)636 – The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020

Background and Purpose

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 ("the Information Regulations") place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales ("operators") to provide passengers with certain public health information.

These Regulations amend the Information Regulations to—

- require operators to provide the information at an additional stage, namely 24 to 48 hours before an international passenger service is scheduled to depart, and
- update the information which is to be provided before a booking is made and check-in is completed, and during the journey to the port in Wales.

Regulation 2(3) amends the regulation 3 of the Information Regulations to specify the updated information to be provided before a booking is made and before check-in is completed.

Regulation 2(4) inserts a new regulation 3A into the Information Regulations requiring operators to provide the information 24 to 48 hours before an international passenger service is scheduled to depart.

Regulation 2(5), (6) and (7) makes consequential amendments, with regulation 2(7) amending regulation 6 of the Information Regulations (Offences), so that a person who contravenes a requirement in regulation 3A(2) commits an offence and is liable on summary conviction to a fine.

Regulation 2(8) substitutes the Schedule to the Information Regulations.

Procedure

Negative

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



Technical Scrutiny

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

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

Regulation 2(3) substitutes new text for regulation 3(2) of the Information Regulations and at new regulation 3(2)(d) requires an operator to request that the relevant information is passed on to any person on whose behalf a booking is being made, or check-in being carried out. It is unclear whether that request should be in writing or if it can be made orally.

This is in contrast to new regulation 3A(5), which is inserted by regulation 2(4). It states when another person makes a booking on an international passenger service on behalf of another passenger, the regulation is complied with if that person is provided with the relevant information between 24 and 48 hours prior to scheduled departure, along with a written request that they provide that information to the passenger.

Merits Scrutiny

The following 2 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 issue of public policy likely to be of interest to the Senedd.

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

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

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

We note that a Regulatory Impact Assessment has not been carried out. In particular, we note the following paragraphs in the Explanatory Memorandum:

Further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation, these Regulations form part of the response to the ongoing COVID-19 pandemic and need to be put in place urgently. As such, an RIA has not been prepared.

However, an initial assessment indicates that the impact of the Amending Regulations on operators is low.



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 in relation to the technical reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

26 October 2020



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

2020 No. 1118 (W. 253)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, Public Health
Information for Persons Travelling
to Wales etc.) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Information Regulations”) place a requirement on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“operators”) to provide passengers with certain public health information.

These Regulations amend the Information Regulations to—

- (a) require operators to provide the information at an additional stage, namely 24 to 48 hours before an international passenger service is scheduled to depart, and
- (b) update the information which is to be provided before a booking is made and check-in is completed, and during the journey to the port in Wales.

Regulation 2(3) amends the regulation 3 of the Information Regulations to specify the updated information to be provided before a booking is made and before check-in is completed.

Regulation 2(4) inserts a new regulation 3A into the Information Regulations requiring operators to provide the information 24 to 48 hours before an international passenger service is scheduled to depart.

Regulation 2(5), (6) and (7) makes consequential amendments, and regulation 2(8) substitutes the Schedule to the Information Regulations.

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

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

2020 No. 1118 (W. 253)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, Public Health
Information for Persons Travelling
to Wales etc.) (Amendment)
Regulations 2020**

Made at 12.21 a.m. on 14 October 2020

*Laid before Senedd
Cymru at 3.00 p.m. on 14 October 2020*

Coming into force 4 November 2020

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

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020.

(2) These Regulations come into force on 4 November 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.

Amendment of the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020

2.—(1) The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020(1) are amended as follows.

(2) In regulation 2 (interpretation), at the appropriate place insert—

““requirement to isolate” (“*gofyniad i ynysu*”) means the requirement to isolate in accordance with Part 3 of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(2);”;

““requirement to provide information” (“*gofyniad i ddarparu gwybodaeth*”) means the requirement to provide information in accordance with Part 2 of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020;”.

(3) For regulation 3(2) (provision of information before booking and at check-in) substitute—

“(2) The information mentioned in paragraph (1) is—

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

(i) the information set out in Part 1 of the Schedule which must be embedded in a prominent place so that it is visible prior to a booking being made,

(ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule), and

(iii) a link to www.gov.uk/provide-journey-contact-details-before-travel-uk;

(b) in the case of a facility provided for checking in online—

(i) the information set out in Part 1 of the Schedule which must be embedded in a prominent place so that it is visible prior to check-in being completed,

(1) S.I. 2020/595 (W. 136), amended by S.I. 2020/714 (W. 160).
 (2) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243) and S.I. 2020/1098 (W. 249).

- (ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule),
 - (iii) a link to www.gov.uk/provide-journey-contact-details-before-travel-uk, and
 - (iv) a link to <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19.html>;
 - (c) in the case of a facility provided for booking travel or checking in by telephone or face to face—
 - (i) where the information is provided orally, the information set out in Part 1 of the Schedule;
 - (ii) where the information is provided in writing, written notice which sets out the requirement to provide information and the requirement to isolate;
 - (d) in any of the above cases, a request to pass on the information mentioned in sub-paragraph (a), (b) or (c) (as the case may be) to any person on whose behalf—
 - (i) a booking is being made, or
 - (ii) a check-in is being carried out.”
- (4) After regulation 3 insert—

“Provision of information prior to departure

3A.—(1) Paragraph (2) applies where at least 48 hours prior to the scheduled departure time of an international passenger service, a booking is made for a passenger (“P”) to travel on that service.

(2) Where this paragraph applies, between 24 and 48 hours prior to the scheduled departure time of the service, the operator of the service must ensure that P has been provided with the information specified in paragraph (4) (“the required information”).

(3) The required information must be provided by text message, push notification, email or orally.

(4) The required information mentioned in paragraph (2) is—

- (a) where the information is provided by text message or push notification, text which—
 - (i) informs P of the requirement to provide information,

- (ii) informs P that penalties apply for failure to comply with the requirement to provide information,
 - (iii) includes a link to <https://www.gov.uk/provide-journey-contact-details-before-travel-uk>, and
 - (iv) if the international passenger service is one on which P is allocated a seat numbers, advises P to provide the seat number as part of the requirement to provide information;
- (b) where the information is provided by email—
- (i) the information set out in Part 1 of the Schedule,
 - (ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule),
 - (iii) a link to <https://www.gov.uk/provide-journey-contact-details-before-travel-uk>, and
 - (iv) a link to <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19-html>;
- (c) where the information is provided orally, the information set out in Part 1 of the Schedule.

(5) Where another person (“A”) makes a booking on an international passenger service on behalf of another passenger (whether or not A is also a passenger on that service), the requirement to provide information in accordance with this regulation is to be treated as complied with, as regards the time set out in paragraph (1), if the required information was provided to A in the required manner between 24 and 48 hours prior to the scheduled departure time of that service, along with a written request that A provides that information to the passenger.”

(5) In regulation 4(1) (provision of information during journey), for “the Schedule” substitute “Part 2 of the Schedule”.

(6) In regulation 5 (exception from requirements of regulations 3 and 4)—

- (a) in the heading, after “3” insert “, 3A”;
- (b) in the regulation, after “3” insert “, 3A”.

(7) In regulation 6(1) (offences), after “(3)” insert “, regulation 3A(2)”.

(8) For the Schedule substitute—

“SCHEDULE

Regulations 3, 3A and 4

PART 1

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

“ESSENTIAL INFORMATION TO ENTER THE UK

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

1) To protect your health and others’, everyone must complete an online Passenger Locator Form before arrival in the United Kingdom.

2) You may be required to self-isolate for 14 days on arrival. Check the exempt countries list immediately before you travel as this list can change at short notice.

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

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

PART 2

The statement to be provided for the purposes of regulation 4 is—

(a) Welsh language version—

“Dyma neges iechyd y cyhoedd ar ran asiantaethau iechyd y cyhoedd y Deyrnas Unedig.

Cyn cael mynediad i’r Deyrnas Unedig, rhaid i chi lenwi Ffurflen Lleoli Teithwyr ar-lein, ni waeth o ble yr ydych yn cyrraedd. Rhaid i chi hefyd hunanynysu am y 14 o ddiwrnodau cyntaf ar ôl i chi gyrraedd, oni bai eich bod mewn categori esempt. Mae hyn er mwyn eich diogelu chi ac eraill.

Ewch i gov.uk i gael rhagor o wybodaeth.

Symptomau'r coronafeirws yw peswch cyson newydd, tymheredd uchel neu golli eich synnwyr blasu neu arogl arferol, neu newid yn eich synnwyr blasu neu arogl arferol. Os ydych yn profi unrhyw un o'r symptomau hyn, ni waeth pa mor ysgafn ydynt, fe'ch cynghorir i wneud eich hunan yn hysbys i'r criw.

Camau syml y gallwch eu cymryd i helpu i'ch diogelu chi a'ch teulu yw:

Golchi eich dwylo

Osgoi cyffwrdd â'ch wyneb â'ch dwylo

Dal peswch a thisian mewn hances bapur a'i gwaredu ar unwaith.”;

(b) English language version—

“The following is a public health message on behalf of the UK’s public health agencies.

Before entering the UK, you must complete a Passenger Locator Form online, regardless of where you are arriving from. You must also self-isolate for the first 14 days after you arrive, unless you are in an exempt category. This is to protect yourself and others.

Visit gov.uk for more information.

The symptoms of coronavirus are a new continuous cough, a high temperature or a loss of, or change in, normal sense of taste or smell. If you experience any of these symptoms, however mild, you are advised to make yourself known to the crew.

Simple measures you can take to help protect yourself and family are:

Wash your hands

Avoid touching your face with your hands

Catch coughs and sneezes in a tissue and dispose of it immediately.”;

(c) the statement in paragraph (a) or (b) translated into an officially recognised language of the country of departure.”

Vaughan Gething

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

At 12:21 a.m. on 14 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) 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, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020.

Vaughan Gething
Minister for Health and Social Service

14 October 2020

Explanatory Memorandum

1. Description

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020 (“the Amending Regulations”) amend the information that is required be given to passengers travelling to Wales by the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Passenger Information Regulations”).

The Passenger Information Regulations introduced requirements for operators of air and sea international passenger services (“operators”) to provide their passengers with information about coronavirus and related matters (such as the duty to self-isolate when coming to Wales from outside the Common Travel Area), as well as information on public health guidance. These requirements came into force on the 17 June 2020.

The Passenger Information Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Amendment) (Wales) Regulations 2020 to:

- make the content of the public health statement that is made to passengers during their journey consistent across the U.K.;
- remove the requirement for the statement to be made orally, to provide operators with greater flexibility on how the statement is delivered; and
- alter the review period for the Regulations from every 21 days to every 28 days, starting on 23 July 2020.

These amendments came into force on the 10 July 2020.

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020 (“the Amending Regulations”) are part of a suite of regulatory amendments being made by all 4 U.K. nations to the information that operators must give to passengers arriving from outside the Common Travel Area. They further amend the Passenger Information Regulations to:

- provide the text of the information that operators of international travel services must give to passengers at the booking and check-in stages, and prescribe web links to relevant government webpages (previously, the exact wording of this information was not prescribed but was left up to the operator);
- require operators to provide information to all passengers between 24 to 48 hours before they are due to travel to Wales - including links to relevant government webpages; and
- update the on-board statement that must be delivered during the journey to the U.K.

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

None

3. Legislative background

These Regulations are made using powers found in sections 45B(1), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984 (“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 45B of the 1984 Act provides for the making of health protection regulations concerning international travel etc. Under section 45B(1)(a), the appropriate Minister may by regulations make provision for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place. Section 45B(2)(e) provides that regulations under section 45B(1) may include provision prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things. Section 45B(2)(g) provides that regulations under section 45B(1) may include provision requiring persons to provide information or answer questions (including information or questions relating to their health).

Section 45F of the 1984 Act provides that regulations made under section 45B may create offences and provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations. An operator commits an offence under the Regulations if it fails to comply with the requirement to ensure the provision of information. Section 45F(2)(a) contains supplementary provision relating to regulations made under section 45B; it provides that regulations made under section 45B may confer functions on persons. Functions relevant to monitoring compliance and enforcing the requirements are conferred on authorised persons.

The powers under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

Coming into force

These Amending Regulations are subject to annulment by Senedd Cymru (the ‘negative procedure’).

They will come into force on 4 November 2020.

UK-wide approach

Whilst the UK Government leads on the joint policy for international travel, it works in collaboration with the Devolved Governments and has developed a unified UK

approach. As a result, the Governments of all 4 nations have equivalent legislation to the Passenger Information Regulations.

The Amending Regulations are part of a suite of regulatory changes being made by all 4 U.K. nations to the information which operators must give to passengers arriving from outside the Common Travel Area.

4. Purpose and intended effect of the legislation

The Passenger Information Regulations were introduced to ensure only those persons who were willing and able to comply with the relevant requirements and public health guidance completed their travel to Wales.

By the time they reach the point of entry, passengers should have had up-to-date information so that they know what is required of them immediately upon entry. Ensuring that people entering Wales have, and can comply with, these requirements and guidance will help to reduce the transmission of SARS-CoV-2 and thereby prevent danger to public health from aircraft and vessels arriving in Wales from outside the Common Travel Area.

Those who are unable or unwilling to comply with these requirements may choose not to travel.

However, there are concerns that some operators are failing to convey the required information clearly to passengers at booking and check-in. Instead, the information that is given may be unclear or confusing.

In addition, some passengers are arriving in Wales having not completed Passenger Locator Forms, particularly where they are returning from countries with which there is a "Travel Corridor".

There are also concerns that passengers need to be made aware that there could be swift changes to those countries with which Wales has a "Travel Corridor". As a result, passengers may be required to self-isolate on their return to Wales, even though this may not have been a requirement when the journey was originally booked or the outward stage of the journey made.

To ensure all passengers are given the information they need about relevant requirements and public health guidance so that they may make an informed choice about whether to travel to Wales, these Amending Regulations insert new provisions into the Passenger Information Regulations:

a) Booking

The new provisions prescribe the exact wording of the information that operators must give to passengers before a booking is completed. When booking via an operator's website or mobile application, this information must include links to the following webpages:

- i. www.gov.uk/provide-journey-contact-details-before-travel-uk
- ii. www.gov.uk/uk-border-control.

There will be links to public health advice for each nation from www.gov.uk/uk-border-control; for Wales, this will be a link to www.gov.wales/coronavirus.

Where booking is carried out over the telephone or in person, the information must be read out to the passenger by way of a script or by way of a written notice which sets out the requirement to provide information and the requirement to isolate, pursuant to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

By requiring operators to provide this prescribed information at the booking stage, people are better equipped to make an informed decision about whether they wish to travel to Wales.

b) Check-in

The Amending Regulations require the same scripted information to be provided to passengers at check-in as is used on booking. (As with booking, previously the exact wording of this information was not prescribed but was left up to the operator). The information must be provided before check-in is completed.

When check-in is delivered digitally, this information will include links to the following webpages:

- i. www.gov.uk/provide-journey-contact-details-before-travel-uk;
- ii. www.gov.uk/uk-border-control; and
- iii. www.gov.wales/exemptions-self-isolation-coronavirus-covid-19-html.

For passengers checking in at the airport or port, operators must deliver the information orally by way of a script, or by way of a written notice which sets out the requirement to provide information and the requirement to isolate, pursuant to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

The third link to www.gov.wales/exemptions-self-isolation-coronavirus-covid-19-html is needed at check-in to direct passengers – who will be nearing their date of travel – to the latest information on “Travel Corridors”, and exemptions to self-isolation requirements.

In the same way as at the booking stage, there will be prominent links to public health advice for each U.K. nation from www.gov.uk/uk-border-control. For Wales, this will be a link to www.gov.wales/coronavirus.

There is likely to be a time lag between the booking and check-in stages, in which Government guidance could change. By requiring operators to provide the prescribed information at check-in, people can make an informed decision about whether, in light of any changes, they still wish to travel to Wales.

Those who are unable to or unwilling to comply with government guidance may choose not to travel.

c. Notification prior to departure

The Amending Regulations place a new requirement on operators to provide information to passengers between 24 to 48 hours prior to their departure. The information this message must contain is provided in the provisions inserted into the Passenger Information Regulations by the Amending Regulations, and includes a link to www.gov.uk/provide-journey-contact-details-before-travel-uk.

Operators must contact passengers to deliver this information via one of the following methods: email, SMS message, app push notification, or phone call.

d. Whilst passengers are on board the aircraft or ferry.

The “on-board” statement that must be delivered to passengers during their journey to Wales is updated to, amongst other matters, clarify that passengers must complete a Passenger Locator Form regardless of where they are arriving from. The requirement to self-isolate unless exempt is also moved towards the beginning of the statement, to give it more prominence.

This on-board statement is considered to be vital, as bookings may be taken, and check-in services may be managed, by third parties (travel agents, intermediaries) instead of directly by operators. Whilst the aim is to provide information to all passengers at the booking and check-in stages, this cannot be guaranteed. To ensure that all people travelling to Wales have been provided with the guidance, it is therefore necessary for operators to provide it to them whilst they are on board and en route.

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)

Further to the Welsh Ministers’ regulatory impact assessment code for subordinate legislation, these Regulations form part of the response to the ongoing COVID-19 pandemic and need to be put in place urgently. As such, an RIA has not been prepared.

However, an initial assessment indicates that the impact of the Amending Regulations on operators is low.

There will be some familiarisation costs, but as the Passenger Information Regulations already require operators to provide information to passengers (but at

their discretion as to how this information is provided at booking and check-in) these costs are expected to be low.

While there will be additional costs to amend systems and processes in order to provide the specific text and prompts required by the provisions inserted into the Passenger Information Regulations by the Amending Regulations, operators already have systems in place to provide information to passengers on booking and at check-in, prior to departure, and during the on-board stages of the passenger journey. Therefore, the costs of amending existing systems and processes is expected to be low.

It is not possible to directly attribute any specific benefit of the policy to a public health outcome, as these measures act as a vehicle to communicate and enable other health measures through ensuring passengers are aware of the latest public health and travel requirements. Without the changes to passenger information made by these Amending Regulations, the full benefits of these requirements may not be realised. As such, these Regulations are expected to help reduce the transmission of COVID-19.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020**

DATE **14 October 2020**

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

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Passenger Information Regulations”) introduced requirements for operators of international air and sea passenger services to provide their passengers with information about coronavirus and the duty to self-isolate, as well as information on public health guidance. These requirements came into force on the 17 June 2020.

On the 10 July, the Passenger Information Regulations were amended to alter the content of the public health statement that is made to passengers during their journey, and to remove the requirement for this statement to be provided orally. The review period for the Regulations was also changed from every 21 days to every 28 days, starting on 23 July 2020.

Today, I have laid in the Senedd the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) (Amendment) Regulations 2020. These Regulations further amend the Passenger Information Regulations to enable passengers to make a better informed decision about whether they wish to travel to Wales by:

- prescribing the information that operators of international travel services must give to passengers at booking and at check-in; and
- requiring operators of international travel services to provide further specified information to passengers between 24 to 48 hours before they are due to travel to Wales.

These amendments will come into force on the 4 November 2020.

Agenda Item 7.2

SL(5)639 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) 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.

Regulation 2 of these Regulations amends Schedule 3 to the International Travel Regulations to remove Italy, San Marino and Vatican City State from the list of exempt countries and territories. Regulation 3 make transitional provision relating to these countries’ change of status.

Regulation 4 of these Regulations amends Schedule 3 to the International Travel Regulations so that from 4:00am on 18 October 2020, the Greek island of Crete will no longer be excepted from the exemption for Greece and will, therefore, be considered an exempt territory. The island of Mykonos will continue to be excepted from the exemption for Greece. Regulation 5 makes transitional provision relating to that territory’s change of status.

Procedure

Negative.

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

Technical Scrutiny

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



Merits Scrutiny

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

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

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

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

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

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

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a 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 16 October 2020.

In particular, we note the following in the letter:

"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, 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
26 October 2020



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

2020 No. 1133 (W. 258)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 15)
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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249).

The 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 to the International Travel Regulations are referred to as “exempt countries and territories”, but some of the entries in Schedule 3 are subject to exceptions in

respect of particular territories. So for example, in relation to Greece, which is an exempt country for the purposes of the International Travel Regulations, certain Greek islands are excluded from the exemption.

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

Regulation 2 of these Regulations amends Schedule 3 to the International Travel Regulations to remove Italy, San Marino and Vatican City State from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision relating to these countries' 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.

Regulation 4 of these Regulations amends Schedule 3 to the International Travel Regulations so that from 4.00 a.m. on 18 October 2020 the Greek island of Crete will no longer be excepted from the exemption for Greece. The island of Mykonos will continue to be excepted from the exemption for Greece.

Regulation 5 of these Regulations makes transitional provision relating to that territory's 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 amendment made by regulation 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.

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

2020 No. 1133 (W. 258)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 15)
Regulations 2020**

Made at 3.29 p.m. on 16 October 2020

*Laid before the Senedd
Cymru at 6.00 p.m. on 16 October 2020*

*Coming into force at 4.00 a.m. on 18 October
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. 15) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 18 October 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

Removal of countries from 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), omit—

“Italy”

“San Marino”

“Vatican City State”.

Transitional 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 18 October 2020, and
- (b) was last in a country listed in regulation 2—
 - (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 18 October 2020.

(2) P is, by virtue of having been in a country listed in regulation 2, 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.

Amendment to 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), in the entry for Greece, for

(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), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243) and S.I. 2020/1098 (W. 249).

the words from “territories” to the end substitute “territory of Mykonos”.

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 18 October 2020—

- (a) a person (“P”) was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in the territory of Crete, and
- (b) P’s last day of isolation is 18 October 2020 or a day after that day.

(2) The omission by regulation 4 of the territory of Crete from 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 18 October 2020, and
- (b) was in the territory of Crete 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 the territory of Crete, to be determined by reference to whether the territory of Crete was a non-exempt territory when P was last there (and not by reference to 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.

Vaughan Gething

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

At 3.29 p.m. on 16 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) 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. 15) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

16 October 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 9 October 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 Italy, Vatican City State and San Marino 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 Greek island of Crete will no longer be excluded from the exemption for Greece, and therefore will be considered as an exempt territory. This is on the basis that the data received from the JBC has indicated the risk to public health posed by arrivals from this island has decreased and as such arrivals should be exempt from the isolation requirements. The island of Mykonos will however continue to be excluded from the exemption for Greece.

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 18 October 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.



Ein cyf/Our ref: MA/VG/3476/20

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

16 October 2020

Dear Llywydd,

**The Health Protection (Coronavirus, International Travel) (Wales) (Amendment)
(No. 15) 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 Italy, San Marino and Vatican City State from the list of exempt countries and territories. The Greek island of Crete will no longer be excluded from the current exemption for Greece and therefore will be considered as an exempt territory. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these 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 AS/MS
Minister for Finance and Trefnydd

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

DATE **15 October 2020**

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

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

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

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

Today I reviewed the latest JBC assessments and I have decided that Italy, Vatican City State and San Marino will be removed from the list of exempt countries and territories, so travellers from these countries will need to isolate on arrival in Wales. I have also decided that the Greek island of Crete will no longer be excluded from the exemption for Greece, and therefore will be considered as an exempt territory.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Sunday 18 October.

Agenda Item 7.3

SL(5)642 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) SI 2020/574. 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.

Regulations 2 and 3 of these Regulations amends Schedule 3 to the International Travel Regulations to add the Canary Islands, Denmark, Maldives and the Greek island of Mykonos to the list of exempt countries and territories.

Regulation 5 of these Regulations amends Schedule 3 to the International Travel Regulations to remove Liechtenstein from the list of exempt countries and territories.

Regulations 4 and 5 of these Regulations make transitional provision relating to these countries’ and territories’ change of status.

Procedure

Negative.

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

Technical Scrutiny

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



Merits Scrutiny

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

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

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

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

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

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

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a 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 23 October 2020.

In particular, we note the following in the letter:

"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, 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
28 October 2020



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

2020 No. 1165 (W. 263)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 16)
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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258).

The 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”, but some of the entries in Schedule 3 are subject to exceptions in respect of particular territories. So for example, in relation to Greece, which is an exempt country for the purposes of the International Travel Regulations, certain Greek islands are excluded from the exemption.

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

Regulations 2 and 3 of these Regulations amend the International Travel Regulations to add the Canary Islands, Denmark, Maldives, and the Greek island of Mykonos to the list of exempt countries and territories.

Regulation 5 of these Regulations amends the International Travel Regulations to remove Liechtenstein from the list of exempt countries and territories.

Regulations 4 and 6 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, 3 and 5 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.

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

2020 No. 1165 (W. 263)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 16)
Regulations 2020**

Made at 2.43 p.m. on 23 October 2020

Laid before *Senedd*
Cymru at 6.30 p.m. on 23 October 2020

Coming into
force at 4.00 a.m. on 25 October 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. 16) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 25 October 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

Additions 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—

“Canary Islands”

“Denmark”

“Maldives”.

Amendment to the list of exempt countries and territories

3. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), in the entry for Greece, omit “, except the territory of Mykonos”.

Transitional provision in connection with regulations 2 and 3

4.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 25 October 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 or 3, and
- (b) P’s last day of isolation is 25 October 2020 or a day after that day.

(2) The addition of the countries and territories listed in regulations 2 and 3 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

(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), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249) and S.I. 2020/1133 (W. 258).

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 25 October 2020, and
- (b) was in a country or territory listed in regulation 2 or 3 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 or 3, 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 Liechtenstein from the list of exempt countries and territories

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

"Liechtenstein".

Transitional provision in connection with regulation 5

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

- (a) arrives in Wales at or after 4.00 a.m. on 25 October 2020, and
- (b) was last in Liechtenstein—
 - (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 25 October 2020.

(2) P is, by virtue of having been in Liechtenstein, 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 2.43 p.m. on 23 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) 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. 16) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

23 October 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.

Illustrative document of amendments

An illustrative document showing amendments made to the International Travel Regulations is being prepared, and will be published on the GOV.wales website shortly. It will include the amendments being made by these Regulations.

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 18 October 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 Liechtenstein 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 that country.

The Greek island of Mykonos will no longer be excluded from the exemption for Greece, and therefore will be considered as an exempt territory. This is on the basis that the data received from the JBC has indicated the risk to public health posed by arrivals from this island has decreased and as such arrivals should be exempt from the isolation requirements.

The Regulations also add the Canary Islands, Denmark and the Maldives 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 Sunday 25 October 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.



Ein cyf/Our ref: MA/VG/3593/20

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

23 October 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) 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 Liechtenstein from the list of exempt countries and territories and to add the Canary Islands, Denmark and the Maldives to the list. The Greek island of Mykonos will no longer be excluded from the current exemption for Greece and therefore will be considered as an exempt territory. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these 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.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

I 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,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid, with a small dot at the end of the last word.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

DATE **22 October 2020**

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

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

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

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

Today I reviewed the latest JBC assessments and I have decided that Liechtenstein will be removed from the list of exempt countries and territories, so travellers from Liechtenstein will need to isolate on arrival in Wales. I have also decided that the Greek island of Mykonos will no longer be excluded from the exemption for Greece, and therefore will be considered as an exempt territory. The Canary Islands, Denmark and the Maldives will be added to the exempt list. Travellers from these countries and territories will therefore not be required to isolate on arrival in Wales.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Sunday 25 October.

SL(5)638 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) 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.

These Regulations:

- impose restrictions on persons travelling to areas of Wales not designated as local health protection areas from parts of England, Scotland and Northern Ireland which have high prevalence of coronavirus, and corresponding restrictions on people travelling from Wales to such areas. The areas of high prevalence are those designated as follows by the relevant authority in that part of the UK:
 - England – all Tier 2 "high" and Tier 3 "very high" areas
 - Scotland – protected areas subject to additional temporary measures
 - Northern Ireland – currently the entire territory.
- provide that it is a reasonable excuse to enter or leave a local health protection area to participate in or facilitate organised activities for the development or well-being of children, and modifies the reasonable excuses for gathering and for entering or leaving a local health protection area so that they are consistent.
- make minor and consequential amendments to ensure consistency and updating the full title of "Menai (Bangor)" as one of the electoral divisions in the county of Gwynedd, listed in paragraph 1 of Schedule 4A to the Principal Regulations.

The Regulations come into force at 6.00 p.m. on 16 October 2020. The restrictions and requirements introduced by these amendments in relation to travel must be reviewed on or before 23 October 2020, and at least once every seven days thereafter.

Procedure

Made Affirmative.

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



Technical Scrutiny

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

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

Regulation 2(4)(a) of these Regulations make amendments to regulation 14(2) of the Principal Regulations and to “sub-paragraph (b)”. Regulation 2(4)(a) of the Welsh version of these Regulations does not refer to sub-paragraph (b), but instead refers to “ym mharagraff (2)” (which translates as “in paragraph 2”). The Welsh text should read as “yn is-baragraff (b)” (in sub-paragraph (b)) in order to ensure clarity and consistency with the English version.

Merits Scrutiny

The following 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

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

“The Government considers that the restrictions imposed by the amendments made by these Regulations to the principal Regulations, are proportionate. The amendments 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.”

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

We welcome the evidence provided by the Welsh Government in the Explanatory Memorandum explaining why the Principal Regulations have been amended to restrict travel from other areas, and for the purposes of allowing persons to leave a local health protection area should they have a reasonable excuse for doing so. We believe that providing this evidence will aid transparency, and assist the Senedd’s scrutiny of coronavirus restrictions. We note in particular the following paragraph from the Explanatory Memorandum which refers to the report “SARS-Cov-2 Genomic Insights”.

“Evidence from public health professionals suggests coronavirus is moving from east to west across the UK and across Wales. As a general rule, it is concentrating in urban areas and then spreading to more sparsely populated areas as a result of people



travelling. The paper SARS-Cov-2 Genomic Insights (October 2020) demonstrates the spread of infection geographically and supports the case for travel restrictions as a means of controlling spread. To prevent further spread in areas where there is still a relatively low prevalence of the virus, there is an urgent need to limit non-essential travel across the UK. The amendments will achieve this goal.

<https://gov.wales/sites/default/files/publications/2020-10/sars-cov-2-genomic-insights-october-2020.pdf>

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

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

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations. More widely, representative groups along with individuals and businesses have been informed about the relaxation of the restrictions through wide scale and ongoing public information broadcasts across the UK, including by myself. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the 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.

We note that there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and merit reporting point 4 only.

Legal Advisers

Legislation, Justice and Constitution Committee

22 October 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.

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

2020 No. 1130 (W. 257)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 19) 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) impose restrictions on persons travelling to Wales from parts of England, Scotland and Northern Ireland which have higher rates of prevalence of coronavirus, and corresponding restrictions on people travelling from Wales to such areas (this is done by reference to the parts of Wales that are not designated as local health protection areas due to the restrictions that are already in place on entering or leaving these areas);

- (b) provide that it is a reasonable excuse to enter or leave a local health protection area to participate in or facilitate organised activities for the development or well-being of children, and modifies the reasonable excuses for gathering and for entering or leaving a local health protection area so that they are consistent;
- (c) make other minor and consequential provisions.

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

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

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

2020 No. 1130 (W. 257)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 19) Regulations
2020**

Made at 11.40 a.m. on 16 October 2020

*Laid before Senedd
Cymru at 1.00 p.m. on 16 October 2020*

*Coming into force at 6.00 p.m. on 16 October
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. 19) Regulations 2020 and they come into force at 6.00 p.m. on 16 October 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 2—

(a) in paragraph (1), after sub-paragraph (r) insert—

“(s) a “child” means a person who is aged under 18, but in regulations 14(2)(ja), 14A(2)(ea) and 14D(3)(l) and paragraphs 3(2)(la) and 4(2)(la) of Schedule 4A, it means a person who was aged under 18 on 31 August 2020;

(t) “local health protection area” means an area listed in paragraph 1 of Schedule 4A.”;

(b) at the end insert—

“(8) For the purposes of regulations 14, 14A and 14D and Schedule 4A, an activity or event is “organised” if—

(a) it is organised by—

(i) a business,

(ii) a public body or charitable, benevolent, educational or philanthropic institution,

(iii) a club or political organisation, or

(iv) the national governing body of a sport or other activity, and

(b) the person organising it has—

(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. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227), S.I. 2020/1035 (W. 229), S.I. 2020/1040 (W. 230), S.I. 2020/1043 (W. 232), S.I. 2020/1049 (W. 235), S.I. 2020/1066 (W. 240), S.I. 2020/1079 (W. 242) and S.I. 2020/1102 (W. 251).

- (i) carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999⁽¹⁾, whether or not the person is subject to those Regulations, and
 - (ii) complied with the requirements of regulations 12(2) and 13(1).
- (9) For the purposes of paragraph (8)(b)—
 - (a) regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies as if the activity or event were an undertaking conducted by the person organising it;
 - (b) regulation 12(2) of these Regulations applies as if the place where the activity or event takes place were open premises for which the person organising it is responsible.”
- (3) In regulation 4, after paragraph (2) insert—

“(3) The Welsh Ministers must review the need for restrictions imposed by regulation 14D, and whether those restrictions are proportionate to what the Welsh Ministers seek to achieve by them—

 - (a) by 23 October 2020;
 - (b) at least once in the period of 7 days beginning on 24 October 2020;
 - (c) at least once in each subsequent period of 7 days.”
- (4) In regulation 14(2)—
 - (a) in sub-paragraph (b), for “provide or receive care or assistance, including relevant personal care,” substitute “provide, receive or access care or assistance, including childcare or relevant personal care”;
 - (b) for sub-paragraph (ja) substitute—

“(ja)participate in or facilitate organised activities for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);”.
- (5) In regulation 14A—
 - (a) in paragraph (2), for sub-paragraph (e) substitute—

(1) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

- “(e) provide, receive or access childcare;
- (ea) participate in or facilitate organised activities for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);”;
- (b) in paragraph (3), in the words before subparagraph (a), for “outdoor event” substitute “event held outdoors”;
- (c) omit paragraphs (4) and (5).
- (6) After regulation 14C insert—

“PART 4B

Travel restrictions

Restriction on travel to and from areas of high prevalence of coronavirus

14D.—(1) No person living in an area listed in Schedule 4B may, without a reasonable excuse, enter or remain in a part of Wales that is not a local health protection area.

(2) No person living in a part of Wales that is not a local health protection area may, without a reasonable excuse, leave Wales for the purpose of entering an area listed in Schedule 4B.

(3) For the purposes of paragraphs (1) and (2), a reasonable excuse includes the need to do the following in a part of Wales that is not a local health protection area or in an area listed in Schedule 4B (respectively)—

- (a) obtain—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (b) obtain money from or deposit money with any business or service listed in paragraph 6 or 7 of Schedule 4;
- (c) obtain or provide medical assistance, including accessing any of the services referred to in paragraph 10 of Schedule 4 or accessing veterinary services;

- (d) provide, receive or access care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;
- (e) work or provide voluntary or charitable services where it is not reasonably practicable to carry out the work or provide the service from outside the area;
- (f) where the person is an elite athlete, train and compete;
- (g) provide or receive emergency assistance;
- (h) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (i) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (j) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (k) access or receive public services;
- (l) participate in or facilitate organised activities for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);
- (m) access educational services;
- (n) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this

(1) 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;

- (o) move home;
- (p) undertake activities in connection with the purchase, sale, letting, or rental of residential property;
- (q) avoid injury or illness or escape a risk of harm;
- (r) travel to reach a place outside the area.

(3) For the purposes of paragraph (1), it is not a reasonable excuse for a person to enter, or remain in, a part of Wales that is not a local health protection area to do anything if it would be reasonably practicable for the person to do that thing outside the area.

(4) For the purposes of paragraph (2), it is not a reasonable excuse for a person to leave Wales for the purpose of entering an area listed in Schedule 4B to do anything if it would be reasonably practicable for the person to do that thing outside the area.”

(7) In regulation 18—

(a) after paragraph (4A) insert—

“(4B) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is contravening (or is about to contravene) regulation 14D(1) or (2), the officer may direct P to return to the place where P is living.”;

- (b) in paragraph (5)(a), for “or (4A)” substitute “, (4A) or (4B)”;
- (c) in paragraph (6ZA), after “contravene,” insert “regulation 14D(1) or (2) or”.

(8) In regulation 20—

- (a) in paragraph (1)(b), for “or 14B(1)” substitute “, 14B(1) or 14D(1) or (2)”;
- (b) in paragraph (3)(a), after “18(4A)(a),” insert “18(4B),”.

(9) In Schedule 4A—

- (a) in paragraph 1(q)(viii), after “Menai” insert “(Bangor)”;
- (b) in paragraph 3(2)—
 - (i) in sub-paragraph (d), for “provide or receive care or assistance, including relevant personal care,” substitute “provide, receive or access care or assistance, including childcare or relevant personal care”;
 - (ii) in sub-paragraph (l), for “childcare or education” substitute “educational”;

(iii) after sub-paragraph (l) insert—

“(la)participate in or facilitate organised activities for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);”;

(c) in paragraph 4(2)—

(i) in sub-paragraph (d), for “provide or receive care or assistance, including relevant personal care,” substitute “provide, receive or access care or assistance, including childcare or relevant personal care”;

(ii) in sub-paragraph (l), for “childcare or education” substitute “educational”;

(iii) after sub-paragraph (l) insert—

“(la)participate in or facilitate organised activities for the development or well-being of children (including sports, music and other recreational activities such as those provided for children outside of school hours and during school holidays);”.

(10) After Schedule 4A insert—

“SCHEDULE 4B Regulation

14D

Travel restriction areas

Part 1: England

1. The areas of the following, designated as Tier 2 areas by the Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020⁽¹⁾ or as Tier 3 areas by the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020⁽²⁾—

Cheshire

Cheshire East Council

Cheshire West and Chester Council

Warrington Borough Council

⁽¹⁾ S.I. 2020/1104.

⁽²⁾ S.I. 2020/1105.

Cumbria

Barrow-in-Furness Borough Council

Derbyshire

Chesterfield Borough Council

Erewash Borough Council

North East Derbyshire District Council

In the area of High Peak Borough Council, the following electoral areas (as defined by section 203(1) of the Representation of the People Act 1983⁽¹⁾)—

Dinting

Gamesley

Hadfield North

Hadfield South

Howard Town

Old Glossop

Padfield

Simmondley

St John's

Tintwistle

Whitfield

Durham

Durham County Council

Essex

Basildon Council

Braintree District Council

Brentwood Borough Council

Castle Point Borough Council

Chelmsford City Council

Colchester Borough Council

Epping Forest District Council

Harlow Council

(1) c. 2. Amended by Schedule 3 to the Greater London Authority Act 1999 (c. 29).

Maldon District Council
Rochford District Council
Tendring District Council
Uttlesford District Council

Greater London

The Common Council of the City of London
Barking and Dagenham Borough Council
Barnet Borough Council
Bexley Borough Council
Brent Borough Council
Bromley Borough Council
Camden Borough Council
Croydon Borough Council
Ealing Borough Council
Enfield Borough Council
Greenwich Borough Council
Hackney Borough Council
Hammersmith and Fulham Borough Council
Haringey Borough Council
Harrow Borough Council
Havering Borough Council
Hillingdon Borough Council
Hounslow Borough Council
Islington Borough Council
Kensington and Chelsea Borough Council
Kingston upon Thames Borough Council
Lambeth Borough Council
Lewisham Borough Council
Merton Borough Council
Newham Borough Council
Redbridge Borough Council
Richmond upon Thames Borough Council
Southwark Borough Council
Sutton Borough Council

Tower Hamlets Borough Council
Waltham Forest Borough Council
Wandsworth Borough Council
Westminster City Council

Greater Manchester

Bolton Metropolitan Borough Council
Bury Metropolitan Borough Council
Manchester City Council
Oldham Metropolitan Borough Council
Rochdale Borough Council
Salford City Council
Stockport Metropolitan Borough Council
Tameside Metropolitan Borough Council
Trafford Metropolitan Borough Council
Wigan Metropolitan Borough Council

Lancashire

Blackpool Council
Blackburn with Darwen Borough Council
Burnley Borough Council
Chorley Borough Council
Fylde Borough Council
Hyndburn Borough Council
Lancaster City Council
Pendle Borough Council
Preston City Council
Ribble Valley Borough Council
Rossendale Borough Council
South Ribble Borough Council
West Lancashire Borough Council
Wyre Borough Council

Leicestershire

Leicester City Council
Oadby and Wigston Borough Council

Merseyside

Halton Borough Council
Knowsley Metropolitan Borough Council
Liverpool City Council
Sefton Borough Council
St Helens Borough Council
Wirral Metropolitan Borough Council

Northumberland

Northumberland County Council

North Yorkshire

City of York Council

Nottinghamshire

Ashfield District Council
Bassetlaw District Council
Broxtowe Borough Council
Gedling Borough Council
Mansfield District Council
Newark & Sherwood District Council
Nottingham City Council
Rushcliffe Borough Council

South Yorkshire

Barnsley Metropolitan Borough Council
Doncaster Council
Rotherham Metropolitan Borough Council
Sheffield City Council

Surrey

Elmbridge Borough Council

Tees Valley

Darlington Borough Council
Hartlepool Borough Council
Middlesbrough Borough Council
Redcar and Cleveland Borough Council

Stockton-on-Tees Borough Council

Tyne and Wear

Gateshead Council

Newcastle City Council

North Tyneside Council

South Tyneside Council

Sunderland City Council

West Midlands

Birmingham City Council

Sandwell Metropolitan Borough Council

Solihull Metropolitan Borough Council

City of Wolverhampton Council

Walsall Council

West Yorkshire

City of Bradford Metropolitan District Council

Calderdale Metropolitan Borough Council

Kirklees Metropolitan Council

Leeds City Council

Wakefield Council

Part 2: Scotland

2. The area designated as a protected area by the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020⁽¹⁾, comprising the local government areas of—

City of Glasgow

Clackmannanshire

East Ayrshire

East Dunbartonshire

East Renfrewshire

East Lothian

Edinburgh City

⁽¹⁾ S.S.I. 2020/318.

Falkirk

Inverclyde

Midlothian

North Ayrshire

North Lanarkshire

Renfrewshire

South Ayrshire

South Lanarkshire

Stirling

West Dunbartonshire

West Lothian

Part 3: Northern Ireland

3. All of Northern Ireland.”

Mark Drakeford

First Minister, one of the Welsh Ministers

At 11.40 a.m. on 16 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) 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. 19) Regulations 2020.

Mark Drakeford
First Minister

16 October 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

European Convention on Human Rights

Whilst the principal 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 that the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health. The Government therefore considers that the Regulations are proportionate.

The restrictions and requirements in the principal Regulations as amended by these Regulations 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 assembly and association); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property).

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 Government considers that the restrictions imposed by the amendments made by these Regulations to the principal Regulations, are proportionate. The amendments 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.

Among other things, the amendments impose restrictions on travel between areas of low prevalence of coronavirus in Wales and areas with high prevalence of coronavirus in the rest of the UK. Because of the nature of the restrictions, the amendments require the Welsh Ministers to review the restrictions’ proportionality by 23 October 2020 and at least once every seven days thereafter.

3. Evidence base

Reasonable excuse of participating in or facilitating organised activities for the development or well-being of children

These Regulations amend the principal Regulations to provide that a person may have a reasonable excuse to enter or leave a local health protection area to participate in or facilitate organised activities for the development or well-being of children. In this respect–

- there is relatively little evidence of the likely effect on the R rate of permitting persons to enter or leave local health protection areas and the additional mixing of people that this could entail;
- empirical evidence from schools reopening is that with current restrictions (hygiene, distancing depending on age, limiting contact numbers through bubbles, face coverings where required) there has been almost no evidence of transmission in the school setting by under 18s;
- this is evidenced by the majority of school student confirmed cases being single cases and not clusters;
- it is clearly understood that children’s participation in sporting and other developmental activities is beneficial to their mental and physical health and well-being.

Travel Restrictions

The Regulations also amend the principal Regulations to restrict travel from areas of lower incidence rates of coronavirus in Wales to areas of high incidence in England, Scotland and Northern Ireland with high incidence rates of coronavirus and to prevent people from those areas of high incidence entering low incidence areas in Wales.

Evidence from public health professionals suggests coronavirus is moving from east to west across the UK and across Wales. As a general rule, it is concentrating in urban areas and then spreading to more sparsely populated areas as a result of people travelling. The paper SARS-Cov-2 Genomic Insights (October 2020) demonstrates the spread of infection geographically and supports the case for travel restrictions as a means of controlling spread. To prevent further spread in areas where there is still a relatively low prevalence of the virus, there is an urgent need to limit non-essential travel across the UK. The amendments will achieve this goal.

<https://gov.wales/sites/default/files/publications/2020-10/sars-cov-2-genomic-insights-october-2020.pdf>

4. 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.

5. Purpose and intended effect of the legislation

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

These Regulations amend the principal Regulations to-

- provide that a person living in a local health protection area may have a reasonable excuse to travel to other local health protection areas to participate in or facilitate organised activities for the development or well-being of children. This may include sporting, cultural, music, drama, and faith activities;
- restrict travel into areas of Wales not designated as local health protection areas from areas of high prevalence elsewhere in the UK, based on relevant provisions in Coronavirus Regulations in force in the other UK nations. The amendments also restrict travel from areas of Wales not designated as local health protection areas to the areas of high prevalence elsewhere in the UK. The areas of high prevalence are those designated as follows by the relevant authority in that part of the UK:
 - England – all Tier 2 “high” and Tier 3 “very high” areas
 - Scotland – protected areas subject to additional temporary measures
 - Northern Ireland – currently the entire territory;
- make minor and consequential amendments. These ensure consistency in the terms used in the principal Regulations and update the full title of “Menai (Bangor)” ward in paragraph 1 of Schedule 4A to the Principal Regulations.

The Regulations come into force at 6.00 p.m. on 16 October 2020. The restrictions and requirements introduced by these amendments in relation to travel must be reviewed on or before 23 October 2020, and at least once every seven days thereafter.

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.

6. 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, representative groups along with individuals and businesses have been informed about the relaxation of the restrictions through wide scale and ongoing public information broadcasts across the UK, including by myself.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations.

7. 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.



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

16 October 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 19) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 19) 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 6.00 p.m. on 16 October 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 19 November 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 03 November 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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Amendments to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**

DATE **16 October 2020**

BY **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimise the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The number of cases across Wales is growing and our health service is coming under pressure.

To keep Wales safe, the Welsh Government is therefore amending the Regulations to make it clear that people living in areas with a high-prevalence of coronavirus in England, Scotland and Northern Ireland would not be able to travel to parts of Wales where there is a low prevalence.

It is vital that we keep communities which have low levels of infection as safe as possible and this sensible and necessary restriction will help prevent the virus moving from more urban, highly populated areas to more sparsely populated areas.

It is already prohibited for people to travel into a local health protection area here whether they come from other parts of Wales, the UK or from other countries. As with the rules for Local Health Protection Areas there are some exceptions such as work or providing charitable or voluntary services when those cannot be carried out where they live.

We also recognise that this is a particularly difficult time for children and young people and we will also amend the Regulations to allow children to leave their local

health protection areas to play sport or participate in other activities such as drama or dance classes which are so important to their mental and physical health and well-being.

If we all continue to work together, we can protect ourselves and families and keep Wales safe.

Agenda Item 7.5

SL(5)641 – The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 and its amending regulations which include measures put in place for local lockdowns in Wales. (A complete list of the regulations revoked are listed in regulation 34.)

These Regulations impose a number of restrictions and requirements in response to the risks to public health arising from Coronavirus. This is in response to the worsening trend and prevalence of Covid-19 and the risk to public health based on scientific evidence provided by the Welsh Government's Technical Advisory Cell.

These Regulations came into force at 6pm on Friday 23rd October 2020 and expire at the end of the day on 8th November 2020 (a total of 17 days). According to Government guidance, *"following the end of this period, a new set of national rules will be introduced, covering how people can meet and how the public sector and businesses operate."*

These Regulations make provision in 4 key areas:

- a. limiting movement and travel by requiring people to stay at home unless they have a reasonable excuse;
- b. limits gatherings with other people;
- c. closure of certain types of businesses and premises; and
- d. obligations placed on persons responsible for premises open to the public, or for work being carried out at any premises.

In summary:-

Part 2 imposes limits on movement and travel. Regulation 3 requires people living in Wales to stay at home, unless they have a reasonable excuse not to. The Regulations make specific provision for attendance at an event to commemorate Remembrance Sunday to be a reasonable excuse to gather with others, subject to certain conditions. In addition, in the limited circumstances where people can leave home, there is a restriction in regulation 4 on people gathering with anyone who is not part of their household. The overall effect of these provisions is to restrict movement of people within Wales. Regulation 5 provides that people who live outside Wales need a reasonable excuse to travel into Wales. Regulations 6 and 7 limit the circumstances in which a pupil or student has a reasonable excuse to attend the premises of a school or further education institution. Regulation 9 makes further provision making it an offence (punished by a higher penalty) for organising large scale music events that encourage people to gather illegally.



Part 3 relates to business and services whose premises are ordinarily open to the public, requiring many to close. Part 1 of Schedule 1 lists those businesses and services whose premises must be closed to the public. Part 2 of Schedule 1 lists businesses and premises whose premises must be closed but to which access may be allowed on a limited basis. These are categorised as premises selling food and drink (which are listed in Chapter 1); premises offering hotel or holiday accommodation (which are listed in Chapter 2) and others (which are listed in Chapter 3). Regulation 16 provides that where more than one type of business or service is provided at the same premises, e.g. at a large supermarket, those types of business that are prohibited may not continue for the period that these regulations remain in force.

Part 4 makes provisions for the purpose of minimising risk of exposure to coronavirus. Regulation 17 applies to “regulated premises” (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken, for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that not carrying out an activity, closing part of a premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures. Regulations 18 and 19 provide that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions. Regulation 20 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 5 relates to the enforcement of the restrictions and requirements. This part lists who may take enforcement action and includes wide powers of entry, powers to remove and disperse persons and powers to use reasonable force in certain circumstances.

Part 6 makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 30 relates to offences by bodies corporate. Regulation 31 allows for offences to be punished by way of fixed penalty notices and regulation 32 relates to prosecutions of offences under the regulations.

Part 7 contains defined terms and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 (S.I. 2020/725 (W. 162)) as they were amended. Regulation 33 also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. This allows a person who lives alone or only with children to agree to form an extended household with another household, which means that members of both households can interact with each other as if they were members of one household.



Procedure

Made Affirmative.

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

Technical Scrutiny

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.

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

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

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

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new national restrictions for a limited period of 17 days under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which



remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

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

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

In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my press conference on 19 October the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported."

Whilst the Committee acknowledges that these Regulations have been made in response to a public health emergency the Committee note the widespread reporting in the media of dissatisfaction at the short notice given by the Government in relation to the introduction of these Regulations. For example the BBC reported that the Federation of Small Businesses in Wales were disappointed at the short notice given for these changes and restrictions placed on businesses. The Committee would like the Government to provide further detail on who it consulted and when, prior to making these Regulations.

3. Regulation 16 places restrictions on mixed businesses. Under the regulations, mixed businesses are those that run both permitted and prohibited businesses on the same premises. The Committee notes the widespread criticism of this particular policy, the confusion that it has caused amongst stakeholders and the Senedd petition that has been signed by a record 66,000 citizens (as of 26th October 2020). Given clarity is essential when making legislation the Government is asked to provide an update as to whether it intends to amend this particular provision or whether further guidance is to be given to businesses and members of the public in relation to this provision.

4. The regulations make provision for the government to provide guidance on the legislative changes that it makes for this 17-day period. The Government is asked to provide further details of when such guidance was published to provide stakeholders the opportunity to comply with these legislative changes



5. The Committee note that relevant impact assessments were published for these regulations on 26th October 2020 and can be found here - <https://gov.wales/summary-restrictions-social-gathering-and-travel-business-closures-and-attendance-school.html>

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to merits reporting points 2, 3 and 4.

Legal Advisers

Legislation, Justice and Constitution Committee

27 October 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.

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

2020 No. 1149 (W. 261)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 3) (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 impose requirements and restrictions on individuals, businesses and others.

There are 7 Parts to the Regulations.

Part 1 provides that these Regulations come into force at 6 p.m. on **23 October 2020** and expire at the end of the day on **8 November 2020**.

Part 2 imposes limits on movement and travel. Regulation 3 requires people living in Wales to stay at home, unless they have a reasonable excuse not to. In addition, in the limited circumstances where people can leave home, there is a restriction in regulation 4 on people gathering with anyone who is not part of their household. The overall effect of these provisions is to restrict movement of people within Wales. Consistent

with that, regulation 5 provides that people who live outside Wales need a reasonable excuse to travel into Wales. Regulations 6 and 7 limit the circumstances in which a pupil or student has a reasonable excuse to attend the premises of a school or further education institution. Regulation 9 makes further provision making it an offence (punished by a higher penalty) for organising large scale music events that encourage people to gather illegally.

Part 3 relates to business and services whose premises are ordinarily open to the public, requiring many to close. Part 1 of Schedule 1 lists those businesses and services whose premises must be closed to the public (though regulation 11 makes clear that this does not prevent certain activities from taking place on the premises). Part 2 of Schedule 1 lists businesses and premises whose premises must be closed but to which access may be allowed on a limited basis. These are categorised as premises selling food and drink (which are listed in Chapter 1 and to which limited access is allowed in accordance with regulation 12); premises offering hotel or holiday accommodation (which are listed in Chapter 2 and to which limited access is allowed in accordance with regulation 13); and others (which are listed in Chapter 3 and to which limited access is allowed in accordance with regulation 14). Regulation 15 provides for an exception to the requirement to close which applies to the premises of businesses or services listed in Part 3 of Schedule 1. Regulation 16 makes clear that where more than one type of business or service is provided at the same premises, those prohibited by regulation 11 (and listed in Part 1 of Schedule 1) may not continue.

Part 4 makes provisions for the purpose of minimising risk of exposure to coronavirus. Regulation 17 applies to “regulated premises” (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken, for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. It also specifies that not carrying out an activity, closing part of a premises, allowing staff to isolate and collecting contact information from those on the premises may be reasonable measures. Regulations 18 and 19 provide that face coverings must be worn on public transport, including taxis, and in certain indoor places, subject to listed exemptions and exceptions. Regulation 20 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 5 relates to the enforcement of the restrictions and requirements. Regulation 21 makes provision about those who can take enforcement action, regulation 22 makes further provision (in Schedules 2 and 3) about enforcing the need to take preventative measures under regulation 17, regulation 23 relates to compliance notices, and regulation 24 to powers of removal and dispersal. Regulation 25 relates specifically to enforcing the requirement to wear a face covering and regulation 26 to children. Regulation 27 contains a power to enter premises and regulation 28 allows reasonable force to be used in certain circumstances.

Part 6 makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in these Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 30 relates to offences by bodies corporate. Regulation 31 allows for offences to be punished by way of fixed penalty notices and regulation 32 relates to prosecutions of offences under the regulations.

Part 7 contains defined terms (regulation 33) and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 (S.I. 2020/725 (W. 162)) as they were amended (regulation 34). Regulation 33 also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. This allows a person who lives alone or only with children to agree to form an extended household with another household, which means that members of both households can interact with each other as if they were members of one household.

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

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

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

2020 No. 1149 (W. 261)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 3) (Wales)
Regulations 2020**

Made 21 October 2020

Laid before Senedd Cymru 22 October 2020

*Coming into
force* at 6.00 p.m. on 23 October 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 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,

(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.

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) (No. 3) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force at 6.00 p.m. on 23 October 2020.

Expiry

2.—(1) These Regulations expire at the end of the day on 8 November 2020.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

PART 2

Restrictions on movement and gathering with others

Requirement to stay at home

3.—(1) No person in Wales may, without a reasonable excuse, leave the place where they are living or remain away from that place.

(2) A reasonable excuse includes the need to do the following—

- (a) obtain supplies from any business or service listed in Part 3 of Schedule 1 including—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (b) obtain or provide medical assistance, including accessing any of the services referred to in paragraph 47 of Part 3 of Schedule 1 or accessing veterinary services;
- (c) provide, receive or access care or assistance, including childcare or relevant personal care

within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;

- (d) work or provide voluntary or charitable services, where it is not reasonably practicable to do so from home;
- (e) where the person is an elite athlete, train and prepare for, and compete in, a specified sporting event;
- (f) provide coaching and other support to an elite athlete in connection with a specified sporting event;
- (g) officiate at or otherwise be involved in running a specified sporting event;
- (h) exercise, either—
 - (i) alone,
 - (ii) with other members of the person's household, or
 - (iii) with the person's carer;
- (i) provide or receive emergency assistance;
- (j) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (k) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (l) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (m) access or receive public services;
- (n) access or receive educational services, subject to regulations 6 and 7;
- (o) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, "parent" includes a person who is not a parent of the child, but who has parental

(1) 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

responsibility for, or who has care of, the child;

- (p) obtain money from or deposit money with any business or service listed in paragraph 44 or 45 of Part 3 of Schedule 1;
- (q) move home;
- (r) prepare a residential property for persons to move in;
- (s) avoid injury or illness or escape a risk of harm.

(3) A person also has a reasonable excuse to leave the place where they are living to attend an event to commemorate Remembrance Sunday that—

- (a) is held on 7 or 8 November 2020;
- (b) is held outdoors;
- (c) has no more than 30 people attending.

(4) In paragraph (2)(h)—

- (a) exercise must start and finish at the place where the person is living, or
- (b) where, for reasons of physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010⁽¹⁾), the person needs to exercise in another place, exercise must take place in an area local to the place where the person is living.

(5) Paragraph (1) does not apply to a person who is homeless.

Requirement not to gather with other people

4.—(1) Where a person is not at the place where they are living (by virtue of having a reasonable excuse under regulation 3), that person may not, without a reasonable excuse, gather with any other person apart from—

- (a) members of their household,
- (b) their carer, or
- (c) a person they are providing care to.

(2) A reasonable excuse includes the need to do the following—

- (a) work or provide voluntary or charitable services, where it is not reasonably practicable to do so without gathering with others;
- (b) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (c) access or receive public services;

⁽¹⁾ 2010 c.15.

- (d) access or receive educational services, subject to regulations 6 and 7;
- (e) provide, receive or access care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (f) where the person is an elite athlete, train and prepare for, and compete in, a specified sporting event;
- (g) provide coaching and other support to an elite athlete in connection with a specified sporting event;
- (h) officiate at or otherwise be involved in running a specified sporting event;
- (i) provide or receive emergency assistance;
- (j) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (k) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending.

(3) A person also has a reasonable excuse to gather with another person to attend an event to commemorate Remembrance Sunday that—

- (a) is held on 7 or 8 November 2020;
- (b) is held outdoors;
- (c) has no more than 30 people attending.

Restriction on travelling into Wales

5.—(1) No person living outside Wales may, without a reasonable excuse, enter or remain in Wales.

(2) A reasonable excuse includes the need to do the following in Wales—

- (a) obtain—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;

- (b) obtain money from or deposit money with any business or service listed in paragraph 44 or 45 of Part 3 of Schedule 1;
- (c) obtain or provide medical assistance, including accessing any of the services referred to in paragraph 47 of Part 3 of Schedule 1 or accessing veterinary services;
- (d) provide, receive or access care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) work or provide voluntary or charitable services where it is not reasonably practicable to carry out the work or provide the service from outside Wales;
- (f) where the person is an elite athlete, train and prepare for, and compete in, a specified sporting event;
- (g) provide coaching and other support to an elite athlete in connection with a specified sporting event;
- (h) officiate at or otherwise be involved in running a specified sporting event;
- (i) provide or receive emergency assistance;
- (j) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (k) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (l) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (m) access or receive public services;
- (n) access or receive educational services, subject to regulations 6 and 7;
- (o) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental

responsibility for, or who has care of, the child;

- (p) move home;
- (q) avoid injury or illness or escape a risk of harm;
- (r) travel to reach a place outside Wales.

(3) For the purposes of paragraph (1), it is not a reasonable excuse for a person to enter, or remain in, Wales to do anything if it would be reasonably practicable for the person to do that thing outside Wales.

Restriction on attending school

6.—(1) A pupil in year 9 or above may not attend a school's premises in Wales.

(2) But paragraph (1) does not prevent—

- (a) a pupil from attending a school's premises—
 - (i) to undertake an examination or other assessment;
 - (ii) where the pupil's parent is notified by the proprietor of the school that the proprietor considers it appropriate for the pupil to attend due to exceptional circumstances related to the pupil's vulnerability;
- (b) a pupil from attending the premises of a special school;
- (c) a pupil from attending the premises of a pupil referral unit;
- (d) a pupil from attending the premises of a unit in a school, where—
 - (i) the unit is recognised by a local authority as being reserved for pupils with special educational needs, and
 - (ii) the pupil is wholly or mainly educated at the unit;
- (e) a pupil who is a boarder—
 - (i) from residing in accommodation at the school premises;
 - (ii) from being provided education at that accommodation.

Restriction on attending further education

7.—(1) A student may not attend the premises of a further education institution in Wales.

(2) But paragraph (1) does not prevent a student from attending the premises of—

- (a) a further education institution to undertake an examination or other assessment;

- (b) an institution within the further education sector where the student is notified by the institution that the institution considers it appropriate for the student to attend due to exceptional circumstances related to the student's vulnerability.

Interpretation of regulations 6 and 7

8. For the purposes of regulations 6 and 7—

- (a) the “1996 Act” means the Education Act 1996⁽¹⁾;
- (b) “boarder” has the meaning given by section 579 of the 1996 Act;
- (c) “further education institution” means—
 - (i) an institution within the further education sector;
 - (ii) a provider of education or training within the meaning of section 31(1)(a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000⁽²⁾ that—
 - (aa) is not an institution within the meaning of paragraph (i),
 - (bb) is not an institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992⁽³⁾, and
 - (cc) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,

but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;
- (d) “independent school” has the meaning given by section 463 of the 1996 Act;
- (e) “institution within the further education sector” has the meaning given by section 91(3) of the Further and Higher Education Act 1992;
- (f) “parent” has the meaning given by section 576 of the 1996 Act;
- (g) “proprietor” has the meaning given by section 579 of the 1996 Act;
- (h) “pupil” has the meaning given by section 4 of the 1996 Act;

(1) 1996 c. 56.
 (2) 2000 c. 21.
 (3) 1992 c. 13.

- (i) “pupil referral unit” has the meaning given by section 19 of the 1996 Act;
- (j) “special educational needs” has the meaning given by section 312 of the 1996 Act;
- (k) “special school” means—
 - (i) a special school within the meaning given by section 337 of the 1996 Act;
 - (ii) an independent school which wholly or mainly provides education for pupils with special educational needs;
- (l) “school” has the meaning given by section 4 of the 1996 Act;
- (m) “school year” means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July;
- (n) “year 9” means a year group in which the majority of children will, in the school year, attain the age of 14;
- (o) “year group” means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

Prohibition on organising certain unlicensed music events

9.—(1) No person may be involved in organising a relevant unlicensed music event.

(2) For the purposes of this regulation “relevant unlicensed music event” means an event—

- (a) which consists of more than 30 people,
- (b) at which people are gathered in contravention of regulation 4(1),
- (c) at which music is played or performed for the purpose, or for purposes which include the purpose, of entertainment, and
- (d) where the playing or performance of the music is—
 - (i) a licensable activity (within the meaning of the Licensing Act 2003⁽¹⁾), and
 - (ii) not carried on under and in accordance with an authorisation (within the meaning given by section 136(5) of that Act).

(3) For the purposes of this regulation, a person is not involved in organising a relevant unlicensed music event if the person’s only involvement is, or would be, attending it.

(1) 2003 c. 17.

PART 3

Restrictions on businesses and services whose premises are ordinarily open to the public

CHAPTER 1

Overview

References to “premises” and overview

10.—(1) In this Part, references to “premises” are references to premises of a business or service—

- (a) which are in Wales, and
- (b) to which the public have or are permitted access, whether on payment or otherwise.

(2) Chapter 2 makes provision about businesses or services whose premises must close.

(3) Chapter 3 makes provision about businesses or services whose premises must close but to which limited access may be allowed.

(4) Chapter 4 makes provision about businesses or services whose premises may continue to be open.

(5) See regulation 17 for further provision about premises that may continue to be open or are closed but to which limited access may be permitted in accordance with this Part.

CHAPTER 2

Businesses and services whose premises must be closed

Closure of premises used by certain businesses and services

11.—(1) A person responsible for carrying on a business or providing a service which is listed in Part 1 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business or service, and
- (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether

over the internet or as part of a radio or television broadcast);

- (d) the use of premises for the provision of services or information (including the sale, hire or delivery of goods or services)—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including by text message, or
 - (iii) by post.

CHAPTER 3

Business and services whose premises must be closed but to which limited access may be allowed

Closure of bars and restaurants etc.

12.—(1) A person responsible for carrying on a business which is listed in paragraphs 22 to 25 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) the use of premises for—
 - (i) the sale of food and drink for consumption off the premises, or
 - (ii) services providing food or drink to the homeless;
- (b) the provision of room service at a hotel or other accommodation (where the hotel or other accommodation continues to operate in accordance with the limited exceptions allowed by regulation 13);
- (c) a workplace canteen from being open where there is no practical alternative for staff at that workplace to obtain food;
- (d) the carrying out of maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises.

(3) For the purposes of paragraph (1), an indoor area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

Closure of holiday accommodation

13.—(1) A person responsible for carrying on a business which is listed in paragraphs 26 to 29 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (b) the provision of accommodation for any persons staying in that accommodation when these Regulations come into force and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;
- (c) the use of premises to carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post;
- (d) the carrying out of maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises.

Closure of places of worship, community centres and crematoriums

14.—(1) A person responsible for premises of a kind listed in paragraphs 30 to 32 of Schedule 1 must ensure that the premises are closed to members of the public, except for the uses permitted by paragraphs (2), (3) and (4).

(2) A place of worship may be open—

- (a) for funerals;
- (b) for the solemnization of a marriage or formation of a civil partnership;
- (c) to broadcast (without a congregation) an act of worship, funeral or the solemnization of a marriage or formation of a civil partnership (whether over the internet or as part of a radio or television broadcast);
- (d) to provide essential voluntary services;

- (e) to provide public services upon the request of the Welsh Ministers or a local authority.

(3) A community centre may be open—

- (a) to provide essential voluntary services, or
- (b) to provide public services upon the request of the Welsh Ministers or a local authority.

(4) A crematorium may open to members of the public for funerals or burials (and to broadcast a funeral or burial whether over the internet or otherwise).

(5) But paragraph (1) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.

(6) In this regulation, “public services” includes the provision of food banks or other support for homeless or vulnerable people, childcare, blood donation sessions or support in an emergency.

CHAPTER 4

Business and services whose premises may be open

Open premises

15.—(1) Despite the preceding provisions of this Part, premises operated by businesses or services listed in Part 3 of Schedule 1 may continue to be open.

(2) And shopping centres, shopping arcades and markets may be open to the public to the extent that this is required for access to a business or service listed in Part 3 of Schedule 1.

(3) But a person responsible for premises authorised for the sale or supply of alcohol for consumption off the premises may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(4) Paragraph (3) does not allow the person responsible for the premises to sell or supply alcohol in contravention of an authorisation granted or given in respect of the premises.

CHAPTER 5

Mixed businesses

Mixed businesses

16.—(1) Where—

- (a) a person responsible for carrying on a business (“business A”) is required, by virtue of regulation 11(1), 12(1) or 13(1), to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in regulation 11(1), 12(1) or 13(1) is complied with if the person responsible for carrying on

business B ceases to carry on business A at the premises.

(2) So for the avoidance of doubt, where—

- (a) premises operated by a business or service may continue to be open by virtue of regulation 15(1), and
- (b) that business or service forms part of a larger undertaking which includes the carrying on of another business or service on the same premises,

the person responsible for that other business or service must cease to carry it on if required to do so by virtue of regulation 11(1), 12(1) or 13(1).

PART 4

Minimising risk of exposure to coronavirus

Requirement to take preventative measures on regulated premises to minimise risk

17.—(1) For the purposes of paragraph (2)—

- (a) “regulated premises” means—
 - (i) premises which may be accessed by the public by virtue of regulation 11(2), 12(2), 13(2) or 14(2), (3) or (4)
 - (ii) premises of a business or service which may continue to be open by virtue of regulation 15;
 - (iii) a vehicle used to provide a public transport service;
 - (iv) other premises where work is being carried out, and
- (b) the “responsible person” means—
 - (i) in relation to regulated premises referred to in sub-paragraph (a)(i), (ii) or (iii), the person responsible for the premises,
 - (ii) in relation to regulated premises of the kind referred to in sub-paragraph (a)(iv), the person responsible for the work being carried out on the premises.

(2) For the purposes of minimising the risk of exposure to coronavirus at regulated premises, or the spread of coronavirus by those who have been at regulated premises, the responsible person must—

- (a) take all reasonable measures to ensure—
 - (i) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer);

- (ii) where persons are required to wait to enter the premises, that a distance of 2 metres is maintained between them (except between two members of the same household, or a carer and the person assisted by the carer),
 - (b) take any other reasonable measures for that purpose, for example measures which limit close face to face interaction and maintain hygiene such as—
 - (i) changing the layout of premises including the location of furniture and workstations;
 - (ii) controlling use of entrances, passageways, stairs and lifts;
 - (iii) controlling use of shared facilities such as toilets and kitchens;
 - (iv) otherwise controlling the use of, or access to, any other part of the premises;
 - (v) installing barriers or screens;
 - (vi) providing or requiring use of personal protective equipment, and
 - (c) provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus.
- (3) Measures that may be taken under paragraph (2) also include—
- (a) not carrying out certain activities;
 - (b) closing a part of the premises;
 - (c) allowing and enabling a person who ordinarily works at the premises to isolate for a specified period due to testing positive for coronavirus or having had close contact with somebody who has tested positive, where that person has been asked to do so by—
 - (i) the Welsh Ministers;
 - (ii) a public health officer;
 - (iii) an officer of a Local Health Board;
 - (iv) a person designated by a local authority for the purposes of contacting persons who may have been exposed to coronavirus;
 - (d) collecting contact information from each person at the premises or, in relation to persons from the same household, from one of them, and retaining it for 21 days for the purpose of providing it to any of the following, upon their request—
 - (i) the Welsh Ministers,
 - (ii) a public health officer,

- (iii) a person designated by a local authority to process information for the purposes of contacting persons who may have been exposed to coronavirus.

(4) In this regulation—

- (a) “contact information”, in relation to a person at the premises, means the person’s name and information sufficient to enable the person to be contacted, to inform them that they may have been exposed to coronavirus at the premises (including a telephone number and the date and time at which the person was at the premises);
- (b) “public health officer” has the same meaning as in paragraph 3(2)(c) of Schedule 21 to the Coronavirus Act 2020⁽¹⁾;
- (c) “Local Health Board” has the meaning given by section 11 of the National Health Service (Wales) Act 2006⁽²⁾.

Requirement to wear face covering on public transport

18.—(1) A person (“P”) who is travelling as a passenger on a vehicle used to provide a public transport service must wear a face covering.

(2) But this is not required—

- (a) where an exemption applies under paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) on a vehicle providing a school transport service;
- (c) on a ferry where—
 - (i) the part of the ferry which is open to passengers is entirely outdoors, or
 - (ii) a distance of at least 2 metres can be maintained between persons on the part of the ferry which is open to passengers;
- (d) on a cruise ship;
- (e) where P is allocated a cabin, berth or other similar accommodation on the vehicle, at any time when P is in that accommodation—
 - (i) alone, or

(1) 2020 c. 7.

(2) 2006 c.42.

- (ii) only with members of P's household or a member of the household's carer;
 - (f) where—
 - (i) P is permitted, or ordinarily required, to board and to stay in a vehicle when using the public transport service,
 - (ii) the vehicle is not itself used for the provision of a public transport service, and
 - (iii) P stays in that vehicle;
 - (g) on an aircraft which neither took off from, nor is to land at, a place in Wales;
 - (h) on a vessel which does not dock at a port in Wales.
- (4) The circumstances in which P has a reasonable excuse to not wear a face covering include—
- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010);
 - (b) where P has to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
 - (c) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
 - (d) where P is travelling to avoid injury, or to escape a risk of harm, and does not have a face covering;
 - (e) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, if this is allowed on the vehicle and is reasonably necessary (for example due to the length of the journey);
 - (f) where P is asked to remove the face covering by—
 - (i) an enforcement officer, or
 - (ii) the operator of the public transport service, an employee of the operator or a person authorised by the operator.
- (5) An operator of a public transport service to which paragraph (1) applies must provide information to passengers about the requirement to wear face coverings on their vehicles.
- (6) For the purposes of this regulation a “school transport service” means any transport service provided solely for the purpose of—

- (a) carrying a person to and from the school or other place at which the person receives education or training, or
- (b) otherwise facilitating a person's attendance at a school or other place at which the person receives education or training.

Requirement to wear face covering in certain indoor public places

19.—(1) A person (“P”) must wear a face covering in indoor public areas of premises to which the public have or are permitted access, whether on payment or otherwise.

(2) But this is not required—

- (a) where P is a child under the age of 11;
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (3).

(3) The circumstances in which P has a reasonable excuse to not wear a face covering include—

- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010);
- (b) where P is undertaking an activity and wearing a face covering during that activity may reasonably be considered to be a risk to P's health;
- (c) where P has to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
- (d) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
- (e) where P is at the premises to avoid injury, or to escape a risk of harm, and does not have a face covering;
- (f) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, where reasonably necessary;
- (g) where P is asked to remove the face covering by an enforcement officer.

Guidance on minimising exposure

20.—(1) A person required to take reasonable measures under regulation 17(2) must have regard to guidance issued by the Welsh Ministers about those measures.

(2) An operator of a public transport service to which regulation 18 applies must have regard to guidance issued by the Welsh Ministers about—

- (a) the requirement to wear a face covering in accordance with paragraphs (1) to (4) of regulation 18 and the enforcement of that requirement under regulation 25;
- (b) providing information to passengers in accordance with paragraph (5) of regulation 18.

(3) The Welsh Ministers—

- (a) may revise guidance issued under paragraph (1) or (2), and
- (b) must publish the guidance (and any revisions).

(4) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).

PART 5

Enforcement

Enforcement officers

21.—(1) For the purposes of regulation 22 and Schedule 2, an “enforcement officer” means a person designated by a local authority for the purposes of these Regulations.

(2) For the purposes of regulations 23 to 31, an “enforcement officer” means—

- (a) a constable,
- (b) a police community support officer,
- (c) a person designated by—
 - (i) the Welsh Ministers, or
 - (ii) a local authority,
 for the purposes of these Regulations (but see paragraph (3)), or
- (d) a person designated by the Welsh Ministers or a local authority under—
 - (i) regulation 17(1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ for the purposes of those Regulations, or

(1) S.I. 2020/725 (W. 162). Amended by S.I. 2020/985 (W. 222).

- (ii) regulation 10(11)(c) of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ as a relevant person (within the meaning given by that regulation),

(but see paragraph (3)).

(3) A person designated by a local authority may exercise an enforcement officer's functions only in relation to a contravention (or alleged contravention) of a requirement in regulation 11(1), 12(1), 13(1), 14(1), 15(3), 17(2) or Schedule 2.

Enforcement of requirement to take preventative measures

22. Schedules 2 and 3 make provision for and in connection with conferring functions on enforcement officers for the purpose of enforcing regulation 17(2).

Compliance notices

23.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person is contravening a requirement in regulation 11(1), 12(1), 13(1), 14(1) or 18(5).

(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 prevent that person from continuing to contravene the requirement.

Powers of removal and dispersal

24.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person ("P") is contravening regulation 3(1), the officer may—

- (a) direct P to return to the place where P is living;
- (b) remove P to that place.

(2) Where an enforcement officer has reasonable grounds for suspecting that people are gathered together in contravention of regulation 4(1), the officer may—

- (a) direct the gathering to disperse;
- (b) direct any person in the gathering to return to the place where they are living;
- (c) remove any person in the gathering to the place where they are living.

(3) Where an enforcement officer has reasonable grounds for suspecting that a person ("P") is

(1) S.I. 2020/353 (W. 80).

contravening regulation 5(1), the officer may direct P to leave Wales.

(4) When exercising the power in paragraph (1), (2) or (3), an enforcement officer may direct a person to follow such instructions as the officer considers necessary.

(5) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is contravening, or is about to contravene, regulation 9(1), the officer may—

- (a) direct P to follow such instructions as the officer considers necessary in order to stop or prevent the contravention;
- (b) remove P from the location or proposed location of the event which the officer suspects is being, or is about to be, organised in contravention of regulation 9(1).

Enforcement of face covering requirements

25.—(1) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is contravening (or is about to contravene) regulation 18(1), the officer may—

- (a) direct P not to board the vehicle providing the public transport service in question;
- (b) remove P from the vehicle.

(2) Where—

- (a) the operator of a public transport service,
- (b) an employee of the operator, or
- (c) a person authorised by the operator,

has reasonable grounds to suspect that a person (“P”) is about to contravene regulation 18(1), the operator, employee or authorised person may direct P not to board the vehicle providing the public transport service in question.

(3) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening (or is about to contravene) regulation 19(1), the officer may—

- (a) direct P not to enter the premises;
- (b) remove P from the premises.

Enforcement: children

26.—(1) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening regulation 3(1) or is in a gathering in contravention of regulation 4(1) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(2) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening regulation 5(1) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to a place outside Wales, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.

(3) Where an enforcement officer has reasonable grounds to suspect that a child is failing to comply with the requirement in regulation 18(1) or 19(1), the officer may direct any individual (“I”) who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with the requirement.

(4) For the purposes of paragraphs (1), (2) and (3), 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.

Power of entry

27.—(1) An enforcement officer may enter premises, if the officer—

- (a) has reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been or is about to be contravened.

(2) An enforcement officer entering premises in accordance with paragraph (1) may 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.

Enforcement: supplemental provision

28.—(1) An enforcement officer may take other action to facilitate the exercise of a power conferred on the officer by this Part.

(2) An enforcement officer may use reasonable force in the exercise of a power under—

- (a) regulation 24(1)(b), (2)(c) or (5)(b),
- (b) regulation 25(1)(b) or (3)(b), or
- (c) regulation 27(1).

(3) An enforcement officer may only exercise a power under this Part if the officer considers that it is necessary and proportionate to do so.

(4) In this Part references to a requirement include references to a restriction.

PART 6

Offences and penalties

Offences and penalties

29.—(1) A person who—

- (a) without reasonable excuse, contravenes a requirement in regulation 9(1), 11(1), 12(1), 13(1), 14(1) or 15(3), or
- (b) contravenes a requirement in regulation 3(1), 4(1), 5(1), 18(1) or 19(1)

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—

- (a) without reasonable excuse, contravenes paragraph 3(1) of Schedule 2,
- (b) contravenes paragraph 3(2) of that Schedule, or
- (c) without reasonable excuse, removes, obscures or damages a notice or sign required to be displayed under paragraph 7(2) of that Schedule,

commits an offence.

(4) A person who, without reasonable excuse—

- (a) contravenes a direction given—
 - (i) by an enforcement officer under Part 5, or
 - (ii) by the operator of a public transport service, an employee of the operator, or a person authorised by the operator, under regulation 25(2), or

- (b) fails to comply with a compliance notice given by an enforcement officer under regulation 23(1),

commits an offence.

(5) An offence under these Regulations is punishable on summary conviction by a fine.

(6) 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.

Offences committed by bodies corporate etc.

30.—(1) 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.

(2) In paragraph (1), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(3) 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.

(4) 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.

(5) Section 33 of the Criminal Justice Act 1925⁽²⁾ and Schedule 3 to the Magistrates’ Courts Act 1980⁽³⁾ 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.
 (3) 1980 c. 43.

(6) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(7) 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

31.—(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 (except an offence under regulation 29(3)(a)), 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) A person designated by the Welsh Ministers for the purposes of receiving payment under regulation 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 or regulation 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 is to be treated as if designated for the purposes of receiving payment under this regulation.

(5) 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.

(6) 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.

(7) 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 (6)(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.

(8) Where the notice is issued in respect of an alleged offence of contravening regulation 9(1), the amount specified under paragraph (7)(c) must be £10,000 (and paragraphs (10) and (11) do not apply).

(9) In any other case, the amount specified under paragraph (7)(c) must be £60 (subject to paragraphs (10) and (11)).

(10) 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.

(11) 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 (12)—

- (a) paragraph (10) 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.

(12) In calculating how many fixed penalty notices a person has received, fixed penalty notices issued to that person under—

- (a) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020,
- (b) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, and
- (c) the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020⁽¹⁾.

⁽¹⁾ S.I. 2020/1011 (W. 225).

are to be taken into account, but no account is to be taken of any fixed penalty notice issued to that person in respect of an alleged offence of contravening regulation 14B(1) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 or regulation 9(1) of these Regulations.

(13) Whatever other method may be specified under paragraph (7)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (7)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(14) Where a letter is sent as mentioned in paragraph (13), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(15) 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.

Prosecutions

32.—(1) No proceedings for an offence under these Regulations may be brought other than by—

- (a) the Director of Public Prosecutions,
- (b) any person designated by the Welsh Ministers, or
- (c) in relation to proceedings for an offence of contravening a requirement in regulation 11(1), 12(1), 13(1), 14(1), 15(3), 17(2) or Schedule 2, a local authority.

(2) A person designated by the Welsh Ministers under regulation 14 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 or regulation 22 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 is to be treated as if designated under this regulation.

PART 7

General

Interpretation

33.—(1) In these Regulations—

- (a) “burial” includes the interment of a dead person’s ashes;
- (b) “care home” means premises at which a “care home service” within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ is provided;
- (c) “carer” means a person who provides care for the person assisted where—
 - (i) the carer is entitled to an assessment under section 24 of the Social Services and Well-being (Wales) Act 2014⁽²⁾,
 - (ii) the care is part of the provision of community care services under Part 4 of the Social Services and Well-being (Wales) Act 2014, or
 - (iii) the care is provided by a care provider registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;
- (d) “child” means a person who is aged under 18;
- (e) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (f) “elite athlete” means an individual designated as such for the purposes of these Regulations by the Sports Council for Wales;
- (g) “face covering” means a covering of any type which covers a person’s nose and mouth;
- (h) “local authority” means the council of a county or county borough in Wales;
- (i) “Local Health Board” has the meaning given by regulation 17(4)(c);
- (j) “parental responsibility” has the same meaning as in the Children Act 1989⁽³⁾;
- (k) a “person responsible for carrying on a business” includes the owner, proprietor, and manager of that business;
- (l) “premises” includes any building or structure and any land;

(1) 2016 anaw 2, as amended by S.I. 2017/1326 (W. 299) and S.I. 2018/195 (W. 44).

(2) 2014 anaw 4.

(3) 1989 c. 41. See Part 1 of the Act, to which there have been various amendments, including by the Human Fertilisation and Embryology Act 2008 (c. 22) and S.I. 2019/1458.

- (m) “public transport service” means a service provided for the carriage of passengers by road, railway, tramway, air or water;
- (n) “regulated premises” has the meaning given by regulation 17(1);
- (o) “specified sporting events” are the following—
 - (i) Wales v Norway football match, women’s UEFA European Championships qualifying on 27 October 2020;
 - (ii) Wales v Scotland rugby match, women’s 6 Nations Tournament on 1 November 2020;
 - (iii) the UEFA Champions League match involving Swansea City AFC Ladies to be held on 3 or 4 November 2020;
- (p) “vehicle” includes an aircraft, a cable car, a train, a tram and a vessel;
- (q) “vulnerable person” includes—
 - (i) any person aged 70 or older;
 - (ii) any person under 70 who has an underlying health condition;
 - (iii) any person who is pregnant;
 - (iv) any child;
 - (v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

(2) For the purposes of these Regulations—

- (a) there is a gathering when two or more people are in the same place in order to do something together;
- (b) premises are indoors if they are enclosed or substantially enclosed within the meaning given by regulation 2 of the Smoke-free Premises etc. (Wales) Regulations 2007⁽²⁾.

(3) If a household comprising of no more than one adult (and any number of children) and another household agree to be treated as a single (extended) household for the purposes of these Regulations, any reference in these Regulations (other than in paragraphs (4) to (6)) to a “household” is to be read as including both households.

(4) To agree to be treated as a single household all of the adults of the two households must agree.

(5) But—

(1) 2006 c. 47, as amended by section 65 of the Protection of Freedoms Act 2012 (c. 9).
 (2) S.I. 2007/787 (W. 68).

- (a) a household may only agree to be treated as a single household with one other household, and
- (b) if two households cease to agree to be treated as a single household, neither household may agree to be treated as a single household under paragraph (3) with any other household.

(6) If two households have agreed to be treated as a temporary extended household in accordance with paragraph 2 of Schedule 4A to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020⁽¹⁾ they are to be treated as also having agreed to be treated as a single (extended) household for the purposes of these Regulations.

(7) For the purposes of these Regulations, premises are authorised for the sale or supply of alcohol where the premises have been granted or given an authorisation under the Licensing Act 2003, and “authorisation” has the meaning given by section 136(5) of that Act.

Revocation

34.—(1) The following Regulations are revoked—

- (a) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020;
- (b) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020⁽²⁾;
- (c) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020⁽³⁾;
- (d) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020⁽⁴⁾;
- (e) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020⁽⁵⁾;
- (f) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020⁽⁶⁾;
- (g) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020⁽⁷⁾;

(1) S.I. 2020/725 (W. 162). Paragraph 2 of Schedule 4A was amended by S.I. 2020/1079 (W. 242).
 (2) S.I. 2020/752 (W. 169).
 (3) S.I. 2020/803 (W. 176).
 (4) S.I. 2020/820 (W. 180).
 (5) S.I. 2020/843 (W. 186).
 (6) S.I. 2020/867 (W. 189).
 (7) S.I. 2020/884 (W. 195).

- (h) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020⁽¹⁾;
- (i) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020⁽²⁾;
- (j) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020⁽³⁾;
- (k) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020⁽⁴⁾;
- (l) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020⁽⁵⁾;
- (m) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020⁽⁶⁾;
- (n) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020⁽⁷⁾;
- (o) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) Regulations 2020⁽⁸⁾;
- (p) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020⁽⁹⁾;
- (q) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020⁽¹⁰⁾;
- (r) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020⁽¹¹⁾;
- (s) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) Regulations 2020⁽¹²⁾;

(1) S.I. 2020/912 (W. 204).
 (2) S.I. 2020/961 (W. 215).
 (3) S.I. 2020/985 (W. 222).
 (4) S.I. 2020/1007 (W. 224).
 (5) S.I. 2020/1022 (W. 227).
 (6) S.I. 2020/1035 (W.229).
 (7) S.I. 2020/1040 (W. 230).
 (8) S.I. 2020/1043 (W. 232).
 (9) S.I. 2020/1049 (W. 235).
 (10) S.I. 2020/1066 (W. 240).
 (11) S.I. 2020/1079 (W. 242).
 (12) S.I. 2020/1102 (W. 251).

- (t) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 19) Regulations 2020⁽¹⁾.

(2) Despite the revocation of those Regulations, they continue in force in relation to any offence committed, or any notice given or issued, under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 before these Regulations came into force.

Consequential amendment

35.—(1) In regulation 19(10) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, after sub-paragraph (b) insert—

“(c) the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.”

Mark Drakeford

First Minister, one of the Welsh Ministers

21 October 2020

⁽¹⁾ S.I. 2020/1130 (W. 257).

SCHEDULE 1

Regulations 11 to 15

Businesses and services whose premises are subject to restrictions or closure

PART 1

Businesses or services whose premises must be closed

1. Any business selling goods or services for sale or hire in a shop, including—

- (a) homeware stores;
- (b) nail and beauty salons;
- (c) establishments providing tanning services, massage services, body piercings, tattooing, electrolysis or acupuncture;
- (d) auction houses;
- (e) car dealerships;
- (f) markets;
- (g) betting shops;
- (h) hair salons and barbers;
- (i) garden centres and plant nurseries.

2. Shopping centres and shopping arcades.

3. Cinemas.

4. Theatres.

5. Nightclubs, discotheques, dance halls or other venues where live or recorded music is provided for members of the public or members of the venue to dance.

6. Sexual entertainment venues (within the meaning given by paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982⁽¹⁾).

7. Bingo halls.

8. Concert halls.

9. Casinos.

10. Skating rinks.

11. Swimming pools.

12. Leisure centres and leisure facilities including indoor fitness studios, gyms and spas.

⁽¹⁾ 1982 c. 30. Paragraph 2A of Schedule 3 was inserted by section 27(3) of the Policing and Crime Act 2009 (c. 26).

13. Sports courts, skate parks, bowling greens, golf courses and enclosed sports grounds or pitches (whether outdoors or indoors).

14. Bowling alleys, amusement arcades and indoor play areas.

15. Museums, galleries and archive services.

16. Funfairs, amusements parks and theme parks.

17. Visitor attractions and holiday, leisure activity or events businesses.

18. Recycling centres.

19. Libraries.

20. Estate or letting agents, developer sales offices and show homes.

21. Venues for events or conferences (including venues for weddings other than places of worship and registry offices).

PART 2

Business or services whose premises must be closed but to which limited access is allowed

CHAPTER 1

Premises selling food and drink for consumption on the premises

22. Restaurants, including restaurants and dining rooms in members' clubs and on the premises of businesses listed in Chapter 2 of this Part.

23. Cafés, including workplace canteens and cafés on the premises of businesses listed in Chapter 2 of this Part.

24. Bars, including bars in members' clubs and on the premises of businesses listed in Chapter 2 of this Part.

25. Public houses.

CHAPTER 2

Hotels and holiday accommodation

26. Holiday sites.

27. Camping sites.

28. Hotels and bed and breakfast accommodation.

29. Other holiday accommodation (including holiday apartments, hostels and boarding houses).

CHAPTER 3

Others

30. Places of worship.

31. Community centres.

32. Crematoriums.

PART 3

Businesses and services whose premises may be open

33. Food retailers, including food markets, supermarkets, convenience stores, corner shops and establishments selling food or drink for consumption off the premises (including premises authorised for the sale or supply of alcohol for consumption off the premises).

34. Cafés and canteens at a hospital, care home, school or within accommodation provided for students.

35. Canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence.

36. Hospital libraries and libraries at educational establishments.

37. Newsagents.

38. Building supplies and hardware stores.

39. Pharmacies (including non-dispensing pharmacies) and chemists.

40. Bicycle shops.

41. Petrol stations.

42. Car repair and MOT services.

43. Taxi or vehicle hire businesses.

44. Banks, building societies, credit unions, short term loan providers, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.

45. Post offices.

46. Laundrettes and dry cleaners.

47. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical

or health services, including services relating to mental health.

48. Veterinary surgeons and pet shops.

49. Agricultural or aquacultural supplies shops.

50. Livestock markets or auctions.

51. Funeral directors.

PART 4

Interpretation

52.—(1) For the purposes of this Schedule, a “holiday site” means any land in Wales on which a mobile home or caravan is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), in respect of which the relevant planning permission or the site licence for the land—

- (a) is expressed to be granted for holiday use only, or
- (b) requires that there are times of the year when no mobile home or caravan may be stationed on the site for human habitation.

(2) For the purpose of determining whether or not a site is a holiday site, any provision of the relevant planning permission or of the site licence which permits the stationing of a mobile home on the land for human habitation all year round is to be ignored if the mobile home is authorised to be occupied by—

- (a) the person who is the owner of the site, or
- (b) a person employed by that person but who does not occupy the mobile home under an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013⁽¹⁾ applies.

(1) 2013 anaw 6, as amended by the Housing (Wales) Act 2014 (anaw 7).

SCHEDULE 2

Regulation 22

Enforcement of requirement to take preventative measures on regulated premises

Premises improvement notice

1.—(1) An enforcement officer may issue a notice (a “premises improvement notice”) to a responsible person if the officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 17(2), and
- (b) the measures specified in the notice are necessary and proportionate in order to ensure that the person complies with those obligations.

(2) A premises improvement notice must—

- (a) specify the premises to which it relates;
- (b) specify the measures it requires to be taken in order to ensure that the person complies with the obligations imposed by regulation 17(2);
- (c) specify a time limit within which the measures must be taken (which must not be less than 48 hours beginning with the time the notice is issued);
- (d) give details of the right of appeal conferred by paragraph 5.

(3) In this Schedule, “responsible person” has the meaning given by regulation 17(1)(b).

Premises closure notice

2.—(1) If either condition 1 or condition 2 is satisfied, an enforcement officer may issue a notice (a “premises closure notice”) to a responsible person requiring the premises, or part of the premises, to be closed.

(2) Condition 1 is—

- (a) a premises improvement notice has been issued to the person,
- (b) the enforcement officer considers that the person has failed to take the measures specified in the premises improvement notice within the specified time limit, and
- (c) the officer considers that the closure of the premises, or part of the premises, is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(3) Condition 2 is that the enforcement officer considers that—

- (a) the person is not complying with the obligations imposed on the person by regulation 17(2), and
- (b) the closure of the premises, or part of the premises, (without a premises improvement notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

(4) A premises closure notice must—

- (a) contain a description of the premises to be closed,
- (b) where a premises improvement notice has been issued, set out the measures that the enforcement officer considers—
 - (i) have not been taken, and
 - (ii) must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 17(2),
- (c) where a premises improvement notice has not been issued, set out the reasons why the enforcement officer considers that the person is not complying with the obligations imposed by regulation 17(2),
- (d) in either case, set out the reasons why the enforcement officer considers that closure of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus,
- (e) specify the period for which the notice has effect, and
- (f) give details of the right of appeal conferred by paragraph 5.

(5) The period specified under sub-paragraph (4)(e) may not be more than 336 hours (14 days) beginning with the time the notice is issued.

(6) A premises closure notice has effect from the time at which it is issued or from a later time specified in the notice.

(7) A premises closure notice may not be issued in relation to premises which form part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services.

Effect of premises closure notice

3.—(1) As soon as is reasonably practicable after a premises closure notice takes effect, the person to whom it is issued must ensure that—

- (a) the premises to which the notice relates are closed, and
- (b) no business is carried on or service is provided on, or from, the premises.

(2) No person may enter, or be on, premises closed under sub-paragraph (1) without a reasonable excuse.

(3) For the purposes of sub-paragraph (2), the circumstances in which a person has a reasonable excuse include where—

- (a) the person lives on the premises;
- (b) the person is carrying out essential maintenance or repairs;
- (c) the person is doing things necessary to ensure that regulation 17(2) can be complied with when the premises are allowed to be open;
- (d) the person is an enforcement officer or a person assisting an enforcement officer;
- (e) it is necessary for the person to be on the premises to avoid injury or illness or escape a risk of harm.

Termination of premises improvement or closure notice

4.—(1) An enforcement officer may issue a notice terminating a premises improvement notice or a premises closure notice if satisfied that—

- (a) the measures specified in the premises improvement notice (if one was issued) have been taken, or
- (b) other measures have been taken to ensure that regulation 17(2) can be complied with at the premises in question.

(2) A premises improvement notice or premises closure notice ceases to have effect at the time notice of the termination is issued.

Appeals

5.—(1) A person to whom a premises improvement notice or premises closure notice is issued may appeal to a magistrates' court against the notice.

(2) An appeal must be made—

- (a) by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980, and
- (b) within 7 days after the day the notice is issued.

(3) But a magistrates' court may allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2)(b) if satisfied that there is a good reason for the failure to appeal before the expiry of

that period (and for any delay in applying for permission to appeal out of time).

(4) A magistrates' court may suspend the effect of a premises improvement notice or premises closure notice pending the determination of an appeal.

(5) On an appeal against a premises improvement notice or premises closure notice, a magistrates' court may—

- (a) confirm the decision to issue the notice;
- (b) direct that the notice is to cease to have effect;
- (c) modify the notice;
- (d) make such other order as the court considers appropriate.

(6) If the magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to pay compensation for loss suffered as the result of the issue of the notice.

(7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.

(8) On an appeal to the Crown Court, the Court may—

- (a) confirm, vary or reverse the decision of the magistrates court;
- (b) remit the case to the magistrates' court to dispose of in accordance with directions given by the Crown Court.

Issuing premises improvement and closure notices and terminations

6.—(1) A premises improvement notice, premises closure notice or a termination of either of those types of notice is issued to a person by giving a copy of it in writing to that person.

(2) But where the person responsible for the premises to which the notice or termination relates is not on the premises when it is to be issued, the notice is to be treated as having been issued to that person if—

- (a) a copy of it is given to any other person on the premises who appears to be responsible for any business or service being carried out on the premises, or
- (b) if there is no such person on the premises when the notice is to be issued, a copy of the notice is placed in a conspicuous position on the premises.

Publicising premises improvement and closure notices

7.—(1) This regulation applies where an enforcement officer has issued a premises improvement notice or a premises closure notice.

(2) As soon as reasonably practicable after issuing the notice, the enforcement officer must—

- (a) display a copy of the notice, and a sign in the form set out in Schedule 3, in a prominent place near every entrance to the premises;
- (b) arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

(3) A notice or sign displayed under sub-paragraph (2)(a) must be at least A4 size.

(4) A notice required to be displayed and published under sub-paragraph (2) must continue to be displayed and published, and a sign required to be displayed under that sub-paragraph must continue to be displayed, for as long as the notice has effect.

Provision of information etc.

8.—(1) An enforcement officer may, to facilitate the exercise of a power conferred on the officer by this Schedule—

- (a) require any person to give any information or answer any question the officer considers to be relevant to the exercise of the power;
- (b) require the production of, inspect and take copies of, any documents or electronic records.

(2) A person may not be required under sub-paragraph (1) to provide a document, record or other information in respect of which a claim for legal professional privilege could be maintained in legal proceedings.

(3) No information or answer given by a person in response to a requirement imposed under sub-paragraph (1)(a) is admissible in evidence against that person, or the person's spouse or civil partner, in any proceedings other than proceedings under these Regulations.

SCHEDULE 3

Regulation 22

Form of sign to accompany premises improvement notice or premises closure notice

Sign to be displayed with premises improvement notice

1.—(1) A sign displayed with a premises improvement notice under paragraph 7(2)(a) of Schedule 2 must be in the form set out below.

(2) The colours used in the sign must be white, black and amber C0 M60 Y100 K0.

 GIG CYMRU NHS WALES	Iechyd Cyhoeddus Cymru Public Health Wales	 DIOGELU CYMRU KEEP WALES SAFE	 Llywodraeth Cymru Welsh Government
IECHYD Y CYHOEDD Y CORONAFEIRWS Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:		PUBLIC HEALTH CORONAVIRUS Requirement to minimise risk of exposure to coronavirus on premises:	
ANGEN GWELLA			
IMPROVEMENT NEEDED			
Diogelu Cymru gyda'n gilydd		Together we'll keep Wales safe	
©GL I Hawffraint y Goron 2020, Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government WG41123			

Sign to be displayed with premises closure notice

2.—(1) A sign displayed with a premises closure notice under paragraph 7(2)(a) of Schedule 2 must be in the form set out below.

(2) The colours used in the sign must be white, black and red C15 M100 Y100 K0.

 GIG CYMRU NHS WALES Iechyd Cyhoeddus Cymru Public Health Wales		 Llywodraeth Cymru Welsh Government
IECHYD Y CYHOEDD Y CORONAFEIRWS Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:	PUBLIC HEALTH CORONAVIRUS Requirement to minimise risk of exposure to coronavirus on premises:	
CAEWYD Y FANGRE HON		
PREMISES CLOSED		
Diogelu Cymru gyda'n gilydd	Together we'll keep Wales safe	
©CL Hawffraint y Goron 2020, Llywodraeth Cymru WG41123 / Crown copyright 2020, Welsh Government WG41123		

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 3) (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) (No. 3) (Wales) Regulations 2020.

Mark Drakeford
First Minister

22 October 2020

1. Description

These Regulations revoke the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 (“the principal Regulations”) and subsequent amending Regulations. The Regulations impose restrictions and requirements necessary to protect against the risks to public health arising from coronavirus.

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 and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

These Regulations include a ‘sunset provision’ which means they will expire at the end of 8 November 2020.

European Convention on Human Rights

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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The implementation of new national restrictions for a limited period of 17 days under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

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

The 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) which causes the disease known as COVID-19 or “coronavirus”.

Since the last review of restrictions and requirements imposed by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, Wales has continued to see a worsening trend in the prevalence of COVID-19. It is estimated the level of infections today is at 2,500 and at the current rate of growth the number of infections would exceed the level of the March peak by the end of October. For the first time in this second wave of infections, incidence for Wales is higher than 100 cases per 100,000 people and positivity for Wales is above 7.5%. The scientific evidence drawn on to assess the public health risks is provided by the Welsh Government’s [Technical Advisory Cell](#) and available on the gov.wales website.

In recognition of this, and as part of the ongoing review of restrictions and requirements in the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, the Welsh Ministers have decided to put in place new restrictions and requirements for a short time period, with the aim of rapidly reducing the rate of transmission and bringing the virus back under control. Information about previous restrictions and associated impact assessments can also be found on the gov.wales website.

The advice of the Chief Medical Officer for Wales is that action is needed now if we are to prevent NHS capacity in Wales becoming stressed and potentially

overwhelmed. These Regulations are intended to prevent direct covid-19 deaths and deaths related to the non-availability of NHS services as a consequence of widespread community transmission of the virus.

These Regulations make provision in four key areas:

- a) limiting movement and travel by requiring people to stay at home unless they have a reasonable excuse;
- b) limits on gathering with other people;
- c) closure of certain types of businesses and premises;
- d) obligations placed on persons responsible for premises open to the public, or for work being carried out at any premises.

The Regulations also provide for the enforcement of these requirements and restrictions.

Part 1 provides that these Regulations come into force at 6 p.m. on 23 October 2020 and expire at the end of the day on 8 November 2020.

Part 2 of the Regulations imposes limits on movement and travel. Regulation 3 requires people living in Wales to stay at home, unless they have a reasonable excuse not to. In addition, in the limited circumstances where people are permitted to leave home, there is a restriction on people gathering without reasonable excuse with anyone who is not part of their household. The Welsh Ministers recognise there are lower risks of coronavirus transmission associated with being outdoors. The seriousness of the current public health situation, however, means that for the short period in which these Regulations have effect, gatherings outdoors of people not from the same household or organised outdoor activities will generally not be permitted. The Regulations make specific provision for attendance at an event to commemorate Remembrance Sunday to be a reasonable excuse to gather with others, subject to certain conditions. The overall effect of these provisions is to restrict movement of people within Wales so as to minimise transmission of the coronavirus within the community. In order not to undermine the effectiveness of the restrictions on movement and travel within Wales, the Regulations also require that people who live outside Wales need a reasonable excuse to travel into Wales. Regulations 6 and 7 limit the circumstances in which a pupil or student has a reasonable excuse to attend the premises of a school or further education institution. Regulation 9 makes further provision making it an offence (punished by a higher penalty) for organising large scale music events that encourage people to gather illegally.

Part 3 of the Regulations requires certain businesses and services whose premises are ordinarily open to the public to close. Chapter 2 of that Part refers to those businesses and services whose premises must be closed to the public, which are more particularly listed in Part 1 of Schedule 1 (though regulation 11 makes clear that this does not prevent certain activities from taking place on the premises). Chapter 3 makes provision for those businesses and services which must be closed

but to which limited access may be allowed, which are more particularly listed in Part 2 of Schedule 1: premises selling food and drink (to which limited access is allowed in accordance with regulation 12); premises offering hotel or holiday accommodation (to which limited access is allowed in accordance with regulation 13); and places of worship and other places (to which limited access is allowed in accordance with regulation 14). Regulation 15 provides for an exception to the requirement to close which applies to the premises of businesses or services listed in Part 3 of Schedule 1. Regulation 16 makes clear that where more than one type of business or service is provided at the same premises, those businesses prohibited by regulation 11 (and listed in Part 1 of Schedule 1) may not continue.

The urgent need to contain the spread of the coronavirus requires non-essential customer facing businesses and those which involve people coming into contact with each other to close. These include non-essential retail, close contact services, tourism, the events sector and hospitality (with the exception of hotels and other accommodation will be required to close but their premises may be used for such purposes as requested or authorised by the Welsh Ministers or local authorities (for example, to house people that would otherwise be homeless; people fleeing from domestic abuse; key workers, and those working in sectors that can remain open but for which working from home is not viable, such as for professional sports). Under these Regulations, construction, manufacturing and other non-customer facing businesses can continue to operate, including those in the supply chain, such as builder's merchants. These are critical industries that cannot be disaggregated but provide essential infrastructure and services for food and energy supply chains, or are essential to emergency responses. Employees in all sectors will be required to work from home where reasonably practicable to do so. Similarly, pharmacies and chemists, dental services and other medical or health services (including services relating to mental health) may remain open during the period in which the Regulations have effect.

Part 4 of the Regulations places certain obligations on persons responsible for premises open to the public, or responsible for work being carried out at any premises, in order to minimise risk of exposure to coronavirus. Regulation 17 applies to "regulated premises" (any place which is open to the public or where work is carried out) and requires: (1) all reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons on the premises; (2) any other reasonable measures to be taken – for example to limit close face to face interaction and maintain hygiene; and (3) information to be provided to those entering or working at premises about how to minimise risk of exposure to coronavirus. Part 4 also specifies that ceasing an activity, closing part of a premises and collecting contact information from those on the premises may be reasonable measures. Regulations 18 and 19 provide that face coverings must be worn on public transport (including taxis) and in certain indoor places, subject to listed exemptions and exceptions. Regulation 20 provides for guidance to be issued about the practical application of the requirements imposed by this Part, and those to whom the requirements apply must have regard to that guidance.

Part 5 of the Regulations relates to the enforcement of the restrictions and requirements. Regulation 21 makes provision about those who can take enforcement action; regulation 22 makes further provision (in Schedules 2 and 3) about enforcing

the need to take preventative measures under regulation 17; regulation 23 relates to compliance notices, and regulation 24 to powers of removal and dispersal. Regulation 25 relates specifically to enforcing the requirement to wear a face covering and regulation 26 to children. Regulation 27 contains a power to enter premises and regulation 28 allows reasonable force to be used in certain circumstances.

Part 6 of the Regulations makes provision about offences and penalties. Regulation 29 provides that a person who, without a reasonable excuse, contravenes (listed) requirements in the Regulations commits an offence. That offence is punishable by an unlimited fine. Regulation 30 relates to offences by bodies corporate. Regulation 31 allows for offences to be punished by way of fixed penalty notices and regulation 32 relates to prosecutions of offences under the regulations.

Finally, Part 7 contains defined terms and revokes the Health Protection (Coronavirus Restrictions) (Wales) (No.2) Regulations 2020 and related amending instruments. Regulation 33 also makes provision which modifies the numerous restrictions on individuals in the Regulations which limit interaction with anyone who is not a member of their household. As was the case previously in the local health protection areas established under the previous Regulations, under these Regulations a person who lives alone or only with children may agree to form an extended household with another household, which means that members of both households can interact with each other as if they were members of one household. This will help mitigate the effects of isolation and loneliness of single adult households.

It is critical to take all reasonable steps to contain increasing transmission of coronavirus. The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations 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.

In determining the need for, and details of the restrictions and requirements set out in these Regulations, however, I together with other Ministers and the Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my press conference on 19 October the Welsh Government's intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.

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 to deal with a serious and imminent threat to public health.

A summary integrated impact assessment has been prepared and will be published on the GOV.wales website.



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

21 October 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) 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 6.00 p.m. on 23 October 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 24 November 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 have scheduled these Regulations for debate in Plenary on 3 November 2020.

These Regulations will revoke the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020, and the subsequent amending Regulations. This will mean the approval of the Senedd for the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 19) Regulations 2020 will no longer be required. Appropriate revisions to the Business Statement will be made.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

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

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Coronavirus fire-break**
DATE **October 19, 2020**
BY **First Minister Mark Drakeford MS**

The Cabinet has today decided to introduce a two-week fire-break to help bring coronavirus under control in Wales.

This period will begin at 6pm on Friday October 23 and will end on Monday November 9. This includes the half-term holiday for many children in Wales.

We are facing a very serious situation in Wales as coronavirus has risen rapidly and spread in every part of the nation. The clear advice from our medical and scientific advisers is that a short, sharp fire-break will give us an opportunity to reset and ensure the NHS has the capacity to respond to pandemic, emergency and winter pressures.

The scientific advice from the Technical Advisory Cell, which informs the Cabinet's decision, is published today at: <https://gov.wales/technical-advisory-group-fire-breaks>

We have made the fire-break as short as possible but this means the measures we are taking need to be sharp to have a maximum impact on the virus.

From 6pm on Friday October 23:

- People must stay at home, except for very limited purposes, such as for exercise.
- People must work from home wherever possible;
- People must not visit other households or meet other people they do not live with either indoors and outdoors;
- No gatherings will be allowed outdoors;
- All non-food retail, hospitality businesses, close contact services and events and tourism businesses, such as hotels must close;
- Community centres, libraries and recycling centres will be required to close.

As the virus has taken hold, we have said many times that children would be our top priority if further restrictions are needed and that education must continue.

As a result, childcare will stay open. Primary and special schools will re-open as normal after half-term. Secondary schools will re-open after the half-term for children in years seven and eight. Pupils will be able to come in to take exams but other pupils will continue their learning from home for an extra week.

Universities will continue to provide a blend of in person and online learning.

To support those businesses, which must close, we will make available a package of almost £300m, which will complement wage-support schemes available from the UK Government.

- Every business covered by the small business rates relief will receive a £1,000 payment.
- Small and medium-sized retail, leisure and hospitality businesses, which have to close will receive a one-off payment of up to £5,000.
- There will also be additional discretionary grants and support for smaller businesses, which are struggling.
- The £80m fund announced last week to help businesses develop in the longer term, will be increased to £100m, which includes £20m ring-fenced for tourism and hospitality.
- Businesses will also be able to access the support available through the existing Job Retention Scheme or the new expanded Job Support Scheme.

Further details about the support package will be available this week and we will ensure the funding is available as quickly as possible for those who need it.

An initial set of frequently asked questions are available online at <https://gov.wales/coronavirus-circuit-break-frequently-asked-questions>

We propose to bring forward a debate tomorrow in government time about the need for a short fire-break period.

SL(5)607 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.8) (Caerphilly) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 ("the Principal Regulations") to introduce restrictions in respect of a 'local health protection area' and apply those restrictions to the area of Caerphilly County Borough Council. These amendments:

These Regulations amend the principal regulations to introduce restrictions in respect of a 'local health protection area', and apply those restrictions to the area of Caerphilly County Borough Council. The effect of this 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;
- prohibit people outside of the area entering the area without reasonable excuse;
- require people present in the area to wear a face covering (subject to certain exemptions and exceptions) if they are in open premises; and
- require the restrictions and requirements introduced by these amendments for the area of Caerphilly Borough Council to be reviewed on or before 24 September, and at least once every seven days thereafter.

Procedure

Made Affirmative.

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



Technical Scrutiny

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

1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

These Regulations, at regulation 2(6)(b)(iii), refer to regulations 18(6) and 18(6ZA)(a) in the English language version but the Welsh language version only provides reference to the paragraphs within that regulation; '(6) neu (6ZA)(a)'. This regulation amends regulation 20(3)(a) of the principal Regulations. The inconsistency results in the Welsh language version of the amended regulation not being as clear as the English language version.

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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The explanatory memorandum states that,

"The First Minister, together with other Ministers and the Welsh Government, has 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 written statement issued in the afternoon of 7 September, of the intention to impose the restrictions achieved in the Regulations made today. These proposed changes were subsequently widely reported by the media."

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 Committee notes that these Regulations introduce a tightening of covid-19 related restrictions to the area of Caerphilly County Borough Council. As such, these Regulations fall within the territory of human rights considerations again for individual rights under the Human Rights Act 1998/European Charter of Fundamental Rights and against the necessary 'proportionality' test.

Additionally, the Committee notes the further consideration and explanation by the Welsh Government of human rights in the Explanatory Memorandum and are content to see specifically, the built in review period of the restrictions imposed by these Regulations by the Government in the timescales as set out from the EM below:

"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 Caerphilly 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 requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions. 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."

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is required for the technical report point but is not needed for the two merits points.

Committee Consideration

The Committee considered the instrument at its meeting on 21 September 2020 and reports to the Senedd in line with the reporting points above.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 2) (WALES) (AMENDMENT) (NO. 8) (CAERPHILLY) REGULATIONS 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee.

Technical scrutiny points:

Inconsistencies between the Welsh and English texts

2. The Committee's draft report notes that in regulation 2(6)(b)(iii) the reference to regulations 18(6) and (6ZA)(a) differ between the English and Welsh texts.
3. Regulation 2(6)(b)(iii) amends regulation 20(3)(a) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the principal Regulations"). The English language text provides "for "or 18(6)" substitute ", 18(6) or 18(6ZA)(a)"". The Welsh language text provides "yn lle "neu (6)" rhodder ", (6) neu (6ZA)(a)"".
4. The difference is a result of a minor and non-substantive difference in the English and Welsh language texts of regulation 20(3)(a) of the principal Regulations. While the English language text of that regulation refers to "regulation 18(4), 18(5)(a) or 18(6)", the Welsh language text refers to "reoliad 18(4), (5)(a) neu (6)".
5. The English and Welsh language texts of regulation 2(6)(b)(iii) are drafted slightly differently to take account of the difference in the English and Welsh language texts of regulation 20(3)(a) of the principal Regulations. The Government does not consider the Welsh language text to be less clear than the English language text.

SL(5)611 – The Health Protection (Coronavirus, Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020

Background and Purpose

These Regulations provide local authorities across Wales with additional powers 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 include powers for local authorities, 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.

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

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

1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

One of the enabling powers cited in the preamble to these Regulations is section 45C of the Public Health (Control of Disease) Act 1984 (the 1984 Act). Subject to section 45R of the



1984 Act, an instrument containing regulations under section 45C of the 1984 Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Senedd.

These Regulations confirm that they were made under section 45R of the 1984 Act. By virtue of section 45R(2) of the 1984 Act, an instrument may be made without a draft having been laid and approved as required by section 45C(4) of the 1984 Act if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved. Although the Explanatory Memorandum to the Regulations includes such a declaration, the declaration has not been included in the Regulations as required by section 45R(2) of the 1984 Act.

The instrument purports to be made in partial reliance on a provision (section 45R(2) of the 1984 Act) which requires the declaration to be contained in the instrument and therefore there has not been compliance with the statutory requirements of including a declaration in the instrument.

2. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 2(g), there is a reference to regulation 7(1), which should contain the definition of "public place". This is incorrect and should instead refer to regulation 7(2). The correct reference is included in the Welsh version of these Regulations.

3. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 16(9), there is a reference to paragraph (9), which refers to an enforcement officer having reasonable grounds to suspect that a person is contravening, or is about to contravene, regulation 14(4). This is incorrect and should instead refer to paragraph (8). The correct reference is included in the Welsh version.

Merits Scrutiny

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

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

Regulation 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.

5. 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, but not all, 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.

6. 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

In the third paragraph of Part 4 of the Explanatory Memorandum, there is a reference to “policy officer”, which appears to be a typographical error that should instead read “police officer”. The same error appears in the Welsh version, which “swyddog polisi” is used.

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.

Committee Consideration

The Committee considered the instrument at its meeting on 21 September 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee noted that the instrument has been revoked by The Health Protection (Coronavirus Restrictions)



(Functions of Local Authorities etc.) (Wales) Regulations 2020, which were laid before the Senedd on 18 September 2020.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (FUNCTIONS OF LOCAL AUTHORITIES) (WALES) REGULATIONS 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 17 September 2020.

Technical scrutiny points:

Point 1: declaration required under section 45R(2) of the Public Health (Control of Disease) Act 1984

2. The draft Report notes that the Regulations do not include the declaration required by section 45R(2) of the 1984 Act.
3. The Welsh Ministers have revoked and replaced¹ the Regulations. This is due to the failure to properly record the Welsh Ministers' declaration that the Regulations were urgent, in accordance with section 45R(2) of the 1984 Act. We are grateful for the Committee's Report on this point.

Points 2 and 3: reference in regulations 2(g) and 16(9)

4. The draft Report notes that in the English language text of regulation 2(g) the cross reference is to regulation 7(1) instead of 7(2), and in the English language text of regulation 16(9) the cross reference is to paragraph (9) instead of paragraph (8).
5. These errors appear to arise from template formatting issues which arose when the pdf version was created of the signed Word document. The instrument as made was correct. We will raise this with The National Archives for future reference, but as these particular Regulations have now been revoked and replaced no further action (for example, seeking a correction slip) will be taken on them.

Merits scrutiny points:

Point 4: guidance

6. The draft Report notes a number of matters relating to the Regulations which would benefit from further guidance, or existing guidance being updated.
7. Welsh Government public health officials have worked closely with Directors of Public Protection Wales (DPPW) to develop procedures for using the new powers. The procedures will be produced as documented guidance in due course.

Point 5: persons that own and occupy premises, and those that are responsible for premises

¹ See the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (SI 2020/1011 (W. 225)).

8. The draft Report seeks to understand whether there is a distinction in the treatment of notices and, if so, why such a distinction is required.
9. In respect of premises directions and event directions, the phrase “otherwise responsible for the premises” appears in regulation 11 only. This is to allow the procedural step of giving the direction to be completed where it appears to the person giving the direction that there is someone on the premises who is responsible for those premises at the time the direction is given but who may not be the owner or occupier. Nevertheless it is thought appropriate that steps to give prior notice and appeal rights in respect of those kinds of directions ought to be aimed at those with a clear interest in the direction (i.e. persons carrying on businesses at the premises concerned, those organising an event at which an event direction is aimed or the owner or occupier of the premises to which either type of direction relates).
10. Public place directions have more general application to any land to which the public have access. It therefore seems appropriate for there to be a broader category of persons who should be given prior notice (where reasonably practicable) and who may appeal against a direction applying generally to a place which may contain numerous premises.

Point 6: error in the Explanatory Memorandum

11. The draft Report notes that the term “policy officer”/“swyddog polisi” has been used instead of “police officer”/ “swyddog heddlu”.
12. The Government agrees this was an error, but proposes no further action be taken as these Regulations have been revoked and replaced.

Agenda Item 8.3

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.

Committee Consideration

The Committee considered the instrument at its meeting on 28 September 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee agreed to write to the Welsh Government to seek clarification on why it was necessary for the regulations came to come into force before they were laid before the Senedd, which is a requirement of the Statutory Instruments Act 1946.



**GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS)
(FUNCTIONS OF LOCAL AUTHORITIES ETC.) (WALES) REGULATIONS 2020**

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 24 September 2020.

Merits scrutiny points:

Point 3: guidance

2. The draft Report notes a number of matters relating to the Regulations which would benefit from further guidance, or existing guidance being updated.
3. Welsh Government public health officials have worked closely with Directors of Public Protection Wales (DPPW) to develop procedures for using the new powers. The procedures will be produced as documented guidance in due course.

Point 4: persons that own and occupy premises, and those that are responsible for premises

4. The draft Report seeks to understand whether there is a distinction in the treatment of notices and, if so, why such a distinction is required.
5. In respect of premises directions and event directions, the phrase “otherwise responsible for the premises” appears in regulation 11 only. This is to allow the procedural step of giving the direction to be completed where it appears to the person giving the direction that there is someone on the premises who is responsible for those premises at the time the direction is given but who may not be the owner or occupier. Nevertheless it is thought appropriate that steps to give prior notice and appeal rights in respect of those kinds of directions ought to be aimed at those with a clear interest in the direction (i.e. persons carrying on businesses at the premises concerned, those organising an event at which an event direction is aimed or the owner or occupier of the premises to which either type of direction relates).
6. Public place directions have more general application to any land to which the public have access. It therefore seems appropriate for there to be a broader category of persons who should be given prior notice (where reasonably practicable) and who may appeal against a direction applying generally to a place which may contain numerous premises.

SL(5)630 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Background and Purpose

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 ("the Regulations") are made under the powers conferred upon the Welsh Ministers by sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002 and sections 87 and 196(2) of the Social Services and Well-being (Wales) Act 2014.

The Regulations make amendments to two sets of Regulations to relax and amend requirements imposed under them:

1. Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313 (W. 95)) ("the 2005 Regulations")

The 2005 Regulations set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted.

Regulations 3 to 8 of the Regulations make amendments to the 2005 Regulations; the changes made are as follows:

- Amendments to the approval process for prospective adopters to enable stage 1 and stage 2 of the assessment process to run concurrently. This means that information that must currently be collected during stage 1 of the approval process may be collected during stage 2.
- Relaxation of the timescale during which certain actions must be undertaken. Timescales for stage one and stage two of the process from 2 months (stage 1) and 4 months (stage 2) remain in place but agencies are only required to meet the timescales where reasonably practicable.
- The 6 month limit on the length of time a prospective adopter may leave between stage 1 and stage 2 remains in place, but adopters are only required to adhere to the time limit where it is reasonably practicable.

2. Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261)) ("the 2015 Regulations")

The 2015 Regulations make provision about a local authority's obligations in respect of the planning, placement and review of the care and support provided to a child who is looked after by that authority in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014.



Regulation 8 of the Regulations amends the 2015 Regulations to extend the period (from 16 to 24 weeks) during which a person related to or otherwise connected with a child may receive temporary approval to act as a local authority foster parent for that child.

Subject to regulations 9 and 10, the amendments made by the Regulations cease to have effect on 31 March 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 four 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 Explanatory Memorandum states in relation to children's rights:

"No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults. A Children's Rights Impact Assessment (CRIA) was produced at the time the temporary easement to the Adoption Agencies (Wales) Regulations 2005 was approved at the start of the pandemic."

The Children's Rights Impact Assessment referred to above appears not to be available publicly and, whilst the Welsh Government's comments above are noted, it is not possible to identify therefore whether the assessment established fully that there is no interference with the rights of children and young people under the Convention. It would be desirable that the assessment is published as soon as practicable.

Further, both to meet the obligations imposed by section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, and because the revised process has been running informally since the temporary easement, it would be appropriate to conduct and publish a further assessment specific to these Regulations to establish that the relevant rights remain unaffected.

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

Section 5 of the Explanatory Memorandum sets out the details of the four week consultation on these Regulations that was undertaken between 27 July and 24 August 2020. However, it is noted that the consultation results have not yet been published and, as such, it is unclear



how those results, if available, were considered when developing the policy underlying these Regulations. The Committee would welcome clarification on this point and suggests the results should be published as soon as practicable.

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

The amendment to the 2015 Regulations serves to increase the maximum time, from 16 to 24 weeks, a child can be placed with a relative or connected person for foster care under a temporary approval. It is not clear whether the Children's Rights Impact Assessment referred to in point 1. above considered the increased risk posed to a child of being in an extended period of foster care in such a situation. It is noted the consultation (see point 2. above) references the increased time limit but does not otherwise address the issue of risk. As the results of the consultation are not currently available, it is not possible to assess whether any relevant responses were considered when developing the Regulations. The Committee notes however, the safeguards contained in regulation 26(2) of the 2015 Regulations. The consultation results should be published as soon as practicable.

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

There has been no regulatory impact assessment prepared in relation to these Regulations. However, the Welsh Government's following explanation, set out in the Explanatory Memorandum, is noted:

"The need for the Regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 and the changes made are temporary (less than 6 months duration), a Regulatory Impact Assessment has not been produced.

Whilst local authorities are responsible for the children's social care system the proposed changes are not anticipated to result in any extensive additional costs or significant changes to working practices.

The needs of businesses in the social care sector at this time have been considered in the preparation of the Regulations; the amendments will reduce or eliminate burdens on agencies and are intended to support children's social care services to meet their statutory obligations more flexibly during the pandemic."

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to Merits points 1, 2 and 3 above.



Committee Consideration

The Committee considered the instrument at its meeting on 19 October 2020 and reports to the Senedd in line with the reporting points above.



Government Response: The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Merit Scrutiny point 1:

A Children's Rights Impact Assessment (CRIA) was undertaken to support the initial administrative easements applied to the Adoption Agencies (Wales) Regulations 2005 from April 2020. This CRIA is publicly accessible via the Welsh Government's central CRIA list. At the time the CRIA was prepared it was not mandatory to publish all CRIAs. The Welsh Government is however in the process of publishing this CRIA and it will be available on the Welsh Government website in the next few weeks.

The Welsh Government undertook a full Integrated Impact Assessment when developing the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 which included a CRIA. This process confirmed that the assessment outlined in the above mentioned CRIA remained relevant. Again, the relevant sections of the Integrated Impact Assessment are in the process of being published.

Merit Scrutiny point 2:

As stated in the Explanatory Memorandum, a 4 week consultation was undertaken between 27th July and 24th August 2020. This consultation informed the content of the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 in that the proposed change to the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018, to include access to a self-declaration medical process during the pandemic, was removed in light of responses received from stakeholders during the consultation process.

As outlined in the Explanatory Memorandum, the Welsh Government is currently in the process of publishing the summary of the responses to the consultation.

Merit Scrutiny point 3:

The Welsh Government considers that the amendment which extends the period that an agency may make a temporary approval of a connected person / kinship carer from 16 weeks to 24 weeks does not provide any additional risk to a child. This is because the placing authority will still need to adhere to the requirements of the 2015 Regulations and ensure arrangements which will safeguard and promote a child's well-being and meet the needs as set out in the care and support plan. All the remaining duties in respect of that temporary approval remain and are set out in regulation 26(2).

To support the Regulations, a full Integrated Impact Assessment was undertaken and is in the process of being published. The Welsh Government is currently in the process of publishing the summary of the responses to the consultation.

Agenda Item 9.1

SL(5)635 – the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

Background and Purpose

These Regulations establish a debt respite scheme for people in problem debt.

The scheme gives eligible people in problem debt who receive professional debt advice access to a 60-day period in which interest, fees and charges are frozen and enforcement action is paused. This moratorium period is often referred to as 'Breathing Space'.

For people receiving mental health crisis treatment, the scheme establishes an alternate route by which the protections of a moratorium may be accessed and ensures that the protections are in place for the duration of their crisis treatment.

Procedure

These Regulations are made by the Treasury, but must be laid before and approved by a resolution of the Senedd and each House of Parliament.

Scrutiny under Standing Order 21.7

We note and welcome the intention of these Regulations, namely to incentivise more people in problem debt to access professional debt advice, to do so sooner, and to enable them to enter the debt solution that is most appropriate in view of their individual circumstances.

We also note that these Regulations are made by the Treasury under Part 1 of the Financial Guidance and Claims Act 2018, to which the Assembly gave its legislative consent on 13 February 2018. During the Assembly debate on consent, the Minister for Housing and Regeneration at the time, Rebecca Evans MS, said of any future debt respite scheme:

This is still some way off, but we will continue to work closely with the UK Government and the SFGB, when it's established, in addition to advice providers and other stakeholders to influence the development of any scheme and determine whether it meets the requirements of Wales.

We would be grateful if the Welsh Government could:

- (a) set out how the debt respite scheme has been developed to meet the requirements of Wales;
- (b) confirm whether it is content that these Regulations do not generally come into force until 4 May 2021.



Implications arising from exiting the European Union

None.

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

27 October 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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.

DEBT MANAGEMENT AND RELIEF, ENGLAND AND WALES

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

Made - - - -

Coming into force in accordance with regulation 1(2) to (7)

CONTENTS

PART 1

General provisions

1.	Citation, commencement, extent and application	3
2.	Interpretation	3
3.	Meaning of debt advice provider	7
4.	Debt advice provider fees and referrals	7
5.	Qualifying debt	7
6.	Moratorium debt	10
7.	Effect of a moratorium	10
8.	Extension of limitation periods because of a moratorium	13
9.	Extension of other deadlines because of a moratorium	13
10.	Existing legal proceedings at the start of a moratorium	13
11.	Contact between creditor or agent and debtor during a moratorium	14
12.	Agent appointed by creditor	15
13.	Meaning of creditor by assignment	15
14.	Creditor search for additional debt	16
15.	Application of moratorium to additional debt	16
16.	Applicant and debtor obligations	17
17.	Creditor's request for review of a moratorium	17
18.	Review and cancellation of a moratorium as a result of a creditor request	18
19.	Court application by creditor for cancellation of a moratorium	19
20.	Provision of updated information to the Secretary of State to correct mistakes and inaccuracies	19

21.	Death of debtor during a moratorium period	20
22.	Disclosure of information	20

PART 2

Breathing space moratorium

23.	Application for a breathing space moratorium	20
24.	Debtor eligibility for a breathing space moratorium and debt advice provider obligations	21
25.	Initiation of breathing space moratorium	22
26.	Duration of breathing space moratorium	22
27.	Midway review and cancellation of breathing space moratorium	22

PART 3

Mental health crisis moratorium

28.	Meaning of mental health crisis moratorium	23
29.	Application for a mental health crisis moratorium	24
30.	Debtor eligibility for a mental health crisis moratorium and debt advice provider obligations	25
31.	Initiation of mental health crisis moratorium	26
32.	Duration of mental health crisis moratorium	27
33.	Request by a debt advice provider for information about a debtor's receipt of mental health crisis treatment	27
34.	Cancellation of mental health crisis moratorium	28

PART 4

Debt respite scheme administration

35.	Electronic system maintained by the Secretary of State	28
36.	Information about a debtor held on the register	29
37.	Notifications provided to and by the Secretary of State	29
38.	Non-disclosure of a debtor's usual residential address	30
39.	Electronic system malfunction	31

PART 5

Supplemental

40.	Review	31

The Treasury^(a) in exercise of the powers conferred by section 7(2), (5)(a), (5)(c), (5)(d) and (6)(a) of the Financial Guidance and Claims Act 2018^(b) make the following Regulations.

In accordance with section 7(8)(a) and (b) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament and Senedd Cymru.

(a) In accordance with section 26(2) of the Financial Guidance and Claims Act 2018, the reference to the Secretary of State in section 7(2) of that Act is to be read as a reference to the Secretary of State or the Treasury.
(b) 2018 c. 10.

In accordance with section 7(2) and (3) of that Act, the Treasury have received advice from the single financial guidance body on the establishment of a debt respite scheme and have taken that advice into account in making these Regulations.

PART 1

General provisions

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

(2) With the exception of the provisions referred to in paragraphs (3) to (7), these Regulations come into force on 4th May 2021.

(3) Sub-paragraph (b) of the definition of “lease” and the definition of “occupation contract” in regulation 2(1) come into force on the day that section 7 of the Renting Homes (Wales) Act 2016^(a) comes into force.

(4) Regulation 7(7)(k)(i) comes into force on the day that section 157 of the Renting Homes (Wales) Act 2016 comes into force.

(5) Regulation 7(7)(k)(ii) comes into force on the day that section 181 of the Renting Homes (Wales) Act 2016 comes into force.

(6) Regulation 7(7)(k)(iii) comes into force on the day that section 187 of the Renting Homes (Wales) Act 2016 comes into force.

(7) Regulation 29(1)(j) and (k) comes into force on the day that Schedule AA1 to the Mental Capacity Act 2005^(b) comes into force.

(8) These Regulations extend to England and Wales only.

(9) These Regulations apply in respect of debtors domiciled or ordinarily resident in England or Wales.

Interpretation

2.—(1) In these Regulations—

“additional debt” has the meaning given in regulation 15(1);

“agent” is to be construed in accordance with regulation 12(6);

“approved mental health professional” means—

- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under section 114(1) of the Mental Health Act 1983^(c) by any local social services authority whose area is in England, and
- (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales;

“arrears” means any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability;

^(a) 2016 anaw 1.

^(b) 2005 c. 9.

^(c) 1983 c. 20. Section 114 was substituted by the Mental Health Act 2007 (c. 20), section 18.

“bank holiday” means any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(a);

“bankruptcy petition” means a petition for a bankruptcy order made under Chapter 1 of Part 9 of the Insolvency Act 1986(b) by one or more of an individual’s creditors;

“breathing space moratorium” means a moratorium under Part 2;

“business day” means any day except a Saturday, Sunday, bank holiday, Christmas Day or Good Friday;

“capitalised mortgage arrears” means any arrears in relation to a mortgage that have been added to the outstanding balance to be paid over the duration of the mortgage;

“care co-ordinator” means—

- (a) an individual with responsibility for co-ordinating care for a person with a mental disorder, as specified in the code of practice prepared by the Secretary of State in accordance with section 118(1) of the Mental Health Act 1983(c), and
- (b) in relation to acting on behalf of a mental health services provider, an individual appointed in accordance with section 14(1) of the Mental Health (Wales) Measure 2010(d);

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“creditor by assignment” is to be construed in accordance with regulation 13(1);

“debt advice provider” has the meaning given in regulation 3;

“debt relief order” means an order under Part 7A of the Insolvency Act 1986(e);

“debt solution” means an arrangement, scheme or procedure, whether statutory or not, the aim of which is to pay, discharge or liquidate some or all of a debtor’s debts;

“debtor” means—

- (a) in relation to a mental health crisis moratorium, the applicant or the person in relation to whom an application for a moratorium has been made,
- (b) in relation to a breathing space moratorium, the applicant;

“enforcement action” is to be construed in accordance with regulation 7(7);

“enforcement agent” means—

- (a) an individual authorised by section 63(2) of the Tribunals, Courts and Enforcement Act 2007(f) to act as an enforcement agent, or
- (b) an individual authorised in accordance with paragraph 2(1) of Schedule 7 to the Courts Act 2003(g) to act as an enforcement officer;

“eligibility criteria” is to be construed in accordance with regulations 24(3) and 30(3);

“FSMA” means the Financial Services and Markets Act 2000(h);

“hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—

(a) 1971 c. 80.
(b) 1986 c. 45.
(c) 1983 c. 20. Section 118(1) was substituted by the Mental Health Act 2007 (c. 12), Schedule 2, paragraph 9.
(d) 2010 nawm 7.
(e) 1986 c. 45. Part 7A was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 17, paragraph 1.
(f) 2007 c. 15.
(g) 2003 c. 39.
(h) 2000 c. 8.

- (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
 - (i) the exercise of an option to purchase by that person,
 - (ii) the doing of any other specified act by any party to the agreement,
 - (iii) the happening of any other specified event;

“individual voluntary arrangement” means a voluntary arrangement under Part 8 of the Insolvency Act 1986;

“interest” means any interest charged by a creditor in relation to a moratorium debt;

“interim order” means an interim order under section 252(1) of the Insolvency Act 1986;

“joint debtor” means—

- (a) except where sub-paragraph (b) applies, a person who is—
 - (i) jointly or severally liable, or
 - (ii) jointly and severally liable,

with a debtor for a moratorium debt;

- (b) this paragraph applies where the liability referred to in sub-paragraph (a) arises solely as a result of an indemnity or guarantee provided by the person and the person has no other liability in relation to the moratorium debt;

“lease” means—

- (a) a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease tenancy, or assignment, or
- (b) an occupation contract;

“mental disorder” means any disorder or disability of the mind;

“mental health crisis moratorium” means a moratorium under Part 3;

“mental health crisis treatment” is to be construed in accordance with regulation 28(2);

“mental health nurse” means a person registered in Sub-Part 1 of the Nurses’ Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001^(a) and who is so registered with an entry indicating their field of practice is mental health or learning disabilities nursing;

“mental health services provider” means—

- (a) the Welsh Ministers,
- (b) a local health board established under section 11 of the National Health Service (Wales) Act 2006^(b) for an area which includes a principal area in Wales within the meaning of section 20 of the Local Government Act 1972^(c),
- (c) a county council in Wales, or
- (d) a county borough council in Wales;

“midway review” means a review of a breathing space moratorium carried out under regulation 27(1);

“moratorium” means, unless otherwise stated, a breathing space moratorium or a mental health crisis moratorium;

“moratorium debt” is to be construed in accordance with regulation 6;

^(a) S.I. 2002/253. Article 5(1) was amended by S.I. 2018/838, Schedule 1, paragraphs 1 and 4(a).

^(b) 2006 c. 42.

^(c) 1972 c. 70. Section 20 was amended by the Local Government (Wales) Act 1994 (c. 19), section 1(1).

“moratorium period” means the period from the start of a moratorium to the end of the moratorium;

“nominated point of contact” means—

- (a) an approved mental health professional,
- (b) a care co-ordinator, or
- (c) a mental health nurse,

who can provide the confirmation required in regulation 33(1);

“non-eligible debt” has the meaning given in regulation 5(4);

“occupation contract” has the meaning given in section 7 of the Renting Homes (Wales) Act 2016^(a);

“ongoing liabilities” means any payment, other than in respect of a payment shortfall, which is due in relation to—

- (a) a secured credit agreement where the obligation of the debtor to repay is secured by a mortgage on land used by the debtor as their primary residence,
- (b) a lease in relation to a property used by a debtor as their primary residence,
- (c) an insurance agreement,
- (d) taxes, duties and national insurance contributions,
- (e) local taxes to fund local authority expenditure and rates, or
- (f) the supply of water, sewerage, electricity, gas, heating oil or solid fuel;

“qualifying debt” is to be construed in accordance with regulation 5;

“register” means, unless otherwise indicated in this paragraph, the register of matters relating to moratoria maintained by the Secretary of State under regulation 35(1)(b);

“representative” means—

- (a) a person who has been granted—
 - (i) an enduring power of attorney in accordance with such of the regulations mentioned in paragraph 2 of Schedule 4 to the Mental Capacity Act 2005 as applied when the enduring power of attorney was executed, or
 - (ii) a lasting power of attorney in respect of the debtor’s property and affairs in accordance with section 9(1)(b) of the Mental Capacity Act 2005,
- (b) a deputy appointed by the court in respect of the debtor’s property and affairs in accordance with section 16(2)(b) of the Mental Capacity Act 2005, or
- (c) a person appointed as a guardian under the Guardianship (Missing Persons) Act 2017^(b);

“secured credit agreement” means an agreement under which a creditor provides credit to a debtor and the agreement provides for the obligation of the debtor to repay to be secured—

- (a) by a mortgage on land,
- (b) on assets whose value at least equals the amount of debt, or
- (c) on a letter of credit or guarantee;

“secured debt” means—

- (a) a secured credit agreement,
- (b) a hire-purchase agreement, or
- (c) a conditional sale agreement;

“social worker” means—

(a) 2016 anaw 1. Section 7 is not yet in force.
(b) 2017 c. 27.

- (a) a social worker registered in the register of social workers in England maintained under section 39(1) of the Children and Social Work Act 2017^(a), or
 - (b) a social worker registered in the register of social workers in Wales maintained under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016^(b);
- “universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012^(c).

(2) In these Regulations references to a debtor include the debtor’s representative.

Meaning of debt advice provider

3.—(1) In these Regulations a “debt advice provider” is—

- (a) an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(d), or
- (b) an exempt person in relation to such activity.

(2) In this regulation—

- (a) “authorised person” means a person who is authorised for the purposes of FSMA;
- (b) “exempt person” has the meaning given in section 417(1) of FSMA;
- (c) “Part 4A permission” has the meaning given in section 55A(5) of FSMA;
- (d) “regulated activity” is to be construed in accordance with section 22 of FSMA.

Debt advice provider fees and referrals

4.—(1) A debt advice provider must not charge a debtor a fee in connection with a moratorium.

(2) A debt advice provider may refer a debtor to another debt advice provider, if the debt advice provider considers it is appropriate to do so.

(3) Where a debt advice provider accepts a referral of a debtor they must, by the end of the following business day, provide a notification that they have accepted the referral to—

- (a) the Secretary of State, and
- (b) the debtor or (as the case may be) the debtor’s nominated point of contact.

(4) Where the Secretary of State receives a notification from a debt advice provider in accordance with paragraph (3)(a), the Secretary of State must, by the end of the following business day, send a notification of the referral to each creditor and agent who received notification of a moratorium in relation to the debtor under these Regulations.

(5) A referral of a debtor to a debt advice provider takes effect in relation to the obligations of the debt advice provider under these Regulations on the first business day following the day on which the debt advice provider accepts the referral.

Qualifying debt

5.—(1) A “qualifying debt” means any debt or liability other than non-eligible debt.

(2) A debt is a qualifying debt for the purpose of these Regulations whether or not it is entered into, or due to be paid or repaid, before these Regulations come into force.

(3) A qualifying debt includes—

- (a) any amount which a debtor is liable to pay under or in relation to—
 - (i) an order or warrant for possession of the debtor’s place of residence or business,

(a) 2017 c. 16.

(b) 2016 anaw 2.

(c) 2012 c. 5.

(d) S.I. 2001/544. Article 39E was inserted by S.I. 2013/1881, article 5.

- (ii) a court judgment, or
 - (iii) a controlled goods agreement;
- (b) any debt owed or liability payable to the Crown.
- (4) In these Regulations “non-eligible debt” means—
 - (a) secured debt which does not amount to arrears in respect of secured debt,
 - (b) non-eligible business debt,
 - (c) any debt which a debtor incurred by means of any fraud or fraudulent breach of trust by the debtor,
 - (d) any liability in respect of a fine imposed by a court for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury,
 - (e) any obligation arising under a confiscation order made under—
 - (i) section 1 of the Drug Trafficking Offences Act 1986^(a) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Drug Trafficking Act 1994^(b),
 - (ii) section 2 of the Drug Trafficking Act 1994^(c) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002^(d),
 - (iii) section 1 of the Criminal Justice (Scotland) Act 1987^(e) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995^(f),
 - (iv) section 71 of the Criminal Justice Act 1988^(g) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002, or
 - (v) Parts 2, 3 or 4 of the Proceeds of Crime Act 2002,
 - (f) any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment or maintenance calculation made under the Child Support Act 1991^(h),
 - (g) any obligation arising from a payment out of the social fund by way of crisis loan or budgeting loan under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992⁽ⁱ⁾ or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Welfare Reform Act 2012,
 - (h) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student loan and which the debtor receives whether before or after the moratorium starts,
 - (i) any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part 1 of the

(a) 1986 c. 32. Section 1 was repealed by the Drug Trafficking Act 1994 (c.37), Schedule 3, paragraph 1 but saved by the Drug Trafficking Act 1994 (c. 37), Schedule 2, paragraph 2.

(b) 1994 c. 37.

(c) 1994 c. 37. Section 2 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(e) and 13(b).

(d) 2002 c. 29.

(e) 1987 c. 41. Section 1 was repealed by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 5, paragraph 1 but saved by Schedule 3 to that Act.

(f) 1995 c. 40.

(g) 1988 c. 33. Section 71 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(a) and 13(a).

(h) 1991 c. 48. “maintenance calculation” was substituted for “maintenance assessment” by section 1(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) in relation to certain cases in accordance with S.I. 2003/192.

(i) 1992 c. 4.

- Consumer Protection Act 1987(a), being in either case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person,
- (j) an advance payment of universal credit under regulation 32 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(b),
 - (k) any liability in respect of council tax for a financial year, except where—
 - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
 - (ii) a reminder notice has been served on the debtor under regulation 23(1) of the Council Tax (Administration and Enforcement) Regulations 1992(c),
 - (l) any liability in respect of non-domestic rates for a financial year, except where—
 - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
 - (ii) a further notice has been served on the debtor under regulation 8(1) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989(d).
- (5) In paragraph (4)(c), fraud includes any amounts owed by a debtor as a result of supplies taken illegally of gas under paragraph 9 of Schedule 2B to the Gas Act 1986(e) or electricity under paragraph 4 of Schedule 6 to the Electricity Act 1989(f).
- (6) In this regulation—
- (a) “controlled goods agreement” means an agreement under paragraph 13(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;
 - (b) “family proceedings” means—
 - (i) proceedings in the family court, and
 - (ii) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984(g);
 - (c) “fine” includes—
 - (i) any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction, and
 - (ii) in relation to a fine imposed for an offence, a reference to a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985(h) (criminal courts charge), whether on conviction or otherwise,

and includes any interest on the fine and any penalties or charges incurred in connection with it;
 - (d) “non-eligible business debt” means debt incurred in connection with a business carried on by a debtor where the debtor at the point of the application for a moratorium and for the purpose of that business—
 - (i) is registered under the Value Added Tax Act 1994(i), or
 - (ii) is a partner in a partnership with any other person,

(a) 1987 c. 43.

(b) S.I. 2013/380.

(c) S.I. 1992/613. Regulation 23 was amended by S.I. 1994/505, regulation.3 and S.I. 1997/393.

(d) S.I. 1989/1058. Regulation 8 was amended by S.I. 1992/1512, S.I. 1993/616, S.I. 2010/1656, S.I. 2010/2222, S.I. 2011/1665, and S.I. 2012/24.

(e) 1986 c. 44. Paragraph 9 of Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2 and amended by the Utilities Act 2000 (c. 27), Schedule 6, Part 1, paragraph 2(1) subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

(f) 1989 c. 29. Paragraph 4 of Schedule 6 was substituted by the Utilities Act 2000 (c. 27), Schedule 4, paragraph 1 subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

(g) 1984 c. 42.

(h) 1985 c. 23. Section 21A was inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 54(1).

(i) 1994 c. 23.

and the debt solely relates to the business carried on by the debtor;

- (e) “partnership” means any relation which subsists between persons carrying on a business in common with a view of profit other than any relation between members of any company or association which is—
 - (i) registered under the Companies Act 2006(a), or
 - (ii) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;
- (f) “student loan” means a loan made under –
 - (i) regulations made under section 22(1) of the Teaching and Higher Education Act 1998(b), or
 - (ii) the Education (Student Loans) Act 1990(c), or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act.

Moratorium debt

6. A “moratorium debt” is any qualifying debt—

- (a) that was incurred by a debtor in relation to whom a moratorium is in place,
- (b) that was owed by the debtor at the point at which the application for the moratorium was made, and
- (c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

Effect of a moratorium

7.—(1) A moratorium has the effect specified in this regulation in relation to moratorium debt during a moratorium period.

(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless—

- (a) these Regulations specify otherwise, or
- (b) the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

(3) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (6)(a) or (b).

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a court or tribunal may—

- (a) determine an application for permission to take a step specified in paragraph (6)(c) or (d) in any way that it thinks fit,
- (b) give permission subject to such conditions as it thinks fit, and
- (c) make such orders as may be necessary to give effect to the determination of the application.

(5) A court or tribunal may only grant permission under paragraph 2(b) for a creditor or agent to take a step specified in paragraph (6)(c) or for a creditor to instruct an agent to take a step specified in paragraph (6)(c) where the court considers that—

- (a) it is reasonable to allow the creditor or their agent to take the step, and
- (b) the step will not—

(a) 2006 c. 46.

(b) 1998 c. 30.

(c) 1990 c. 6.

- (i) be detrimental to the debtor to whom the moratorium relates, or
- (ii) significantly undermine the protections of the moratorium.

(6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to—

- (a) require a debtor to pay interest that accrues on a moratorium debt during a moratorium period,
- (b) require a debtor to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period,
- (c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or
- (d) instruct an agent to take any of the actions mentioned in sub-paragraphs (a) to (c).

(7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt—

- (a) take a step to collect a moratorium debt from a debtor,
- (b) take a step to enforce a judgment or order issued by a court or tribunal before or during a moratorium period regarding a moratorium debt,
- (c) enforce security held in respect of a moratorium debt,
- (d) obtain a warrant,
- (e) subject to regulation 12(4)(d), sell or take control of a debtor's property or goods,
- (f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,
- (g) make an application for a default judgment in respect of a claim for money against the debtor,
- (h) take steps to install a pre-payment meter under paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986^(a) or paragraph 2(1)(a) of Schedule 6 to the Electricity Act 1989^(b) to take payments in respect of a moratorium debt, or use a pre-payment meter already installed to take such payments, unless a debtor had provided their consent for the installation of the pre-payment meter before the moratorium started,
- (i) take steps to disconnect a debtor's premises from a supply of gas under paragraph 7(3)(b) of Schedule 2B to the Gas Act 1986 or electricity under paragraph 2(1)(b) of Schedule 6 to the Electricity Act 1989 unless the debtor had taken the supply of gas or electricity illegally,
- (j) serve a notice to take possession of a dwelling-house let to a debtor on grounds 8, 10 or 11 in Schedule 2 to the Housing Act 1988^(c) or take possession of a dwelling-house let to a debtor having served such a notice,
- (k) serve a notice to take possession of a dwelling let to a debtor or take possession of a dwelling let to a debtor having served such a notice—
 - (i) on the ground of breach of contract specified in section 157 of the Renting Homes (Wales) Act 2016^(d) where that breach relates to rent arrears, or
 - (ii) on the grounds specified in section 181(2) of the Renting Homes (Wales) Act 2016^(e), or
 - (iii) on the grounds specified in section 187(2) of the Renting Homes (Wales) Act 2016^(f),

^(a) 1986 c. 44. Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2.

^(b) 1989 c. 29.

^(c) 1988 c. 50.

^(d) 2016 anaw 1. Sections 157 is not yet in force.

^(e) 2016 anaw 1. Section 181 is not yet in force.

^(f) 2016 anaw 1. Section 187 is not yet in force.

- (l) contact a debtor for the purpose of enforcement of a moratorium debt,
 - (m) make an application in respect of a debtor for commitment to prison under regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989^(a) or regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992^(b), or
 - (n) take any of the steps in this paragraph in relation to a joint debtor.
- (8) For the purposes of paragraph (7)(f), legal proceedings against a debtor includes a bankruptcy petition.
- (9) Where a moratorium debt is a secured debt, paragraph (6)(a) applies only to interest that accrues on any arrears on the debt during a moratorium period.
- (10) After the end of a moratorium period, neither a creditor nor their agent is entitled to—
- (a) require a debtor to pay interest, fees, penalties or charges referred to in paragraph (6)(a) and (b) that accrued during the moratorium period, or
 - (b) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties or charges as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.
- (11) Subject to paragraph (13)(c), to the extent it applies to a moratorium debt, during a moratorium period, the Secretary of State and the Commissioners for Revenue and Customs must not direct that a new arrangement should be put in place for a debtor's benefit to be paid, wholly or in part, to a third party under regulation 35 of the Social Security (Claims and Payments) Regulations 1987^(c).
- (12) Any action taken contrary to this regulation shall be null and void.
- (13) Nothing in this regulation affects the following to the extent that they relate to a debtor—
- (a) a charging order made before the start of the moratorium under the Charging Orders Act 1979^(d) or regulations 50 and 51 of the Council Tax (Administration and Enforcement) Regulations 1992,
 - (b) an attachment of earnings order made before the start of the moratorium under the Attachment of Earnings Act 1971^(e) or regulation 37 of the Council Tax (Administration and Enforcement) Regulations 1992,
 - (c) a deduction from earnings made under—
 - (i) Parts 8 or 8A of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988^(f),
 - (ii) Part 3 of the Social Security Administration Act 1992^(g), or
 - (iii) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013^(h),
 where a deduction notice has been served before the start of the moratorium under that Act or those Regulations, or
 - (d) the debtor's universal credit paid, wholly or in part, to a third party under regulation 60 of and Schedules 6 and 7 to the Universal Credit, Personal Independence Payment,

(a) S.I. 1989/1058. Regulation 16 was amended by S.I. 1992/474, regulation 3(2)(a), S.I. 1993/616, Schedule 2(2), paragraph 1, S.I. 1998/3089, regulation 5(1) and S.I. 2014/600, Schedule 1(1), paragraph 2(1)(d).

(b) S.I. 1992/613. Regulation 47 was amended by S.I. 1994/505, regulation 6, S.I. 2014/600, Schedule (1), paragraph 3(e) and S.I. 2019/220, regulation 2(2).

(c) S.I. 1987/1968.

(d) 1979 c. 53.

(e) 1971 c. 32.

(f) S.I. 1988/664. Regulation 29A was inserted by S.I. 2013/384, article 31(9).

(g) 1992 c. 5. Section 75(1) was amended by the Social Security Administration (Fraud) Act 1997 (c. 47). Part 3 was amended by the Welfare Reform Act 2012 (c. 5) but some of those amendments are not yet in force.

(h) S. I. 2013/384. Part 6 was amended by S. I. 2015/499.

Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013^(a).

(14) In this regulation, “benefit” means any payment made to a debtor under the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995^(b), the Welfare Reform Act 2007^(c) or the Welfare Reform Act 2012.

(15) This regulation is subject to regulation 11.

Extension of limitation periods because of a moratorium

8.—(1) This regulation applies where—

- (a) a limitation time limit relates to a right of action in respect of a moratorium debt,
- (b) a moratorium in relation to the debt starts before the limitation time limit expires, and
- (c) if not extended by this regulation, the limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of bringing an action in respect of a moratorium debt, the limitation time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) Where more than one limitation time limit applies in relation to a right of action in respect of a moratorium debt, the extension by paragraph (2) of one of those time limits does not affect the others.

(4) In this regulation, “limitation time limit” means any time limit applicable, whether under the Limitation Act 1980^(d) or any other enactment, to the bringing of an action.

Extension of other deadlines because of a moratorium

9.—(1) This regulation applies where—

- (a) an enforcement time limit relates to the taking of enforcement action in respect of a moratorium debt by a creditor or an agent acting by or on behalf of a creditor,
- (b) a moratorium in relation to the debt starts before the enforcement time limit expires, and
- (c) if not extended by this regulation, the enforcement time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of taking enforcement action in respect of the debt, the enforcement time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) In this regulation, “enforcement time limit” means a time limit—

- (a) by which a creditor or (as the case may be) an agent is legally obliged to take enforcement action in respect of a moratorium debt (or would be so obliged but for the existence of the moratorium in relation to the debt), and
- (b) which is not a limitation time limit (within the meaning of regulation 8) relating to a right of action in respect of the debt.

Existing legal proceedings at the start of a moratorium

10.—(1) If at the start of a moratorium a creditor to whom a moratorium debt is owed has a bankruptcy petition or any other action or other proceeding in any court or tribunal pending in

(a) S.I. 2013/380. Regulation 60 was amended by S.I. 2017/725, Schedule 5(1), paragraph 8(b) subject to transitional provisions in regulations 19, 19A and 20 of that instrument.

(b) 1995 c. 18.

(c) 2007 c. 5.

(d) 1980 c. 58.

relation to a moratorium debt, then the creditor must notify the court or tribunal of the moratorium.

(2) After a court or tribunal has received a notification referred to in paragraph (1) or is otherwise made aware of a moratorium—

- (a) any bankruptcy petition in relation to a moratorium debt must be stayed by the court until the moratorium ends or is cancelled, and
- (b) the court or tribunal must deal with any other action or proceeding in relation to a moratorium debt in accordance with this regulation.

(3) Subject to paragraph (5), if at the start of a moratorium any action or proceeding that relates to a moratorium debt is pending in a court or tribunal then such action or proceeding may continue until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.

(4) Where a debtor makes an admission before or during a moratorium in connection with an action or other proceeding relating to a moratorium debt, a creditor who is a party to the action or proceeding may enter judgment in that action or proceeding during the moratorium if they would otherwise be entitled to do so.

(5) Subject to paragraph (7), during a moratorium a court or tribunal must take all necessary steps to ensure that any action or proceeding to enforce a court order or judgment concerning a moratorium debt does not progress during the moratorium period.

(6) For the purpose of paragraph (5), the progression of an action or proceeding includes (but is not limited to)—

- (i) holding a hearing during a moratorium period,
- (ii) making or serving an order or warrant, writ of control, writ of execution or judgment summons, and
- (iii) instructing an enforcement agent to serve an order, warrant, writ of control, writ of execution or judgment summons.

(7) This regulation does not prevent a court or tribunal from sending notices or correspondence to a debtor in relation to an action or proceeding.

(8) This regulation is subject to regulation 7(2)(b).

Contact between creditor or agent and debtor during a moratorium

11.—(1) During a moratorium period neither a creditor nor the creditor's agent must contact a debtor in relation to the enforcement of a moratorium debt, including to demand payment or as a precursor to starting any legal proceedings against the debtor in connection with the moratorium debt, save as provided for in paragraph (2).

(2) This regulation does not prevent a creditor or an agent during a moratorium period from contacting or engaging with—

- (a) a debtor's debt advice provider regarding a moratorium debt or a debt solution in respect of the debtor,
- (b) a debtor—
 - (i) for purposes unrelated to a moratorium debt including in relation to ongoing liabilities or non-eligible debt,
 - (ii) at the debtor's request regarding a moratorium debt or a debt solution,
 - (iii) in response to a query or complaint raised by the debtor,
 - (iv) in relation to any action or legal proceedings in a court or tribunal permitted under regulation 10, or
 - (v) if the creditor or agent is otherwise required to do so under—

- (aa) the Consumer Credit Act 1974^(a), or
- (bb) any rules made under Part 9A of FSMA^(b).

Agent appointed by creditor

12.—(1) A creditor who has appointed an agent to act on their behalf in relation to a moratorium debt and who receives a notification under these Regulations must notify the agent of the moratorium and its effect.

(2) Subject to paragraph (3), any creditor who fails to notify their agent in accordance with paragraph (1), or fails to do so as soon as reasonably practicable, will be responsible for any losses incurred by a debtor or the agent as a result of the creditor's failure.

(3) If an agent of a creditor receives a notification of a moratorium under these Regulations, the creditor will not be liable for any losses incurred by the agent that the agent could have avoided after the earliest of the date on which the agent actually receives, or the agent is deemed to have received, the notification.

(4) During a moratorium period, an enforcement agent appointed in relation to a moratorium debt who is notified of a moratorium or is otherwise aware that a moratorium is in place in relation to a debtor must not in relation to any moratorium debt—

- (a) give notice to the debtor under paragraph 7 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007,
- (b) visit the debtor's place of residence or business for the purpose of taking control of goods,
- (c) take control of goods,
- (d) sell goods belonging to the debtor unless the enforcement agent took possession of the goods prior to the start of the moratorium, or
- (e) require the debtor to pay fees, penalties or charges that accrue during a moratorium period relating to the storage of goods seized before the start of the moratorium.

(5) After the end of a moratorium period, an enforcement agent is not entitled to require a debtor to pay the fees, penalties or charges referred to in paragraph (4)(e) that accrued during the moratorium period.

(6) For the purpose of these Regulations, "agent" includes—

- (a) an enforcement agent,
- (b) a solicitor, or
- (c) a person appointed to collect a moratorium debt on behalf of a creditor.

(7) In this regulation "take control of goods" is to be construed in accordance with paragraph 13(1) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

Meaning of creditor by assignment

13.—(1) In these Regulations references to a creditor as a person to whom a qualifying debt is owed by a debtor include a reference to any person who, by assignment or operation of law, before or after the date of the application for a moratorium has—

- (a) assumed or has the right to exercise the rights and duties of the creditor, or
 - (b) to whom the right to claim the whole or any part of the debt has passed,
- (a "creditor by assignment").

(a) 1974 c. 39.

(b) 2000 c. 8. Section 137A was substituted by section 24 of the Financial Services Act 2012 (c. 21), section 24(1) and amended by S.I. 2018/1115, regulation 7(6).

(2) In these Regulations, “assignment”, in relation to Scotland, means assignation and “assigned” shall be construed accordingly.

Creditor search for additional debt

14.—(1) A creditor who receives a notification of the start of a moratorium under these Regulations must as soon as reasonably practicable undertake a reasonable search of their records to identify—

- (a) debt owed to the creditor by the debtor to whom the moratorium relates, and
- (b) any creditor by assignment.

(2) Where a creditor search identifies a debt owed by the debtor that was not included in the notification referred to in paragraph (1), the creditor must provide details of the debt to the debtor’s debt advice provider.

(3) Where a creditor search identifies a creditor by assignment, the creditor must—

- (a) notify the creditor by assignment of the moratorium, and
- (b) provide contact details of the creditor by assignment to the debtor’s debt advice provider.

(4) Any creditor who fails to comply with paragraph (2) or (3) as soon as reasonably practicable will be liable for any losses caused to the debtor or (as the case may be) the creditor by assignment as a result.

(5) A debt advice provider who receives details of a debt from a creditor in accordance with paragraph (2) must take the relevant steps specified in regulation 15.

(6) Where a debt advice provider receives contact details of a creditor by assignment in accordance with paragraph (3)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

Application of moratorium to additional debt

15.—(1) This regulation applies where a debt advice provider has initiated a moratorium under these Regulations and subsequently—

- (a) receives details under regulation 14(2) of a debt not specified as a moratorium debt in a notification from the Secretary of State referred to in regulation 14(1), or
- (b) otherwise becomes aware of a debt that is owed by a debtor in relation to whom a moratorium is in place but which was not included in the information provided to the Secretary of State under regulations 25(1)(b) or (c) or 31(1)(b) or (d),

(an “additional debt”).

(2) Where this regulation applies, a debt advice provider must consider whether an additional debt is a qualifying debt.

(3) Subject to paragraph (4), if a debt advice provider considers that an additional debt is a qualifying debt, the debt advice provider must provide to the Secretary of State details of the additional debt, including contact details of the creditor to whom the debt is owed.

(4) For a breathing space moratorium, if a debt advice provider receives details, or becomes aware, of an additional debt after the period of 45 days beginning with the day on which a moratorium started, the debt advice provider may provide to the Secretary of State the information required under paragraph (3) in relation to the additional debt if the debt advice provider considers it appropriate for the moratorium to apply in respect of the additional debt.

(5) Where the Secretary of State receives information under paragraphs (3) or (4), the Secretary of State must, by the end of the following business day, provide a notification of the moratorium to those creditors whose contact details have been provided to the Secretary of State in accordance with those paragraphs.

(6) Paragraph (5) is subject to regulation 38.

(7) A moratorium has the effect specified in regulation 7 in relation to an additional debt from the earliest of the date that the creditor to whom the additional debt is owed—

- (a) received a notification of the moratorium under paragraph (5), or
- (b) is deemed under regulation 37(4) to receive the notification under paragraph (5).

(8) This regulation does not affect the date on which a moratorium starts or ends under these Regulations.

Applicant and debtor obligations

16.—(1) Any person who makes an application for a moratorium under these Regulations must—

- (a) take reasonable care to provide accurate information to the debt advice provider, and
- (b) not deliberately withhold relevant information from the application.

(2) During a breathing space moratorium a debtor must—

- (a) inform their debt advice provider if there is any material change in the debtor's circumstances or financial position,
- (b) make any payment due in relation to an ongoing liability as it falls due to be paid during the moratorium period,
- (c) not obtain additional credit, either alone or jointly with any other person, that at any one point in time collectively exceeds £500, and
- (d) engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate.

(3) The reference in paragraph (2)(c) to the debtor obtaining additional credit includes where goods are bailed to a debtor under a hire-purchase agreement or agreed to be sold to the debtor under a conditional sale agreement.

Creditor's request for review of a moratorium

17.—(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

- (a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,
- (b) a moratorium debt is not a qualifying debt, or
- (c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within the period of 20 days beginning with the day on which the moratorium started.

(4) Where an additional debt is included in a moratorium in accordance with regulation 15, the creditor to whom the additional debt is owed may request a review of the moratorium in relation to the additional debt in accordance with this regulation.

(5) A request under paragraph (4) must be made within the period of 20 days beginning with the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

- (6) Any request made under this regulation must—
- (a) be made in writing to the debtor's debt advice provider, and
 - (b) contain the following—
 - (i) a statement of the ground or grounds on which the review is requested, and
 - (ii) evidence which supports the statement.

Review and cancellation of a moratorium as a result of a creditor request

18.—(1) Having received a request for a review in accordance with regulation 17, a debt advice provider must conduct the review and carry out the steps in paragraph (4) before the end of the period of 35 days beginning with—

- (a) the day on which the moratorium started, or
- (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(2) Subject to paragraph (3), having carried out a review in response to a request from a creditor, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in regulation 17(2).

(3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of a moratorium debt if the debt advice provider considers that the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(4) The steps referred to in paragraph (1) are that a debt advice provider must—

- (a) inform the creditor who requested a review of the outcome of the review, and
- (b) if the debt advice provider considers that a moratorium should be cancelled in respect of some or all of the moratorium debts—
 - (i) consult the debtor to whom the moratorium relates prior to doing so to the extent that the debt advice provider is able to do so, and
 - (ii) if, after acting in accordance with paragraph (i), the debt advice provider remains of the view that the moratorium should be cancelled in respect of some or all of the moratorium debts, notify the Secretary of State and the debtor of the cancellation.

(5) Where the Secretary of State receives a notification under paragraph (4)(b)(ii), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(6) Paragraph (5) is subject to regulation 38.

(7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).

(8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

(9) A review carried out under this regulation in respect of a breathing space moratorium may be carried out as part of a midway review.

Court application by creditor for cancellation of a moratorium

19.—(1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).

(2) An application under this regulation must be made before the end of the period of 50 days beginning with—

- (a) the day on which the moratorium started, or
- (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely—

- (a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,
- (b) cancel the moratorium in respect of any other moratorium debt.

(4) Where a court has cancelled a moratorium in relation to a moratorium debt under paragraph (3), the court can require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of the debt.

(5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest, fees or charges under paragraph (4), the court—

- (a) may give such supplemental directions as it thinks fit, and
- (b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt.

(6) Where the Secretary of State receives a notification under paragraph (5)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(7) Where a court cancels a moratorium under paragraph (3) the cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (6)(a).

Provision of updated information to the Secretary of State to correct mistakes and inaccuracies

20.—(1) If a debt advice provider becomes aware that the information in paragraph (2) contains a mistake or inaccuracy the debt advice provider must provide updated information to the Secretary of State.

(2) A debt advice provider must provide updated information to the Secretary of State in accordance with paragraph (1) in relation to information—

- (a) provided by a debt advice provider to the Secretary of State in accordance with these Regulations, or
- (b) on the register.

(3) Where the Secretary of State receives updated information from a debt advice provider in accordance with paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register to reflect the updated information, and
- (b) send a notification to any relevant creditor and agent.

(4) The obligation to send a notification to a creditor and agent under paragraph (3)(b) only applies in relation to updated information concerning—

- (a) a debtor's name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

Death of debtor during a moratorium period

21.—(1) Where a debtor dies during a moratorium period, the moratorium ends on the day after the day on which the debtor died.

(2) A debt advice provider must, as soon as reasonably practicable after being informed or becoming aware of the death of the debtor, notify the Secretary of State of the death.

(3) Where the Secretary of State receives a notification under paragraph (2), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the end of the moratorium to each creditor and agent who received notification of the moratorium under these Regulations.

(4) Paragraph (3) is subject to regulation 38.

(5) A notification sent to a creditor or agent in accordance with paragraph (3)(b) must—

- (a) specify the date on which the moratorium ended, and
- (b) state the reason for the end of the moratorium.

Disclosure of information

22.—(1) This regulation applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under these Regulations.

(2) A duty or power to which this regulation applies does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(3) In this regulation, “data protection legislation” has the meaning given in section 3(9) of the Data Protection Act 2018(a).

PART 2

Breathing space moratorium

Application for a breathing space moratorium

23.—(1) A debtor may apply to a debt advice provider for a breathing space moratorium.

(2) An application may not be made unless the debtor has first obtained advice, whether in person, over the telephone or by electronic means.

(3) The application must be made to the debt advice provider who has provided the advice referred to in paragraph (2).

(4) The application must include the following information—

- (a) the debtor's full name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

(5) The application must include the following information to the extent that the information is known by the debtor and relevant—

(a) 2018 c. 12. Section 3(9) is amended by S.I. 2019/419, Schedule 2, paragraph 4(3) but that amendment is not yet in force.

- (a) details of the debts to which the debtor is subject at the date of the application and contact details of the creditor to whom each debt is owed, and
 - (b) details of any enforcement agent or other agent instructed by a creditor for the purpose of collection or enforcement of the debt including the agent's contact details.
- (6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor's usual residential address under regulation 38.
- (7) In paragraph (2) "advice" means advice as to the suitability, conditions and consequences of a breathing space moratorium for the debtor.

Debtor eligibility for a breathing space moratorium and debt advice provider obligations

24.—(1) A debt advice provider must consider any application for a breathing space moratorium made to them by a debtor.

(2) Having considered the application, the debt advice provider must initiate a breathing space moratorium in relation to the debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts to be included in the moratorium are qualifying debts.

(3) The eligibility criteria referred to in paragraph (2)(a) are that, on the date of the application for a breathing space moratorium, the debtor—

- (a) is an individual,
- (b) owes a qualifying debt to a creditor,
- (c) is domiciled or ordinarily resident in England or Wales,
- (d) is not subject to a debt relief order,
- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt,
- (g) is not subject to another breathing space moratorium and, if they have previously been subject to a breathing space moratorium, that moratorium ended more than 12 months before the date of the application, and
- (h) is not subject to a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided by the debtor under regulation 23 and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due, and
- (b) a breathing space moratorium would be appropriate.

(5) For the purpose of paragraph (4)(b), when considering whether a breathing space moratorium is appropriate the debt advice provider—

- (a) must consider whether—
 - (i) the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due,
 - (ii) it would benefit the debtor to enter into a debt solution,
 - (iii) the debtor may be eligible to enter into a debt solution during a moratorium or as soon as reasonably practicable after the moratorium ends, and
 - (iv) the moratorium period is necessary in order for the debt advice provider to assess which debt solution would be appropriate for the debtor, to advise the debtor on which debt solution would be appropriate or for a debt solution to be put in place, and

- (b) may have regard to any other factor that the debt advice provider considers relevant, including but not limited to whether—
 - (i) it is necessary for the debtor to enter into a debt solution in order to discharge or liquidate their debt,
 - (ii) it is necessary for the debtor to enter into a debt solution without delay and the debtor is in a position to do so, or
 - (iii) the debtor is already subject to an appropriate debt solution.

Initiation of breathing space moratorium

25.—(1) In order to initiate a breathing space moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
 - (i) the debtor meets the eligibility criteria in regulation 24(3), and
 - (ii) the conditions in regulation 24(4) are met,
- (b) the information provided by the debtor under regulation 23(4) and (5) to the extent that it relates to the debtor or qualifying debt, and
- (c) information identified by the debt advice provider about any other qualifying debt.

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the start of the breathing space moratorium to those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (c).

(3) Paragraph (2) is subject to regulation 38.

Duration of breathing space moratorium

26.—(1) A breathing space moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 25(2)(a).

(2) A moratorium continues for 60 days beginning with the date on which it started in accordance with paragraph (1) unless—

- (a) it ends in accordance with regulation 21 as a result of the death of the debtor, or
- (b) it is cancelled in accordance with regulations 18, 19 or 27.

(3) Unless a moratorium ends as a result of the death of the debtor or is cancelled, on the day that a moratorium ends in accordance with paragraph (2) the Secretary of State must—

- (a) cause an entry to be made on the register, and
- (b) send notification that the moratorium has ended to each creditor and agent who received notification of the moratorium under these Regulations.

(4) Where a moratorium ends on a Saturday, Sunday or Bank Holiday, other than in circumstances where the debtor has died or the moratorium has been cancelled, the Secretary of State must send the notification required under paragraph (3)(b) on the next business day after the moratorium has ended.

(5) Paragraph (3) is subject to regulation 38.

Midway review and cancellation of breathing space moratorium

27.—(1) A debt advice provider who initiated a moratorium or (as the case may be) the debt advice provider to whom a debtor has been referred since the start of the moratorium must review

the moratorium to determine whether it should continue or be cancelled in accordance with this regulation (a “midway review”).

(2) Subject to paragraph (3), a debt advice provider must complete a midway review before the end of the period of 35 days beginning with the day on which the moratorium started.

(3) A midway review must not be carried out in the period of 25 days beginning with the day on which the moratorium started.

(4) Where a creditor has requested a review of a moratorium under regulation 17, the debt advice provider may conduct the review as part of a midway review.

(5) Subject to paragraphs (6) and (7), having carried out a midway review, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that—

- (a) the debtor has failed to comply with any of the debtor’s obligations under regulation 16,
- (b) a debt solution has been put in place in respect of all the moratorium debts, or
- (c) the debt advice provider is unable to consult the debtor as required under paragraph (8)(a), including for reasons of the unavailability of the debtor.

(6) A debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor’s personal circumstances would make the cancellation unfair or unreasonable.

(7) Where a debtor has failed to comply with the obligation in regulation 16(2)(b) to pay an ongoing liability, a debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor does not have the financial means to pay the ongoing liability.

(8) If the debt advice provider considers it necessary to cancel a moratorium in respect of some or all of the moratorium debts, the debt advice provider must—

- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
- (b) notify the Secretary of State and the debtor of the cancellation.

(9) Where the Secretary of State receives a notification under paragraph (8)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(10) Paragraph (9) is subject to regulation 38.

(11) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (9)(a).

(12) A notification sent to a creditor or agent in accordance with paragraph (9)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

PART 3

Mental health crisis moratorium

Meaning of mental health crisis moratorium

28.—(1) A mental health crisis moratorium is a moratorium under this Part in respect of a debtor who is receiving mental health crisis treatment.

(2) In these Regulations, a debtor is receiving mental health crisis treatment when the debtor—

- (a) has been detained in hospital for assessment under sections 2 or 4 of the Mental Health Act 1983,
- (b) has been detained in hospital for treatment under section 3 of that Act,

- (c) has been removed to a place of safety by a police constable under sections 135 or 136 of that Act,
- (d) has been detained in hospital for assessment or treatment under sections 35, 36, 37, 38, 45A, 47 or 48 of that Act, or
- (e) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature.

(3) In this regulation “specialist mental health service” means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service.

Application for a mental health crisis moratorium

29.—(1) Any of the following persons may submit an application to a debt advice provider for a mental health crisis moratorium in relation to a debtor—

- (a) the debtor,
- (b) the debtor’s carer,
- (c) an approved mental health professional,
- (d) a care co-ordinator appointed in respect of the debtor,
- (e) a mental health nurse,
- (f) a social worker,
- (g) an independent mental health advocate appointed in respect of the debtor for the purposes of arrangements made under sections 130A(1) or 130E(1) of the Mental Health Act 1983(a),
- (h) an independent mental capacity advocate appointed in respect of the debtor for the purposes of arrangements made under section 35(1) of the Mental Capacity Act 2005(b),
- (i) a relevant person’s representative,
- (j) an approved mental capacity professional approved under paragraph 39 of Schedule AA1 to the Mental Capacity Act 2005(c), or
- (k) an appropriate person as specified in paragraph 42(5) of Schedule AA1 to the Mental Capacity Act 2005(d).

(2) The application must include the following information—

- (a) sufficient information to identify the debtor, and
- (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.

(3) For the purpose of paragraph (2)(b), evidence from an approved mental health professional must include the following—

- (a) sufficient information to identify the debtor,
- (b) the name and contact details of the approved mental health professional,
- (c) the name and contact details of the debtor’s nominated point of contact,

(a) 1983 c. 20. Section 130A was inserted by the Mental Health Act 2007 (c. 12), section 30(2) and amended by the Mental Health Act (Wales) Measure 2010 (nawm 7), Schedule 1, paragraph 2 and the Health and Social Care Act 2012 (c. 7), section 43(1). Section 130E was inserted by the Mental Health Act (Wales) Measure 2010 (nawm 7), section 31.

(b) 2005 c. 9. Section 35(1) was amended by the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraph 134(a) and the Mental Health Act 2007 (c. 12), Schedule 9, paragraph 3. Section 35(1) is also amended by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 3 but those amendments are not yet in force.

(c) 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.

(d) 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.

- (d) a declaration by the approved mental health professional that the debtor is receiving mental health crisis treatment, and
- (e) a signed statement by the approved mental health professional that the evidence is, to the best of their knowledge and belief, correct.

(4) In addition to the information specified in paragraph (2), the application may include the following information where it is known by the person submitting the application, is relevant and has not already been provided in accordance with paragraph (2)(a)—

- (a) the debtor's full name, date of birth and usual residential address,
- (b) the trading name or names and address of any business carried on by the debtor,
- (c) details of the debts to which the debtor is subject at the date of the application and the contact details of the creditor to whom each debt is owed, and
- (d) details of any enforcement agent or other agent instructed by the creditor for the purpose of collection or enforcement of the debt including the agent's contact details.

(5) The nominated point of contact referred to in paragraph (3)(c) may be the approved mental health professional who provided the evidence referred to in paragraph (2)(b).

(6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor's usual residential address under regulation 38.

(7) In this regulation—

- (a) “adult” means a person aged 18 or over;
- (b) “carer” means an adult who—
 - (i) provides care for another adult, and
 - (ii) is in receipt of carer's allowance or an award of universal credit of an amount under regulation 29 of the Universal Credit Regulations 2013(a);
- (c) “carer's allowance” means an allowance paid to a person in accordance with section 70 of the Social Security Contributions and Benefits Act 1992;
- (d) “relevant person's representative” means a person appointed in respect of the debtor in accordance with paragraph 137 of Schedule A1 to the Mental Capacity Act 2005(b) or that provision as it continues in force by virtue of any transitional or savings provisions made in connection with its repeal by the Mental Capacity (Amendment) Act 2019(c).

Debtor eligibility for a mental health crisis moratorium and debt advice provider obligations

30.—(1) When considering an application for a mental health crisis moratorium made under regulation 29, a debt advice provider must—

- (a) assess whether the debts included in the application are qualifying debts, and
- (b) obtain information relevant to the financial standing of the debtor from at least one credit reference agency.

(2) Having considered an application for a mental health crisis moratorium, a debt advice provider must initiate a mental health crisis moratorium on behalf of a debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts to be included in the moratorium are qualifying debts.

(a) S.I. 2013/376. Regulation 29 was amended by S.I. 2015/1754, regulation 13 and S.I. 2017/204, regulation 4(6) subject to transitional and savings provisions in Schedule 2(2) of that instrument.

(b) 2005 c. 9. Schedule A1 was inserted by the Mental Health Act 2007 (c. 12), Schedule 7, paragraph 1. Schedule A1 is also repealed by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 2(c) but that repeal is not yet in force.

(c) 2019 c. 18. This Act is not yet in force.

(3) The eligibility criteria referred to in paragraph (2)(a) are that the debtor—

- (a) is an individual,
- (b) owes a qualifying debt to a creditor,
- (c) is domiciled or ordinarily resident in England or Wales,
- (d) is not subject to a debt relief order,
- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt, and
- (g) is not subject to a breathing space moratorium or a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided in accordance with regulation 29(2) and (4) and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due,
- (b) a mental health crisis moratorium would be appropriate, and
- (c) an approved mental health professional has provided evidence that the debtor is receiving mental health crisis treatment.

(5) For the purpose of paragraph (4)(b), when considering whether a mental health crisis moratorium is appropriate, the debt advice provider—

- (a) must consider whether the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due, and
- (b) may have regard to any other factor that the debt advice provider considers relevant.

(6) In this regulation, “credit reference agency” means a person who carries on by way of business an activity of the kind specified by article 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Initiation of mental health crisis moratorium

31.—(1) In order to initiate a mental health crisis moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
 - (i) the debtor meets the eligibility criteria in regulation 30(3), and
 - (ii) the conditions in regulation 30(4) are met,
- (b) the information provided in accordance with regulation 29(2)(a) and (4),
- (c) the name and contact details of the debtor’s nominated point of contact, and
- (d) information identified by the debt advice provider about any other qualifying debt.

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the start of the mental health crisis moratorium to—
 - (i) the debtor’s nominated point of contact, and
 - (ii) those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (d).

(3) Paragraph (2) is subject to regulation 38.

Duration of mental health crisis moratorium

32.—(1) A mental health crisis moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 31(2)(a).

(2) A mental health crisis moratorium ends on the earliest of—

- (a) the end of the period of 30 days beginning with the day on which the debtor stops receiving mental health crisis treatment,
- (b) the end of the period of 30 days beginning with the day on which a debt advice provider makes a request to the debtor's nominated point of contact in accordance with regulation 33 and during which period the debt advice provider does not receive a response,
- (c) the day on which cancellation of the mental health crisis moratorium takes effect under regulations 18, 19 or 34, or
- (d) the day on which it ends in accordance with regulation 21 as a result of the death of the debtor.

(3) Paragraph (4) applies where a debtor's nominated point of contact—

- (a) notifies the debtor's debt advice provider that the debtor has stopped receiving mental health crisis treatment, or
- (b) provides confirmation that the debtor has stopped receiving mental health crisis treatment in accordance with regulation 33.

(4) Where a debt advice provider receives a notification or confirmation under paragraph (3), the debt advice provider must, by the end of the following business day, notify the Secretary of State of the date on which the debtor stopped receiving mental health crisis treatment.

(5) Where a mental health crisis moratorium ends in accordance with paragraph (2)(b), the debt advice provider must, by the end of the following business day, notify the Secretary of State that the moratorium has ended.

(6) Where the Secretary of State receives a notification under paragraphs (4) or (5), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification to each creditor and agent who received notification of a mental health crisis moratorium under this Part.

(7) Paragraph (6) is subject to regulation 38.

Request by a debt advice provider for information about a debtor's receipt of mental health crisis treatment

33.—(1) Subject to paragraph (2), a debt advice provider must, before the end of the period of 30 days beginning with the day on which the moratorium started, request from a debtor's nominated point of contact—

- (a) confirmation of whether the debtor is still receiving mental health crisis treatment, and
- (b) if the debtor is no longer receiving mental health crisis treatment, confirmation of the date on which the treatment ended.

(2) The debt advice provider must not make the request to a nominated point of contact under paragraph (1) in the period of 20 days beginning with the day on which the moratorium started.

(3) Having made a request under paragraph (1) and subject to paragraph (4), a debt advice provider must then request from the nominated point of contact the confirmation specified in paragraph (1) every 20 to 30 days beginning with the day on which the last request was made.

(4) If a moratorium ends in accordance with regulation 32(2)(b) because a debt advice provider has not received a response to a request made under this regulation, then the debt advice provider is not required to make further requests under paragraph (3).

Cancellation of mental health crisis moratorium

34.—(1) Subject to paragraph (2), a debt advice provider must cancel a mental health crisis moratorium if—

- (a) the debt advice provider considers that the evidence from an approved mental health professional referred to in regulation 29(2)(b) contains inaccurate, misleading or fraudulent information, or
- (b) the debtor requests that the debt advice provider cancels the moratorium.

(2) A debt advice provider is not required to cancel a mental health crisis moratorium if the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(3) Paragraph (2) does not apply in circumstances where the debtor requests that the debt advice provider cancels the mental health crisis moratorium in accordance with paragraph (1).

(4) In order to cancel a mental health crisis moratorium, a debt advice provider must—

- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
- (b) notify the Secretary of State and the debtor of the cancellation.

(5) Where the Secretary of State receives a notification under paragraph (4)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(6) Paragraph (5) is subject to regulation 38.

(7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).

(8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

PART 4

Debt respite scheme administration

Electronic system maintained by the Secretary of State

35.—(1) The Secretary of State must maintain an electronic system for the purpose of—

- (a) giving and receiving communications and notifications in connection with moratoria, and
- (b) maintaining a register of matters relating to moratoria.

(2) The Secretary of State may send and receive communications in connection with moratoria by means of the electronic system where the Secretary of State considers it appropriate to do so.

(3) The following persons are entitled to information contained on the electronic system that concerns or is relevant to a debtor—

- (a) the Secretary of State,
- (b) the debt advice provider who initiated a moratorium on behalf of the debtor, and
- (c) the debt advice provider to whom the debtor has been referred since the start of the moratorium.

(4) The following persons are entitled to information contained on the register that concerns or is relevant to a debtor—

- (a) the debtor,

- (b) the Secretary of State,
- (c) any debt advice provider, and
- (d) those creditors who have received notification of a moratorium relating to the debtor under these Regulations.

(5) A creditor is not entitled to information contained on the register or otherwise held by the Secretary of State about—

- (a) any other creditor of the debtor,
- (b) any moratorium debt owed by the debtor to any other creditor, or
- (c) the debtor's usual residential address where regulation 38 applies.

(6) The Secretary of State must delete from the register all information concerning a moratorium where fifteen months have elapsed from the date on which the moratorium ended or was cancelled under these Regulations.

Information about a debtor held on the register

36.—(1) The register maintained by the Secretary of State in accordance with regulation 35(1)(b) must include the following information relating to a moratorium—

- (a) information provided by a debt advice provider under these Regulations concerning—
 - (i) the identification details of the debtor to whom the moratorium relates, including the debtor's full name, date of birth and usual residential address,
 - (ii) the trading name or names and address of any business carried on by the debtor,
- (b) the date on which the moratorium started, and
- (c) where a moratorium has ended, the date on which the moratorium ended or was cancelled in accordance with these Regulations.

(2) This regulation is subject to regulation 38.

Notifications provided to and by the Secretary of State

37.—(1) Any information provided by a debt advice provider to the Secretary of State under these Regulations must be given by means of the electronic system maintained by the Secretary of State in accordance with regulation 35(1).

(2) Any notification by the Secretary of State to a person under these Regulations must be given by one of the following methods—

- (a) transmitting it by means of electronic communication,
- (b) leaving it at the person's address, or
- (c) posting it to that address.

(3) Paragraphs (1) and (2) are subject to regulation 38.

(4) Unless the contrary is shown a notification will be deemed to have been received on the following days—

- (a) on the day the electronic communication was sent by the Secretary of State,
- (b) on the day that the notification was left at the person's address, or
- (c) at the end of the period of four business days beginning with the day on which the notification was posted by the Secretary of State.

(5) The Secretary of State may provide notification by means of electronic communication if the person to whom it has to be provided—

- (a) has indicated to the debt advice provider or the Secretary of State (and has not withdrawn the indication) that they are willing to receive notification by those means, and
- (b) has provided, to the debt advice provider or the Secretary of State for this purpose, an e-mail address or other electronic identification.

(6) An e-mail address or other electronic identification provided to the debt advice provider or the Secretary of State for receiving notifications is sufficient indication for the purpose of paragraph (5)(a).

(7) In this regulation “address” means the registered office, registered principle address or any address provided to the debt advice provider or the Secretary of State for receiving notifications.

Non-disclosure of a debtor’s usual residential address

38.—(1) In the circumstances specified in this regulation, the Secretary of State must not include a debtor’s usual residential address—

- (a) in any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) in any notification sent to creditors or agents under these Regulations.

(2) A debtor, or the person applying for a moratorium on the debtor’s behalf, may make an application to a debt advice provider under this regulation for non-disclosure of the debtor’s usual residential address.

(3) An application for non-disclosure of a debtor’s usual residential address must contain—

- (a) a statement of the grounds on which the application is made,
- (b) evidence which supports the statement of the grounds on which the application is made.

(4) The grounds for non-disclosure of a debtor’s usual residential address are that disclosure of the debtor’s usual residential address might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor’s family.

(5) A debt advice provider must consider any application for non-disclosure of a debtor’s usual residential address and determine whether the address should be disclosed.

(6) Within 7 days beginning with the day on which a determination by a debt advice provider under paragraph (5) is made, the debt advice provider must notify the outcome of the determination to the debtor or the person who made an application for a moratorium on the debtor’s behalf.

(7) If a debt advice provider determines that the grounds specified in paragraph (4) apply, when providing information to the Secretary of State in accordance with these Regulations, the debt advice provider must notify the Secretary of State that the debtor’s usual residential address must not be included in—

- (a) any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) any notification sent to creditors or agents under these Regulations.

(8) Where an application under this regulation is unsuccessful, a notification under paragraph (6) must inform the debtor, or the person applying for a moratorium on the debtor’s behalf, of their right to appeal to the county court under paragraph (9).

(9) Where an application under this regulation is unsuccessful, a debtor, or the person applying for a moratorium on the debtor’s behalf, may appeal to the county court against the determination on the grounds specified in paragraph (4) before the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6).

(10) Where an application is made to a debt advice provider under this regulation, the debt advice provider may not initiate a moratorium under these Regulations until the earliest of—

- (a) the day on which the debt advice provider determines that the address should not be disclosed,
- (b) where the application is unsuccessful but no appeal proceedings are brought under paragraph (9), the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6), or

- (c) the conclusion of any appeal proceedings relating to the application under this regulation.

Electronic system malfunction

39.—(1) In the event of any malfunction or error in the operation of the electronic system, the Secretary of State must inform debt advice providers that information, communications and notifications may be provided under these Regulations to the Secretary of State in such a form as the Secretary of State will specify.

(2) In the event of any malfunction or error in the operation of the electronic system, where the Secretary of State is required to send notifications under these Regulations, the Secretary of State is required to send the notifications as soon as is reasonably possible.

PART 5

Supplemental

Review

40.—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 4 May 2026.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(a) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a debt respite scheme.

These Regulations make provision for two types of moratorium available to eligible debtors domiciled or ordinarily resident in England or Wales, namely a breathing space moratorium and a mental health crisis moratorium.

Part 1 makes provision relevant to any moratorium under these Regulations, including the effect of a moratorium and the rights of creditors to request a review of a moratorium and to apply to the county court to cancel the moratorium.

(a) 2015 c. 26.

Parts 2 and 3 make provision concerning a breathing space moratorium and a mental health crisis moratorium respectively.

Part 4 provides for the administration of the debt respite scheme by the Secretary of State.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.

HM Treasury (2019) - Breathing space impact assessment.

Explanatory Memorandum to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

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

PART 1

Description

This instrument establishes the first part of a debt respite scheme for people in problem debt. This part gives eligible people in problem debt who receive professional debt advice access to a 60-day period in which interest, fees and charges are frozen and enforcement action is paused. This moratorium period is often referred to as 'Breathing Space'. For people receiving mental health crisis treatment, this instrument establishes an alternate route by which the protections of a moratorium may be accessed and ensures that the protections are in place for the duration of their crisis treatment.

The second part of the scheme is the Statutory Debt Repayment Plan (SDRP), a statutory agreement that will enable a person in problem debt to repay their debts to a manageable timetable, with legal protections from creditor action for the duration of their plan. As set out in the June 2019 consultation response the Government intends to implement the SDRP over a longer timeframe and has not yet set a specific implementation date for this part of the scheme.

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

This is the first use of the power provided by sections 6 and 7 of the Financial Guidance and Claims Act 2018.

This instrument will apply to qualifying debts and will prevent creditors from taking enforcement action and will prevent debtors being liable for certain interest, fees and charges in relation to their qualifying debts during the moratorium period.

Various parts of this instrument therefore have retrospective effect. The authority to make provisions with retrospective effect is contained in section 7(5)(d) of the Financial Guidance and Claims Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

HM Treasury (2019) - Breathing space impact assessment.

This entire instrument applies to England and Wales only because the instrument has effect in England and Wales only (see regulation 1(8)) and applies in respect of debtors ordinarily resident or domiciled in England and Wales (see regulation 1(9)). 2 3.5. The instrument has effects outside of England and Wales which the Department considers to be minor or consequential. This is because the instrument could apply in respect of debts incurred or creditors based outside this jurisdiction.

In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

The Department has reached this view because it considers that the purpose of the instrument is the establishment of a debt respite scheme, which is within the devolved legislative competence of the Northern Ireland Assembly and the Scottish Parliament. In relation to Northern Ireland, the instrument does not deal with an excepted matter in Schedule 2 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act). In relation to Scotland, the instrument does not relate to a reserved matter in Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act).

Extent and Territorial Application

The territorial extent of this instrument is England and Wales.

The territorial application of this instrument is England and Wales. 5.

European Convention on Human Rights

4.1 The UK Economic Secretary to the UK Treasury has made the following statement regarding Human Rights:

“In my view the provisions of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 are compatible with the Convention rights.”

Legislative background

This is the first use of the power provided by section 7(2) of the Financial Guidance and Claims Act 2018 for the establishment of a debt respite scheme. This instrument is being made to establish the first part of that scheme: a Breathing Space moratorium on enforcement action and the charging of interest and fees for eligible individuals. This instrument also provides for a moratorium in respect of individuals receiving mental health crisis treatment.

In an Oral Statement on the scheme delivered in June 2019, the Economic Secretary to the Treasury committed to implementing the moratorium in early 2021.¹ These regulations confirm that the scheme will start on 4 May 2021.

Purpose and intended effect of the legislation

What is the problem under consideration?

Sections 6 and 7 of the Financial Guidance and Claims Act 2018 make provision for a debt respite scheme by secondary regulations. This instrument represents the first part of that scheme through the establishment of two types of moratorium on debt-related enforcement action and interest, fees, and charges.

People who need debt advice often do not seek to access it. Those who do receive advice often experience sub-optimal outcomes due to the circumstances in which they seek advice. Advice is often sought at a late stage, when debtors are at crisis point.² They are often driven to receive advice by creditor action, such as starting court proceedings or taking enforcement action. This creditor action compounds the stress and anxiety that problem debt causes.³ Under this level of stress, debtors often take the quickest rather than the most appropriate solution, contributing to sub-optimal debt advice outcomes.

What is the policy objective and how will it be achieved?

The policy objective is to incentivise more people in problem debt to access professional debt advice, to do so sooner, and to enable them to enter the debt solution that is most appropriate in view of their individual circumstances.

These protections are accessible only via professional debt advice providers (i.e. an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the

¹ Official Report, 19 June 2019, Vol. 662, c. 246. Available at: <https://hansard.parliament.uk/Commons/2019-06-19/debates/252B8ABA-F40D-4848-8D59-DFB0734A78AC/BreathingSpaceScheme>

² Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: <https://capuk.org/filesserver/downloads/general/cap-clientreport-2019-dp.pdf>

³ Money Advice Service (2017) *Better debt advice: from a moment of crisis to a lifetime of resilience*. Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience>

HM Treasury (2019) - Breathing space impact assessment.

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁴, or by exempt persons in relation to that activity (such as a local authority). Any debt adviser meeting this description could offer a moratorium, via an online, telephone or face-to-face service, provided the debtor meets the eligibility criteria for the scheme. This will encourage more people to seek debt advice and to do so at an appropriate time.

The debt adviser cannot charge a fee for this service or for any service in connection with a moratorium.

A moratorium under the scheme will freeze charges and certain interest as well as pause enforcement action. This will give debtors time to engage fully with professional advice by reducing the stress caused by spiralling debt and impending enforcement action. Enhancing the engagement between debtors and their advisers will promote more positive debt advice outcomes, including by increasing creditor recoveries.

All of a person's debts can be included in a breathing space, unless it is a non-eligible debt. Non-eligible debts are set out in regulation 5(4). Arrears owed to central and local government, including council tax arrears, personal tax debts and benefit overpayments are generally included in a moratorium. 2 Christians Against Poverty (2019) Client Report: Changing Perceptions. Available at: <https://capuk.org/filesserver/downloads/general/cap-clientreport-2019-dp.pdf> 3 Money Advice Service (2017) Better debt advice: from a moment of crisis to a lifetime of resilience Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience> 4 S.I. 2001/544.

Some specific public sector debts are excluded by regulation 5(4), mirroring the position in bankruptcy (e.g. debts incurred as a result of fraudulent behaviour; fines imposed by a court, including criminal fines; confiscation orders; child maintenance payments and debts that arise after an order made in family proceedings; social fund loans; student loans and personal injury liabilities).

Universal Credit advances and Universal Credit third party deductions are currently excluded, but will be included in the protections on a phased basis as early as possible following the start of the policy in early 2021, to ensure that IT changes required align with other requirements of the wider Universal Credit programme.

A person's business debts are not eligible if the debtor's business is registered for VAT, or if they are in partnership with anyone else and the debt they have accrued relates solely to the business. There is no limit on the amount of any individual debt, or total debts that can be protected in a moratorium.

A moratorium is not a payment holiday. The person should keep paying their debts during a moratorium. In particular, a debtor is required to keep paying certain ongoing liabilities (defined in regulation 2, including mortgage, rent, insurance, taxes and utility bills) as they fall due. If they do not keep up paying on these specific ongoing liabilities, and the debtor has the means to do so, the debt adviser must cancel their moratorium at the midway review unless the

⁴ S.I. 2001/544.

HM Treasury (2019) - Breathing space impact assessment.

debtor's personal circumstances would make cancellation unfair or unreasonable.

Campaigners originally requested a six-week moratorium, which the Government proposed to extend to 60 days in its 2018 consultation. As set out in the 2019 consultation response, almost all consultation respondents welcomed the extension of the length of breathing space to 60 days, suggesting that this was a realistic length of time to enable an individual to seek debt advice and enter a sustainable debt solution.

Breathing space cannot be extended, as the fixed period provides certainty to creditors. The only exception to this is in the mental health crisis moratorium (see paragraph 7.14 below.)

Mental health crisis moratorium

People receiving mental health crisis treatment will receive the protections of the scheme but through different entry mechanism. This reflects the fact that while this group could benefit from the protections in the standard scheme, they may face challenges in meeting the requirement to engage with debt advice in order to meet the eligibility criteria. There is no difference in the types of debts that are eligible for a mental health crisis moratorium.

7.15 This group will be able to enter a mental health crisis moratorium without engaging with debt advice. Approved Mental Health Professionals (AMHPs) will be the professional group able to produce an assessment that an individual is receiving mental health crisis treatment. AMHPs may themselves provide this evidence to a debt adviser, or they may do so following a request by the debtor or someone else involved in the debtor's care. This assessment will be the evidence that debt advisers then use when determining an individual's eligibility for a mental health crisis moratorium and enter them into the protections of the scheme.

The policy protections will apply for the duration of their crisis treatment and then for a further 30 days. If eligible, debtors may then have access to the 60-day Breathing Space moratorium accessed via professional debt advice. As mental health problems often recur, there will be no limit on the number of times that people receiving mental health crisis treatment may enter a moratorium via this mechanism, whereas debtors in the 60-day Breathing Space moratorium will have access once in each 12-month period.

This instrument also provides for the administration of the scheme by the Secretary of State. The Secretary of State's functions will be carried out by the Insolvency Service, which is an executive agency, sponsored by the Department for Business, Energy & Industrial Strategy. The Insolvency Service will operate an electronic system to administer the scheme, including a private register of persons in moratoria. Regulation 35(4) sets out entitlements to information held on the register, and regulation 35(5) limits the information a creditor may access about debtors

European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

This instrument does not relate to withdrawal from the European Union. 9.

Consolidation

This regulation will not consolidate other instruments.

Consultation

The UK Government has issued two consultations on the debt respite scheme. First, a call for evidence ran between October 2017 and January 2018. The UK Government's response was published in June 2018. Over 80 unique responses were received.⁵ Most respondents were supportive. Many respondents suggested that individuals in problem debt should have to seek debt advice before entering a Breathing Space, although some noted that there were certain, unique cases where this could be inappropriate, with individuals experiencing mental health crises highlighted as an example.

The UK Government consulted on a policy proposal informed by responses to this call for evidence between October 2018 and January 2019, publishing its response in June 2019. Over 130 responses were received. Respondents included creditors, trade bodies, local authorities, charities, debt advice providers, credit reference agencies, utility companies, telecoms providers, and others.⁶

The key points raised by these respondents are summarised in the UK Government's consultation response document.⁷ A wide range of views were expressed on a very large number of issues such as: the duration of a moratorium, the initial eligibility criteria, ongoing eligibility criteria, which debts should be included in the policy, whether there should be a public register of people in breathing space, the treatment of business debts, and other questions. Most respondents were supportive, for example of the eligibility criteria and of the proposed protections for debtors.

Further engagement with specific expert stakeholders from the creditor and debt advice sectors was undertaken in support of the drafting of this instrument. This informal exercise generated many helpful comments on the draft regulations.

⁵ HM Treasury (2018) *Breathing space: call for evidence*. Available at: <https://www.gov.uk/government/consultations/breathing-space-call-for-evidence>

⁶ HM Treasury (2019) *Breathing space scheme: consultation on a policy proposal*. Available at: <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal>

⁷ *Ibid.*

HM Treasury (2019) - Breathing space impact assessment.

Guidance

HM Treasury guidance will be prepared in due course to assist creditors, creditor agents, and debt advice providers as they apply the regulations.

Reporting on the original version of these Regulations, which were withdrawn on 9 September, the Secondary Legislation Scrutiny Committee recommended that the UK Government should consider establishing a register of authorised professional debt advisers⁸. The UK Government will work with the Money and Pensions Service, other Government departments, creditors and debt advice providers to raise awareness of the scheme, but does not intend to establish a register of debt advisers.

The Government will ensure that its activity includes clear signposting to debt advice providers who are able to enter people into a moratorium, including via the Money and Pensions Service's existing Debt Advice Locator and Money Navigator tools. Other forms of publicity will also be employed to raise awareness of the policy amongst potential users. This activity will take into account the advice provided to the government by the Money and Pensions Service, in accordance with section 6 of the Financial Guidance and Claims Act 2018, on raising awareness of the policy⁹.

Impact

The impact on business, charities or voluntary bodies is forecast to be a total cost over the ten years from 2021-22 of £2.1bn, which includes foregone interest and charges, delayed repayments, and familiarisation, dissemination and administration costs. The economic benefits to businesses, charities and voluntary bodies (that is the business net present value) is forecast to be £6.1bn in 2016 prices, which includes higher recoveries for creditors, productivity benefits for employers and reduced negative mental and physical health outcomes amongst debtors.

The impact on the public sector is forecast to be £7m over the same period. The wider benefits on society (that is the net present social value) are forecast to be £9.2bn in 2016 prices.

A full impact assessment is included in this memorandum and published on GOV.UK.¹⁰

Regulating small business

The legislation applies to activities that are undertaken by small businesses.

No specific action is proposed to minimise regulatory burdens on small businesses.

⁸ House of Lords Secondary Legislation Scrutiny Committee (2020) 24th Report of Session 2019-2021. Available at: <https://committees.parliament.uk/publications/2206/documents/20319/default/>

⁹ Money and Pensions Service (2019) Breathing space scheme – Money and Pensions Service advice. Available at: <https://www.gov.uk/government/publications/breathing-space-scheme-money-and-pensions-service-advice>

¹⁰ HM Treasury (2019) *Breathing space impact assessment*. Available at: <https://www.gov.uk/government/publications/breathing-space-impact-assessment>

HM Treasury (2019) - Breathing space impact assessment.

The basis for the final decision on what action to take to assist small businesses is outlined in full in the Small and Micro Business Assessment in the Impact Assessment.¹¹ Exemption or mitigation for small businesses would not achieve the policy intent, so no specific action is proposed to minimise the regulatory burdens on such businesses.

Full exemption from the protections of a moratorium for small businesses would mean that the respite afforded to debtors by a moratorium was incomplete, particularly where debtors' liabilities were owed mostly or entirely to creditors exempted by virtue of their size. It would also be impractical, imposing an excessive burden on debt advice providers (often themselves small businesses, charities or civil society organisations) to identify whether a creditor qualified as a small business.

As full exemption would undermine the policy intent and would be impractical, mitigations to minimise the regulatory burden of a moratorium on small businesses were considered. The government considered three options: allowing small businesses more time to prepare for the commencement of the debt respite scheme, in recognition of their high familiarisation costs relative to larger firms; applying the protections to small businesses only in respect of enforcement action rather than enforcement action and interest and fee-charging, and reducing the duration of a moratorium in respect of debts owed to small businesses.

All three of these mitigations were discounted. The first mitigatory option was found to be disproportionate: the familiarisation costs of small businesses are only forecast to be 8% higher than those of larger businesses.¹² The second and third were found to undermine the policy intent by providing only incomplete respite from creditor action for debtors. In addition, these options would impose an impractical and excessive administrative burden on debt advice providers in requiring them to determine whether creditors qualified as small businesses.

Monitoring & review

The approach to monitoring of this legislation is outlined in regulation 40 of this instrument. HM Treasury will publish a review by 4th May 2026, five years after the commencement of the instrument. In addition, subsequent evaluations will be published at five-year intervals. These evaluations will be carried out with due regard to the advice provided on this topic by the Money and Pensions Service.¹³ Further information is set out in the impact assessment.

A statutory review clause is included in the Regulation.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Money and Pensions Service (2019)

HM Treasury (2019) - Breathing space impact assessment.

HM Treasury Impact Assessment below:

Title: Breathing Space RPC Reference No: RPC-4418(1)-HMT Lead department or agency: HM Treasury	Impact Assessment (IA)		
	Date: 27/08/2019		
	Stage: Regulations		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
	Contact for enquiries: Alfie Shaw Alfie.Shaw@HMTreasury.gov.uk 020 7270 2492		
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status	

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value £9151.4m	Business Net Present Value £6132.0m	Net cost to business per year £169.3m	Business Impact Target Status Qualifying Provision
What is the problem under consideration? Why is government intervention necessary? There are an estimated 9 million overindebted people in the UK, of which only around 1.1 million receive advice each year. ¹ An additional 0.65 to 2.9 million people would benefit from debt advice but do not seek it. ² Even those that do seek help often do so at a late stage ³ and sometimes take the quickest rather than most sustainable solution. ⁴ Evidence suggests that people’s emotions, knowledge and attitudes to their debt create barriers to accessing advice. ⁵ These internal barriers include the stress and anxiety that comes with problem debt, which can be compounded when creditors start to take enforcement action such as chasing for repayment, starting court processes or using bailiffs.			
What are the policy objectives and the intended effects? The government wants to incentivise more people to access professional debt advice and to access it sooner, helping them to reach sustainable debt solutions. The government also wants to provide debtors who engage with this advice with the headspace to find a debt solution by pausing creditor enforcement action, interest, and charges. By offering these protections in Breathing space, and by making debt advice the gateway to these protections, the policy should deliver these objectives.			
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) To achieve these objectives, the government has considered three options: a) Do nothing. No government intervention to address the barriers that prevent or delay the people most in need of professional debt advice from seeking it. b) A voluntary Breathing Space. The government would encourage creditors to offer the protections of Breathing Space voluntarily. c) A regulatory Breathing Space, as described in the government’s consultation document. This option would deliver a higher net present social value than the other two options.			
Will the policy be reviewed? Yes. If applicable, set review date: The policy will be reviewed within five years of commencement. When a commencement date is fixed, the RPC Secretariat will be made aware.			

HM Treasury (2019) - Breathing space impact assessment.

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on trade and investment		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded N/A		Non-traded N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister, the Economic Secretary to the Treasury:

John P. Glen
27th August 2019

1 Wyman (2018) Independent Review of the Funding of Debt Advice in England, Wales, Scotland, and Northern Ireland. Available at:
https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter_Wyman_Review_of_Debt_Advice_Funding_2018.pdf

2 Ibid.

3 Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at:
<https://capuk.org/files/server/downloads/general/cap-client-report-2019-dp.pdf>

4 Money Advice Service (2017), 'How to use behavioural science to increase the uptake of debt advice' Available online at https://masassets.blob.core.windows.net/cms/files/000/000/810/original/MAS0032-MAS-BehaviouralChange_W.PDF

5 Money and Pensions Service (2019), *Debt Respite Scheme: Response to Request for Advice* to HM Treasury

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Best Estimate	0		0		0
Description and scale of key monetised costs by 'main affected groups'					
In the absence of intervention, no change is expected relative to the counterfactual. Debt advice supply is forecast to increase from 1.3m in 2017-18 to 2.6m in 2030-31. The supply of this debt advice comes at a cost, but doing nothing will not change this cost. There is therefore no marginal cost to doing nothing.					
Other key non-monetised costs by 'main affected groups'					
Nil.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Best Estimate	0		0		0
Description and scale of key monetised benefits by 'main affected groups'					
As a result of the increase in debt advice supply, more people will benefit from debt advice. Doing nothing will not change the number of additional people who will benefit from debt advice in the counterfactual or the value of the debt advice that they receive, so there is no marginal benefit to doing nothing.					
Other key non-monetised benefits by 'main affected groups'					
Nil.					
Key assumptions/sensitivities/risks					Discount rate (%)
Nil, as doing nothing is not expected to change the counterfactual.					3.5%

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	
			0

Summary: Analysis & Evidence**Policy Option 2**

Description: Voluntary Breathing Space

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 8029.4
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Best Estimate		13.7	91.4	788.5	
Description and scale of key monetised costs by 'main affected groups' (costs in present value) The costs of a voluntary Breathing Space would be the same as in a mandatory Breathing Space, but their scale would be reduced as a result of non-compliance. 20% of firms already deliver similar protections to those of Breathing Space for clients in problem debt. Non-regulatory intervention is expected to double this proportion. In the absence of regulation, firms will be expected to familiarise themselves with only updated guidance rather than new regulations. Only firms who voluntarily comply would be expected to make systems changes (£11.2m). Costs to creditors would therefore be lower than under a regulatory Breathing Space: foregone interest (£575.3m) and fees (£78.4m), delayed revenue (£0.5m), administrative costs (£114m), familiarisation costs (£0.2m), and dissemination costs (£1.9m). Public sector creditors would comply voluntarily, incurring similar costs (£6.9m).					
Other key non-monetised costs by 'main affected groups' Creditors may face opportunity costs as a result of the key monetised costs set out above.					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Best Estimate		0.0	1336.7	8817.9	
Description and scale of key monetised benefits by 'main affected groups' (benefits in present value) The benefits of a voluntary Breathing Space would be the same as in a mandatory Breathing Space. As only some creditors are expected to comply with the protections of Breathing Space, the scale of the benefits will be lower than under a regulatory version of the scheme. The benefits of this option compared to do nothing would be: higher creditor recoveries (£5158.0m), higher employee productivity (£1796.4m), and benefits to debtors themselves (£1205.8m). In addition, debtors will benefit from economic transfers equivalent to the inverse of the costs to creditors of frozen interest and charges and delayed revenue (£657.8m).					
Other key non-monetised benefits by 'main affected groups' The same set of non-monetised benefits as identified in option 3 (regulatory Breathing Space) would apply.					
Key assumptions/sensitivities/risks				Discount rate (%)	
There is a high degree of uncertainty around the relationship between the incentive to seek debt advice and the strength of the consumer protections that debt advice can provide. Debt advisers estimated that Breathing Space will increase the number of debtors who seek advice by 10% per annum. Creditor non-compliance would reduce the strength of the consumer protections accessible via Breathing Space, which would decrease the incentive to seek advice. This would reduce the forecast 10% uplift in debt advice take-up. In the absence of evidence on which to base an assumption for the extent to which the 10% assumption would fall, it has been assumed to fall to 5% per annum. Debt advice agencies suggested that Breathing Space will increase the benefit of debt advice by 14%. Debtors will not derive this full marginal benefit if not all of their creditors offer the protections of Breathing Space voluntarily. This relationship will not be direct – the benefit of Breathing Space when only 40% of creditors comply will not be 40% of 14%. Exactly how much lower the marginal benefit of debt advice will be given incomplete coverage is unclear, but it is assumed to be half that of a regulatory version of the scheme, at 7%.				3.5%	

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	
			0

Summary: Analysis & Evidence

Policy Option 3

Description: Regulatory Breathing Space

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 11577.5
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Best Estimate		31.7	240.2		2066.8
Description and scale of key monetised costs by 'main affected groups' (costs in present value) Creditors will forego interest (£1460.9m) and charges (£207.7m). Some of the debtors who would have made repayments in the counterfactual may delay their repayments under Breathing Space and some revenue derived from enforcement action will be delayed, generating costs to creditors (£1.4m). Creditors and debt advisors will face administrative costs (£358.2m), minimised through systems changes where economical (£29.1m). Creditors and debt advisers will face familiarisation (£0.4m) and dissemination costs (£1.9m). Government creditors will face similar costs (£7.1m).					
Other key non-monetised costs by 'main affected groups' Creditors may face opportunity costs as a result of the key monetised costs set out above.					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Best Estimate		0.0	1614.5		13644.4
Description and scale of key monetised benefits by 'main affected groups' (benefits in present value) Breathing Space will magnify the benefits of debt advice for those who already seek it and encourage more of those in problem debt to seek debt advice. Debt advice agencies estimated that the value of debt advice will be 14% higher under Breathing Space and it is forecast that an additional 1.3m debtors will seek advice over the assessment period as a result of Breathing Space. This will promote higher recoveries for creditors (£6109.0m), deliver productivity benefits for employers (£3708.3m), and reduce negative mental and physical health outcomes amongst debtors (£2153.4m). In addition, debtors will benefit from economic transfers equivalent to the inverse of the costs to creditors of frozen interest and charges and delayed revenue (£1673.7m).					
Other key non-monetised benefits by 'main affected groups' Non-monetised benefits to debtors include: lower dependence on state-subsidised housing; more positive education and employment outcomes, partly as a result of higher levels of parental engagement; lower risk of children being taken into care; lower rates of desperation crime; lower risk of eviction or repossession; lower risk of job loss; lower rates of relationship breakdown; increased social security take-up; higher rates of small business continuity, and more positive future credit access. Creditors will benefit from reduced risk of credit cycling, whereby debtors borrow from one creditor to pay another.					
Key assumptions/sensitivities/risks					Discount rate (%) 3.5%
The costs and benefits of Breathing Space are sensitive to changes in take-up. If take-up was to be lower than forecast, the benefits and ongoing costs of the scheme would be lower. As government programmes that rely on consumer demand are often over forecast, this has been accounted for with an optimism bias adjustment to the forecast caseload of 20%. The inverse risk of take-up rising above forecast levels is low. Demand for debt advice can be volatile, but supply constraints within the debt advice sector would limit the scope for significant caseload increases.					

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 214.2	Benefits: 0	Net: 214.2	846.5

1. Problem under consideration

1.1. There are substantial benefits from the provision of professional debt advice. These benefits fall across society, including to creditors who receive higher repayments, to employers who benefit from higher employee productivity, and to individuals in problem debt.

1.2. The Money Advice Service (now the Money and Pensions Service), a financial advice and guidance body established by government, estimates the benefits of debt advice to be between £475-£1bn per annum in 2021 prices.¹

1.3. There are estimated to be up to 9 million people in the UK struggling with their debts.² In 2018, Peter Wyman conducted an independent review of debt advice funding in the United Kingdom. He found that between 0.65m and 2.9m people in the UK would benefit from advice but do not seek it.

1.4. Those who seek debt advice often seek it too late. Christians Against Poverty report that most of their clients wait over a year before seeking advice, far later than when advice would be most beneficial.³ The debt advice charity StepChange estimates that people who wait six months to seek advice see their debts grow 14% larger than those who seek advice at an earlier stage.⁴

2. Rationale for intervention

2.1 There are clear demand side barriers to accessing advice from the point that it would be most beneficial. The government is seizing the opportunity to address these.

2.2 Advice to the government from the Money and Pensions Service (MAPS) states that individuals in problem debt often have internal barriers where their attitudes, emotions and knowledge impact their willingness to seek advice.⁵ MAPS suggest that people in problem debt often deny the severity of their circumstances, partly as a result of the stigma attached to being in problem debt. For others, fear, shame, embarrassment, and the hope that they will be able to resolve their problem debt without professional help cause them to delay seeking advice.⁶

2.3. By the time that debtors seek advice, many creditors will have progressed to taking enforcement action, such as writing to the debtor to request

¹ Europe Economics (2018) *The Economic Impact of Debt Advice*. Available at: <https://www.moneyadviceservice.org.uk/en/corporate/economicimpactdebtadvice>

² Wyman (2018) *Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland*. Available at: https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter_Wyman_Review_of_Debt_Advice_Funding_2018.pdf

³ Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: <https://capuk.org/files/server/downloads/general/cap-clientreport-2019-dp.pdf>

⁴ StepChange (2015) *Safe Harbours* Available at: <https://www.stepchange.org/Portals/0/documents/Reports/safe-harbours-report.pdf>

⁵ Money and Pensions Service (2019) *Debt Respite Scheme: Response to Request for Advice*. Available at: <https://www.gov.uk/government/publications/breathing-space-scheme-money-and-pensions-service-advice>

⁶ Christians Against Poverty (2019)

HM Treasury (2019) - Breathing space impact assessment.

repayment, taking court action, or using bailiffs, all of which can add to the stress and anxiety that debtors experience.

2.4. Debtors who are at crisis point when they seek advice are less likely to achieve an optimum outcome from debt advice. Research by the Money Advice Service suggests that the stress and anxiety of problem debt results in people being more likely to ignore essential communication, to report feeling overwhelmed by information about debt solutions, and to choose poorer debt solutions, often opting for quick fixes over more sustainable debt solutions.⁷

2.5. Some creditors already offer protections similar to those of Breathing Space. Chapter 7 of the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook suggests that firms consider "suspending, reducing, waiving or cancelling any further interest or charges... allowing deferment of payment of arrears... accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock... [and] refer[ing] the customer to a not-for-profit debt advice body."⁸ These protections are referred to collectively as 'forbearance'.

2.6 Not all debtors who need it are shown this forbearance. The FCA does not mandate that the firms it regulates undertake these steps and, in any case, debtors can owe money to firms in a host of different sectors which are not FCA regulated, such as utility companies, landlords, and the public sector. The enforcement and forbearance practices that debtors experience can therefore be very varied.

3. Policy objective

3.1. The government wants to encourage and incentivise more people to access debt advice and to access it sooner. This will help them to achieve better, more sustainable outcomes from debt advice. This will benefit not just to debtors but creditors and employers, too.

3.2. If creditors more consistently provide forbearance and pause enforcement action for those who are in the process of engaging with debt advice, those individuals will have the headspace to engage more effectively to achieve more sustainable solutions. Making debt advice the gateway to such protections would also make debt advice more attractive to those who need it, incentivising them to seek advice and to seek it sooner.

4. Description of options considered

4.1. This impact assessment considers a regulatory Breathing Space against a voluntary approach and doing nothing.

4.2. First, this assessment considers doing nothing. This would see no change in counterfactual debt advice take-up or outcomes and so no additional costs or benefits. Take-up of debt advice would rise, but more slowly than under a mandatory Breathing Space. The benefits of debt advice would accrue

⁷ Money Advice Service (2017) *Better debt advice: from a moment of crisis to a lifetime of resilience* Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience> Money Advice Service (2017) *How to use behavioural science to increase the uptake of debt advice* Available at: https://asauk.org.uk/wp-content/uploads/2018/03/MAS0032-MASBehaviouralChange_W.pdf

⁸ FCA (2014)

accordingly, but debt advice would be less beneficial than under Breathing Space.

4.3. Next, a voluntary approach to delivering Breathing Space is assessed. This would see the government work with creditors, trade bodies, and regulators to encourage more creditors to freeze interest, fees, and charges, to refrain from contacting debtors, and to pause enforcement action where debtors are in financial hardship. More creditors would offer these protections than do in the counterfactual, but fewer than would do so under a regulatory Breathing Space. As a result of incomplete coverage, the rate of increase in take-up of debt advice and the marginal benefit of debt advice would be lower than under a regulatory version of Breathing Space.

4.4. Finally, this assessment considers a regulatory Breathing Space. This will pause enforcement action; freeze interest, fees, and charges, and pause creditor contact with debtors where it relates to debt repayment. These protections would last for a 60-day period and be accessible via professional debt advice. This is expected to increase take-up of debt advice and the benefit of debt advice.

4.5. To support an evidence-based assessment of the costs and benefits of Breathing Space, information was requested from a range of stakeholders including: debt advice agencies; industry bodies representing the financial services sector, debt collection agencies, and enforcement agents; utility companies, and the public sector. This stakeholder engagement was in addition to a formal consultation that received over 130 responses.⁹

5. Breathing Space policy outline

5.1. Breathing Space is a 2017 manifesto commitment.¹⁰ It will pause enforcement action; freeze interest, fees, and charges, and pause creditor contact with debtors where it relates to debt repayment for a 60-day period. These protections will be accessible via professional debt advice.

5.2. The strong protections of Breathing Space will incentivise debtors to seek advice sooner by providing a tangible way out of debt problems that might otherwise seem insurmountable. By pausing enforcement action and freezing interest, fees, and charges, Breathing Space will provide debtors with the headspace to engage fully with debt advice, away from the pressures of spiralling debts and ongoing enforcement action.

5.3. Breathing Space will also include a Mental Health Crisis Moratorium for those receiving mental health crisis treatment. For this group, the protections of Breathing Space will last for the duration of their crisis treatment, followed by a further 30 days. The Money and Mental Health Policy Institute estimate that the median duration of in-patient psychiatric treatment is 34 days.

This suggests that the median duration within the Mental Health Crisis Moratorium before entering the main protections of Breathing Space is 64 days.

5.4. Not all debtors will remain within the protections of Breathing Space for its full 60-day duration. Breathing Space will impose a number of obligations on

⁹ HM Treasury (2019) *Breathing Space scheme: response to policy proposal*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/17June_CLEAN_response.pdf

¹⁰ Conservative Party (2017) *Manifesto*. Available at: <https://www.conservatives.com/manifesto>

HM Treasury (2019) - Breathing space impact assessment.

debtors, including: not taking out further credit of £500 or more without the approval of their debt advisor, continuing to meet their ongoing liabilities where they are able to do so, and continuing to engage with debt advice with a view to finding a debt solution. Where they are notified of a failure to meet the ongoing eligibility criteria, debt advisers will administer an ongoing eligibility check at the 30-day point, removing debtors who have not met the ongoing eligibility criteria.¹¹

Do Nothing – option 1

6.1. In the absence of a policy intervention, debt advice take-up will continue to rise and there will be no change in debt advice outcomes. By contrast, a regulatory Breathing Space would improve both outcomes and take-up.

6.2. The Money and Pensions Service (MAPS) is the body that commissions the delivery of free to access debt advice. MAPS collects nationwide data on debt advice supply, which is represented in Table 1 below.

6.3. MAPS's best estimate, based on debt advice provider data, is that 16.7% of the debt advice sessions that are recorded annually are likely to be duplicates. That is, they are likely to record the same debtor receiving separate advice more than once in a 12-month period. Breathing Space will only be accessible once per year, so duplicates are removed from the counterfactual.

6.4. MAPS estimate that 7.5% of debt advice is supplied in Scotland and Northern Ireland.¹² The territorial extent of Breathing Space will be England and Wales, so debt advice supplied in Scotland and Northern Ireland will not lead to Breathing Space. Advice supplied in Scotland and Northern Ireland is therefore removed from the counterfactual.

Debt advice supply	2015-16	2016-17	2017-18
Total, UK	953,764	1,134,607	1,390,776
Total, England and Wales	882,232	1,049,511	1,286,468
Duplication adjustment	734,899	874,243	1,071,628

Table 1: Baseline debt advice supply

6.5. From this starting point, debt advice supply may be forecast across the assessment period. As Peter Wyman pointed out in his Independent Review of Debt Advice Funding, forecasting future take-up of debt advice is challenging given the complexity of the relationship between levels of over indebtedness and wider macroeconomic factors. Partly for this reason, there is no official forecast of debt advice supply across the period that this impact assessment examines.

6.6. In the absence of an official forecast, the three-year trend is extrapolated across the assessment period. Debt advice is supplied via three primary channels: telephone, face-to-face, and online. As Table 2, below, shows, there has been significant volatility in the supply of advice via each channel. This volatility has been most pronounced in the online advice channel. This reflects

¹¹ The 30-day check may be undertaken at any point between days 25 and 35 of Breathing Space.

¹² Money Advice Service (2018) Mapping the unmet demand for debt advice in the UK Available at: https://masassets.blob.core.windows.net/cms/files/000/001/064/original/Mapping_the_unmet_demand_for_debt_advice_in_the_UK.pdf

HM Treasury (2019) - Breathing space impact assessment.

a sector-wide strategy of increasing debt advice supply by reducing the unit costs of debt advice. As online advice is cheapest to supply, the debt advice sector has sought to increase supply of advice via this channel.

England and Wales debt advice supply by channel	2015-16	Change	2016-17	Change	2017-18
Total change	882,232	19%	1,049,511	23%	1,286,468
Face to face	313,115	-5%	297,954	7%	318,730
Phone	410,562	24%	510,597	-5%	485,798
Online	158,554	52%	240,961	100%	481,940
Average change excluding online		10%		1%	
Average of annual changes	5%				

Table 2: Debt advice supply in England and Wales by channel

6.7. As online-channel debt advice reaches an optimum point, the annual increase in online debt advice is expected to revert to a similar level as that of telephone and face-to-face advice. There is uncertainty as to when this optimum point will be reached. This forecast assumes that it is reached in 2018-19. Therefore, in this forecast of counterfactual debt advice supply across the assessment period, the baseline annual increase in debt advice supply is taken to be the mean of the annual change in debt advice supply delivered by the telephone and face-to-face channels.

6.8. As Table 2 illustrates, this suggests that debt advice supply will increase by 5% per annum from 2018-19 to 2030-31. This suggests that debt advice supply will rise from 1.6m to 2.5m over the assessment period, or 1.3m to 2.1m when duplicates are removed.

6.9. Doing nothing will not change the amount of debt advice that is supplied across the assessment period and will not increase the value of that debt advice to either creditors, employers, or debtors. It will impose no new costs. Doing nothing will therefore have no impact on society, meaning that this option's Net Present Social Value, Business Net Present Value, and Equivalent Annual Net Direct Cost to Business are all nil.

7. Voluntary Breathing Space – option 2

7.1. In the absence of regulation, there is strong evidence that coverage of Breathing Space would be incomplete as a result of creditor non-compliance, limiting both the costs and benefits of this option.

7.2. Some respondents to the government's consultation on a policy proposal for Breathing Space suggested that debts owed to their sector should not be

HM Treasury (2019) - Breathing space impact assessment.

included in the scheme, arguing that the existing forbearance that they provide is adequate.¹³

7.3. A non-regulatory intervention might see the government work with regulators to encourage more creditors to deliver forbearance in a guise that is similar the protections of Breathing Space. This could be achieved by working with regulators directly to update guidance, or by collaborating with trade bodies to develop sector-wide codes of practice with recognition for firms who adhere. Such a non-regulatory intervention would increase the proportion of creditors who offer this level of forbearance, but by exactly how much is uncertain.

7.4. Recent efforts to change creditor behaviour through voluntary approaches have been only partially successful. In his independent review of debt advice funding, Peter Wyman recommended that a wider range of creditors should contribute to debt advice funding.¹⁴ Wyman proposed that this objective should be achieved through the development of a code of conduct by creditor trade bodies. Over a year after the publication of Wyman's recommendation, compliance with this recommendation has been limited. This suggests that compliance with a voluntary Breathing Space would be incomplete.

7.5 Creditors responding to requests for information submitted as part of this impact assessment estimated that creditors offer forbearance similar to the protections of Breathing Space in 20% of cases in the status quo.

7.6. In the absence of outturn data, this assessment assumes that a non-regulatory intervention would double the proportion of creditors offering these protections. As fewer creditors would comply with Breathing Space than under the regulatory option, costs to creditors would be lower.

7.7. Some costs would fall below this level. For example, there would be no regulations and so firms would have to familiarise themselves with guidance alone rather than both regulations and guidance. Likewise, only the firms complying with the voluntary Breathing Space would be expected to make systems changes.

7.8. The protections offered by Breathing Space will encourage debtors to seek professional debt advice sooner. Debt advice agencies were consulted on how much this would improve debt advice outcomes. They suggested that encouraging debtors to seek advice sooner would produce financial and social benefits, which are discussed in more detail in section 9 below.

7.9. People in problem debt who delay seeking debt advice typically present to debt advisers with more significant debts. StepChange estimate that debtors who wait six months after first worrying about their debts before seeking professional advice can see their debts grow by 14% on average.¹⁵

7.10. The financial benefits alone of seeking debt advice sooner could be 14% over 6 months. The social benefits are expected be higher still, though by how much is uncertain. Breathing Space is therefore assumed to increase by 14%

¹³ HM Treasury (2019)

¹⁴ Wyman (2018)

¹⁵ StepChange (2015) *Safe Harbours: Why we need a new extended breathing space guarantee to help people in temporary financial difficulties recover from debt*. Available at: <https://www.stepchange.org/policy-and-research/breathing-space.aspx>

the benefit to debtors of seeking advice. This is a low estimate looking only at financial benefits, so the realistic benefit is likely to be higher.

7.11. Debtors who would not have received advice in the absence of Breathing Space but who receive it under Breathing Space will derive this full benefit. Those who would have received debt advice in the counterfactual will derive only the marginal benefit.

7.12. The benefits of a voluntary Breathing Space are superior to doing nothing as some creditors would voluntarily deliver the protections of Breathing Space. However, the majority would not. The marginal benefits of Breathing Space apply per person, not per debt. Debt advice agencies estimate that debtors hold an average of 4 to 6 debts at the point of seeking advice. As a result of non-compliance in a significant minority of cases, it is unlikely that debtors will gain the headspace to engage fully with debt advice.

7.13. It is uncertain how much this would reduce the 14% marginal benefit of debt advice under Breathing Space. It is clear, though, that the relationship is not direct. Being pursued for interest, undergoing enforcement action, and being contacted by creditors seeking repayment is likely to reduce disproportionately the marginal benefits of debt advice under a mandatory Breathing Space.

7.14. Non-compliance will reduce the extent to which debtors find the best debt solutions for them and the higher creditor recoveries that this yields; it would reduce the extent to which Breathing Space counters absenteeism and presenteeism amongst employed debtors, lowering with it the benefits to employers, and most obviously, it would limit the improvement in debtor quality of life that a regulatory Breathing Space could deliver by countering debtors' sense of impending enforcement action and spiralling debts. For these reasons, it is assumed that noncompliance would reduce the marginal benefits of debt advice under Breathing Space from 14% to 7%.

7.15. In addition to reducing the marginal benefits of debt advice, creditor non-compliance is likely to reduce the incentive for debtors to seek professional advice where they would not have done in the counterfactual. The rate of increase in debt advice take-up would therefore be lower than under a regulatory version of Breathing Space, where it is assumed that the protections of Breathing Space increase by 10% the number of people who receive debt advice in each year of the assessment period.

7.16 There is significant uncertainty around the relationship between the strength of the protections of Breathing Space and marginal demand for debt advice. Given this uncertainty, it is assumed that the rate of increase in debt advice take-up under a voluntary Breathing Space would be half that of a regulatory Breathing Space. This equates to 5% per annum and 2.5% in year one to account for lag time.

7.17. The present value of this option is inherently lower than that of a regulatory Breathing Space as a result of non-compliance. Non-compliance reduces the incentive for more people in problem debt to take up debt advice and the marginal benefit of doing so relative to a regulatory option.

7.18. All of the business impacts of this option are considered indirect, as an impact arises only where businesses choose to comply with the non-regulatory Breathing Space scheme.

Regulatory Breathing Space – take-up – option 3

8.1. The key determinant of the costs and benefits of a regulatory Breathing Space is take-up. Counterfactual debt advice take-up has been discussed in section 6, where it was projected that it would rise from 1.3m to 2.1m between 2021-22 and 2030-31. The Breathing Space caseload will be a subset of this counterfactual debt advice supply, as the scheme is accessible only via professional debt advice.

8.2. The initial eligibility criteria set out that the scheme is accessible only to people in problem debt who are likely to be able to access a debt solution and for whom such a solution would be in their best interests.¹⁶ Engagement with debt advice agencies suggested that, on average, 60% of those who receive debt advice are advised to enter a debt solution. This group would meet the initial eligibility criteria in full. The Breathing Space caseload is therefore forecast to be 60% of the maximum caseload as set out in paragraph 8.1, which is 800,000 in 2021-22, rising to 1.3m in 2030-31.

8.3. Breathing Space will provide strong protections for people in problem debt. These protections will increase the incentive to take-up debt advice. It is uncertain by exactly how much this will increase demand for debt advice. Engagement with debt advice agencies suggested that a 10% annual increase in demand for debt advice was a central assumption. To account for a lag time in this demand increase while debtors become aware and convinced of the benefits of Breathing Space, it is forecast that marginal demand will be 5% of existing demand in 2021-22, rising to 10% per annum thereafter. This suggests that the marginal caseload – the number of people who will take-up debt advice under Breathing Space where they would not have done in the counterfactual – will be 66,000 in 2021-22 and 213,000 in 2030-31.

8.4. Not all of the people who are incentivised to take-up debt advice under Breathing Space will be eligible to enter the scheme. In the low scenario, they will be as likely to be eligible for Breathing Space as people who seek debt advice in the counterfactual. In this scenario, 60% of the marginal caseload would be eligible for Breathing Space. In reality, it is likely that they will have a higher eligibility rate than this counterfactual population, by virtue of having self-selected into debt advice as a direct result of the existence of Breathing Space. In the absence of outturn data to inform an alternative assumption, it is assumed that the eligibility rate of this population will be 80%: the midpoint of the minimum (60%) and maximum (100%) eligibility rates. This reduces the size of the marginal caseload who enter Breathing Space to 53,000 in 2021-22, rising to 170,000 in 2030-31.

8.5. The sum of the eligible static and marginal caseloads is the Breathing Space caseload, which is forecast to be 851,000 in 2021-22, rising to 1.45m in 2030-31. However, there is significant uncertainty in this forecast. Specifically, the 5% baseline annual increase in counterfactual debt advice demand (paragraph 6.7); the 60% eligibility rate (paragraph 8.2); the 10% increase in marginal debt advice demand (paragraph 8.3), and the 80% eligibility rate (paragraph 8.4), are uncertain. Recent experience with other demand-side policy interventions suggests that uncertainties in take-up forecasts often

¹⁶ HM Treasury (2019)

manifest on the side of optimism rather than conservatism. To account for this, a 20% optimism bias adjustment is applied. This reduces the Breathing Space caseload to 681,000 in 2021-22 and 1.2m in 2030-31.

8.6 In addition to this core caseload, another cohort of people in problem debt will enter Breathing Space via the Mental Health Alternative Access mechanism. This mechanism will be accessible to people receiving mental health crisis treatment. NHS England data suggests that there are 92,300 people receiving mental health crisis treatment. NHS England estimate that this figure will rise by 150,000 between 2019-20 and 2030-31. This increase is assumed to be linear.

8.7. Within this cohort, only people in problem debt are expected to enter Breathing Space via the Alternative Access Mechanism. The Money and Mental Health Policy Institute estimates that 22% of people with severe symptoms of common mental disorders are also in problem debt.¹⁷

This suggests that the number of people entering Breathing Space via the Alternative Access Mechanism will be 27,500 in 2021-22, rising to 54,000 by 2030-31.

8.8. It is assumed that the debt compositions of each cohort are the same. This is an uncertainty and data were unavailable to inform an evidence-based position. The data that informs the costs forecast in this impact assessment is derived from the general population who seek advice in the counterfactual. Debtors who do not seek advice in the counterfactual but take-up debt advice under Breathing Space might have different types of debts or different debt levels. The same could be true of people in problem debt who are receiving mental health crisis treatment. Data is intrinsically unavailable on the former group, as they do not currently take-up debt advice. Data comparable with that of the general population was not available on the latter group.

8.9. Not all debtors will remain within the protections of Breathing Space throughout its 60-day duration. Some will be removed at the 30-day point for contravening the ongoing eligibility criteria set out in section 5 – taking out further credit worth over £500 without their debt adviser's consent, not pay ongoing bills that they have the means to pay, or failing to engage with debt advice.

8.10. In the counterfactual, debt advice agencies suggested that around 3% of those who seek debt advice take out new credit and fall behind on their ongoing liabilities two months after seeking advice. In some of these cases, that new credit will be worth over £500 and the failure to meet ongoing liabilities could be considered a choice rather than purely a product of the debtor's financial position. In the absence of evidence to inform an assumption, it is assumed that this proportion would be 50%, so that 1.5% of counterfactual debt advice recipients deliberately stop paying their ongoing liabilities and take out further credit having sought debt advice. Debt advisers suggested that, additionally, 15% to 20% of debt advice recipients fail to continue to engage with debt advice.

¹⁷ Money and Mental Health Policy Institute (2019) *Debt and mental health: a statistical update* Available at: <https://www.moneyandmentalhealth.org/wp-content/uploads/2019/03/debt-and-mental-health-policy-note.pdf>

8.11. This data is based on the counterfactual, where there is little explicit penalty to debtors who take out further credit, fail to engage with debt advice, or who stop meeting their ongoing liabilities. Under Breathing Space, where failing to meet the ongoing eligibility criteria would lead to removal from the scheme's protections, it is reasonable to assume that debtors will alter their behaviour and so the proportion of debtors engaging in these behaviours will fall under Breathing Space relative to the counterfactual.

8.12. The extent of this fall is unknown. In the central scenario, it is assumed that the rate of removal will be 50% lower under Breathing Space than it would be in the counterfactual, suggesting that 10% of debtors will be removed from Breathing Space after 30 days.

8.13. For this group, it is assumed that one monthly debt repayment, one late payment charge, and one compounding interval falls within each 30-day period. For the remaining 90% of debtors, it is assumed that two debt repayments, two late payment charges, and two compounding intervals fall within the 60 days of Breathing Space.

8.14 This forecast assumes that debt advice supply increases with demand. This assumption is consistent with the government's intent. The government has increased funding for free professional debt advice to almost £56m this year, delivering 560,000 sessions in England. In addition, as Peter Wyman recommended in his review of debt advice funding, debt advice supply will rise as providers shift from high unit-cost advice channels to less expensive ones, increasing the number of advice sessions that may be delivered with the available funding.¹⁸

8.15 A macroeconomic deterioration could increase demand for debt advice and so take-up of Breathing Space. Likewise, a period of sustained economic growth could reduce demand for debt advice. Given the inherent uncertainty and in the interests of proportionality, this take-up forecast makes no assumption about macroeconomic change.

9. Regulatory Breathing Space – counterfactual benefits of debt advice

9.1. Breathing Space will incentivise more people to seek debt advice and to do so earlier, promoting more positive debt advice outcomes. We start by looking at the benefits associated with debt advice.

9.2. In the interests of proportionality, the best available secondary evidence on the economic value of debt advice is taken as the starting point of this analysis of the benefits of Breathing Space. This research includes The Money Advice Service's *The Economic Impact of Debt Advice*¹⁹ and StepChange's *The Social Cost of Problem Debt*.²⁰

¹⁸ Footnote was missing from original document

¹⁹ Europe Economics (2018) *The Economic Impact of Debt Advice A Report for the Money Advice Service* Available at: https://masassets.blob.core.windows.net/cms/files/000/000/898/original/Economic_Impact_of_Debt_Advice_-_main_report.pdf

²⁰ Clifford, Ward, Coram, & Ross (2014) StepChange Debt Charity: Social Impact Evaluation of certain projects using Social Return on Investment Available at: https://www.stepchange.org/Portals/0/documents/media/reports/Transforming_lives.pdf

9.3. *Transforming Lives* is an impact evaluation conducted for StepChange by Baker Tilly. A review of the social impact of debt advice for UK individuals and families, the report uses a social return on investment methodology to identify the economic value of debt advice delivered between 2012 and 2013 to 109,397 debt advice clients. The report identifies a wide variety of areas where debt advice has delivered a societal benefit. These benefits include: increased employment, improved mental health, higher creditor recovery, reduced desperation crime, reduced debt recycling, reduced risk of children being taken into care, reduced rates of eviction, improved interpersonal relationships, increased small business survival, and higher parental engagement, amongst others.

9.4. Building on this research, Europe Economics explored *The Economic Value of Debt Advice* for the Money Advice Service. This research used a regression model to identify whether a treatment group who undertook debt advice experienced different outcomes to a control group who did not. The specific outcomes that this research examined were those where Baker Tilly identified an impact amongst StepChange clients. To mitigate the risk of sample-selection bias, Propensity Score Matching was employed.

9.5. This impact assessment only monetises benefits where Europe Economics identified a clear link between debt advice and improved outcomes. This means that many of the benefits identified in the StepChange report are not monetised here. The benefits monetised in this impact assessment are:

9.5.1. Higher employee productivity – where debt advice reduces rates of absenteeism and

presenteeism amongst employees who are in problem debt.

9.5.2. Improved debtor wellbeing, when debt advice helps people in problem debt to return to a stable financial footing, improving their wellbeing and reducing the morbidity of mental health problems such as anxiety and depression, and

9.5.3. Higher debt repayments when debt advice supports people in problem debt to enter debt solutions in which they repay more of their debts.

10. Regulatory Breathing Space – overview of benefits calculation methodology

10.1. Both sources express the benefits of debt advice at population level. Unit costs and benefits per advised debtor have been identified by dividing the population-level benefit by the relevant underlying population. These benefits have been uprated by CPI from the year in which they were identified to the impact assessment base year, 2021-22.

10.2 These benefits then need to be applied to the Breathing Space caseload. There are three cohorts within the Breathing Space caseload forecast. These are: debtors who receive advice in the counterfactual, who will engage more effectively with advice under Breathing Space; debtors who take-up advice under Breathing Space that they would not have taken up in the counterfactual, and people who enter Breathing Space via the Mental Health Alternative Access Mechanism, who would not have received advice in the counterfactual.

HM Treasury (2019) - Breathing space impact assessment.

These caseloads are summarised in table 3 below. Year 1 is 2021-22 and year 10 is 2030-31.

	1	2	3	4	5	6	7	8	9	10
Receive debt advice in the counterfactual	639	673	710	748	788	831	876	923	973	1026
New debt advice	42	89	94	99	105	110	116	122	129	136
Mental Health Access Mechanism	27	30	33	36	39	42	45	48	51	54
Total	708	792	837	883	932	983	1037	1093	1153	1216

Table 3: Breathing Space caseload in thousands by year between 2021-22 and 2030-31

10.3. The cohort who already receive debt advice in the counterfactual will only benefit from the marginal value of debt advice under Breathing Space. Those who take-up debt advice for the first time under Breathing Space will derive the full value of debt advice under Breathing Space.

10.4. People who join Breathing Space via the Mental Health Access Mechanism are assumed not to have received debt advice in the counterfactual. This is a reasonable assumption as they are individuals receiving mental health crisis treatment. The Mental Health Access Mechanism has been designed to deal with the fact that they are unlikely to be able to have the conversations with a debt adviser which are a requirement to meet the eligibility criteria of the main scheme.

10.5. The benefits of Breathing Space to debtors, employers, and creditors are therefore calculated by multiplying the relevant populations by either the full or marginal benefit of debt advice under Breathing Space.

11. Regulatory Breathing Space – benefits to employers

11.1. Europe Economics estimated that the benefit of debt advice to employers was £3,384 per debtor in 2018. This productivity benefit to employers has been adjusted to reflect the fact that not all people in problem debt are in employment. A survey conducted by YouGov for Europe Economics suggested that the employment rate of people in problem debt was between 50% and 55%. In 2021 prices, this equated to a benefit of £1,969 at a 55% employment rate, or £1,790 at a 50% employment rate. The average of the two – £1,880 – is applied across the Breathing Space caseload.

11.2. As discussed in paragraph 7.10, debt advice agencies suggested that the value of debt advice under Breathing Space would be 14% higher than in the counterfactual. Applying this uplift to the baseline benefit per debtor, regardless of employment status, elevates the £1,879 benefit to £2,142 per debtor, a marginal benefit of £263.

11.3. Debtors who received advice in the counterfactual will benefit only from the marginal benefit of debt advice under Breathing Space. As they will receive this benefit without altering their behaviour, the benefit in respect of this cohort is considered to be direct.

HM Treasury (2019) - Breathing space impact assessment.

11.4. Those who take up debt advice under Breathing Space where they would not have done in the counterfactual will benefit from the full value of debt advice. The benefit in respect of this cohort is indirect, as the beneficiary debtors must alter their behaviour in order to access debt advice under Breathing Space.

11.5. The cohort who enter Breathing Space via the Mental Health Alternative Access Mechanism are excluded as they are not expected to receive debt advice during their mental health crisis treatment. This calculation is reflected in table 4, below.

	1	2	3	4	5	6	7	8	9	10
Caseload Marginal benefit ('000s)	639	673	710	748	788	831	876	923	973	1026
Benefit/£m	168	177	187	197	207	219	230	243	256	270
Caseload – full benefit ('000s)	42	89	94	99	105	110	116	122	129	136
Benefit/£m	91	191	202	212	224	236	249	262	277	291
Total Benefit/£m	259	368	388	409	431	455	479	505	533	561

Table 4: Benefits of Breathing Space to employers by year between 2021-22 and 2030-31.

12. Regulatory Breathing Space – benefits to debtors

12.1. Europe Economics monetise a range of benefits to debtors, both to their personal wellbeing and in terms of reducing their demand for treatment by lowering the morbidity of certain mental health problems that may be caused or exacerbated by problem debt. The sum of these benefits in the central scenario is £910, as illustrated in table 5.

Benefit	Upper value	Lower value	Average value
Lower rates of depression	£134	£71	£102.50
Lower rates of anxiety	£36	£21	£28.50
Lower rates of panic attacks	£52	£25	£38.50
Higher debtor wellbeing	£846	£635	£740.50
		Sum	£910

Table 5: Values of debt advice to debtors

12.2. As explained in paragraph 7.10, debt advice agencies agreed that the value of this benefit will increase by 14% under Breathing Space, to £1,037, a marginal benefit of £127.

12.3. All three cohorts will benefit. The cohort who already receive debt advice in the counterfactual will benefit by the marginal benefit of debt advice under Breathing Space. The Mental Health Access Mechanism and new debt advice

HM Treasury (2019) - Breathing space impact assessment.

cohorts will benefit from the full value of debt advice. This benefit has no impact on business. The size of this impact is quantified in table 6 below.

12.4. It is possible that people in the Mental Health Access Mechanism cohort will see greater improvements to their wellbeing and reductions in mental health problems than the other cohorts, given they are a cohort explicitly suffering from the intersection of both problem debt and mental health crisis. However, primary research was not available to support or quantify this possibility.

	1	2	3	4	5	6	7	8	9	10
Caseload Marginal benefit ('000s)	639	673	710	748	788	831	876	923	973	1026
Benefit/£m	81	86	90	95	100	106	112	118	124	131
Caseload – full benefit ('000s)	69	119	127	135	144	152	161	170	180	190
Benefit/£m	72	124	132	141	149	158	168	177	187	198
Total Benefit/£m	154	210	223	236	250	264	279	295	311	328

Table 6: Benefits of Breathing Space to debtors by year between 2021-22 and 2030-31.

Regulatory Breathing Space – benefits to creditors

13.1. People in problem debt who seek debt advice repay more to their creditors. Under Breathing Space, this benefit will be more pronounced. The creditor behaviour that causes people in problem debt either to enter inappropriate debt solutions or to disengage with debt advice will be prohibited under Breathing Space. As a result, fewer debtors will enter the most readily accessible debt solution rather than the most appropriate, and fewer debtors will disengage with debt advice under the strain of impending enforcement action and spiralling debts before they manage to find a debt solution.

13.2. Not all debtors who receive debt advice will enter debt solutions. Longitudinal research conducted for the Money and Pensions Service suggests that 84% of people in problem debt who agree to undertake an action following debt advice subsequently undertake that action. As only people in problem debt who have a realistic chance of entering a debt solution are eligible for Breathing Space, it is reasonable to assume that all debtors who enter Breathing Space will be advised to enter some form of debt solution. MAPS' finding suggests that 84% will subsequently enter that solution, while 16% will not.

13.3. Europe Economics estimate that debtors who are advised to enter Debt Management Plans (DMPs) or Individual Voluntary Arrangements (IVAs) repay their creditors an additional £3,522. StepChange estimate that debtors who seek advice repay an additional £858. The difference is driven by the fact that Europe Economics look only at two types of formal debt solution, whereas StepChange look at debt solutions ranging from a formal debt solution to budgeting advice. As described in paragraph 7.10, both figures are uplifted by 14% to reflect the enhanced value of debt advice under Breathing Space. This yields a benefit to creditors of £4,015 in respect of debtors who enter debt solutions and £979 in respect of those who do not. The marginal benefit is therefore £493 or £121, respectively.

13.4. The cohorts who receive debt advice under Breathing Space but not in the counterfactual and who receive debt advice in both Breathing Space and

HM Treasury (2019) - Breathing space impact assessment.

the counterfactual are each divided into further cohorts. These further cohorts reflect the fact that 84% of the people in each cohort will enter debt solutions while 16% will not. This division is reflected in table 7 below.

	Code	1	2	3	4	5	6	7	8	9	10
Receive debt advice in the counterfactual		639	673	710	748	788	831	876	923	973	1026
o/w enter a solution	A	536	565	596	628	662	698	736	776	818	862
o/w do not enter a solution	B	102	108	114	120	126	133	140	148	156	164
Do not receive debt advice in the counterfactual		42	89	94	99	105	110	116	122	129	136
o/w enter a solution	C	36	75	79	83	88	93	98	103	108	114
o/w do not enter a solution	D	7	14	15	16	17	18	19	20	21	22

Table 7: Sub-cohort debt advice outcomes in thousands between 2021-22 and 2030-31.

13.5. As in the calculations for the other benefits of Breathing Space, the full and marginal benefits of Breathing Space are applied in respect of the relevant caseloads. In this instance, the benefit to debtors who do not take up debt advice in the counterfactual is £4,015 for debtors who enter solutions (C) and £979 for those who do not (D). In respect of debtors who do receive debt advice in the counterfactual, the relevant marginal figures – £493 (A) and £121 (B) – are applied. Applying these unit benefits to the relevant caseloads yields the benefits summarised in table 8 below.

	1	2	3	4	5	6	7	8	9	10
Receive debt advice in the counterfactual	277	292	308	324	342	360	380	400	422	445
Do not receive debt advice in the counterfactual	149	315	332	350	369	389	410	432	455	480

Table 8: Benefits of Breathing Space to creditors between 2021-22 and 2030-31.

13.6. Some debtors will take up debt advice under Breathing Space that they would not have taken up in the counterfactual. All of this group are forecast to repay more to their creditors than they would have done in the counterfactual. It is assumed that the proportion of this cohort who will enter debt solutions is the same as that of people who seek advice in the counterfactual. As this benefit depends upon a behavioural change, it is not inevitable and is therefore considered indirect. This benefit is expressed in the first row of table 8.

13.7. Creditors are also expected to benefit from higher repayments from debtors who were already engaging with debt advice. Within this cohort, the

behaviour of some creditors in the counterfactual provoked some debtors either to disengage with debt advice or to enter a suboptimal debt solution. This creditor behaviour – applying the pressure of impending or actual enforcement action while allowing debts to spiral through the addition of interest and charges – will be prohibited under Breathing Space. As a result, debtors will continue along their existing pathways: having sought advice, they will enter debt solutions and so repay their creditors more than they would have done otherwise. This benefit will not be an immediate and inevitable consequence of the policy; it will depend on behavioural change on the part of creditors. It is therefore considered to be indirect.

13.8. This represents a conservative assessment of the likely benefits of Breathing Space. In addition to the benefits of debt advice that are monetised in the secondary sources, there are a wider set of benefits that are identified in the secondary source material but that are not monetised. These include lower dependence on state-subsidised housing; more positive education and employment outcomes, partly as a result of higher levels of parental engagement; lower risk of children being taken into care; lower rates of desperation crime; lower risk of eviction or repossession; lower risk of job loss; lower rates of relationship breakdown; increased social security take-up; higher rates of small business continuity, and more positive future credit access.

14. Regulatory Breathing Space – costs – summary – option 3

14.1. The costs of Breathing Space are summarised below.

14.1.1. Enforcement action will be paused during Breathing Space. Some debtors will change their repayment behaviour as a result, choosing not to make debt repayments that they would have made in the counterfactual. In addition, revenue that might have been generated by enforcement action will be delayed until the end of Breathing Space, when enforcement action may continue. This will generate indirect costs to creditors who have borrowed to lend.

14.1.2. Contractual and default interest will be frozen during Breathing Space. Creditors will forego revenue as a result.

14.1.3. Late payment fees and charges that would have been added during Breathing Space will be frozen. Creditors will forego revenue as a result.

14.1.4. Creditors will be required to take administrative steps to comply with Breathing Space. These will take up administrator time at a cost to creditors.

14.1.5. Debt advisers will be required to undertake additional administrative activities to deliver Breathing Space, at a cost to debt advice agencies.

14.1.6. To reduce the cost of these administrative activities, some creditors and debt advice agencies will find it economical to make systems changes.

14.1.7. Approved Mental Health Professionals will need to complete forms to provide evidence that people are receiving mental health crisis treatment.

HM Treasury (2019) - Breathing space impact assessment.

14.1.8. Creditors and debt advisers will need to familiarise themselves with the Breathing Space regulations and guidance in order to deliver the scheme.

14.1.9. Debt advisers will require a deep understanding of Breathing Space. This will require debt advisers to undergo training to disseminate the contents of the Breathing Space regulations and guidance, at a cost to debt advice agencies.

14.2. The costs of a regulatory Breathing Space, like the benefits, are divided between those that directly impact business and those that indirectly impact business. This division is made on the basis of whether the impact is immediate and inevitable or not. Where a behavioural change is required for the impact to materialise, the impact is considered indirect.

14.3. Costs arising from the cohorts of debtors in Breathing Space who already receive debt advice in the counterfactual and who enter Breathing Space via the Mental Health Alternative Access Mechanism do not require behavioural change. They are therefore considered to be direct.

14.4. By contrast, costs arising from the cohort of debtors in Breathing Space who do not receive debt advice in the counterfactual are considered to be indirect as they are neither immediate nor inevitable, materialising only where debtors choose to take up debt advice that they would not have received in the counterfactual.

14.5. This segmentation of the Breathing Space caseload into sub-cohorts is illustrated in table 8 below. As explained in paragraph 8.12, not all debtors are expected to remain in Breathing Space for its full 60-day duration.

	Impact	1	2	3	4	5	6	7	8	9	10
Mental Health Caseload	Direct	27	30	33	36	39	42	45	48	51	54
Debt advice in the counterfactual 60 days in Breathing Space	Direct	573	604	637	671	708	746	786	829	874	921
Debt advice in the counterfactual 30 days in Breathing Space	Direct	65	69	73	77	81	85	90	95	100	105
No debt advice in the counterfactual 60 days in Breathing Space	Indirect	38	80	84	89	94	99	104	110	116	122
No debt advice in the counterfactual 30 days in	Indirect	4	9	10	10	11	11	12	13	13	14

HM Treasury (2019) - Breathing space impact assessment.

Breathing Space											
Total		708	793	837	884	932	984	1040	1094	1154	1217

Table 9: Segmentation of Breathing Space cohort between 2021-22 and 2030-31 in thousands.

Regulatory Breathing Space – costs – delayed revenue – option 3

15.1. Breathing Space will pause enforcement action. Some debtors may respond by delaying repayments that they would have made in the counterfactual. In addition, revenue that creditors would have derived from enforcement action will be delayed by Breathing Space.

15.2. The value of the capital lent to debtors will vary according to its source. For all creditors, delayed repayments will drive opportunity costs. Leveraged creditors will also face the cost of borrowing. The cost to creditors of delayed revenue will be offset by a corresponding benefit to debtors of retaining money that they would otherwise have repaid, so this cost is considered to be an economic transfer.

15.3. The protections of Breathing Space do not extend to debtors' payment of ongoing bills – should they not pay these, creditors will not be prevented from taking enforcement action. Additionally, debtors in Breathing Space will be required to meet their ongoing liabilities where they are able to do so to remain in the scheme's protections. Their ongoing liabilities repayment behaviour should not, therefore, change. However, debtors will have the discretion to alter their repayment behaviour for their accrued debt or arrears, where enforcement action is prohibited for non-repayment.

15.4. To quantify the cost to creditors of delayed revenue, the counterfactual revenue is identified. This is a product of the proportion of debtors within Breathing Space who might have made debt repayments and the average value of those repayments.

15.5. Debt advisers consulted as part of this impact assessment suggested that only 40% of their clients have a surplus budget after meeting their ongoing liabilities. They estimated that the average monthly surplus amongst such clients is £294.

15.6. It is assumed that only debtors who have a surplus after paying their ongoing bills make repayments of their debts and arrears, that they repay their whole surplus to their creditors, and that all debtors who could afford to make repayments on their debts or arrears do so. These assumptions are likely to overstate the costs to creditors.

15.7. Not all of this revenue will be delayed under Breathing Space. Debt advisers suggested that they would advise debtors to delay making debt repayments only where doing so would allow them to save the money required to enter an insolvency solution.

15.8. Debt advisers suggested that they would recommend such an insolvency solution to 9.5% of the debtors that they advise. In 6.5% of those cases, debtors could save the money required to access that solution either immediately or by the end of the 60 days of their Breathing Space.

HM Treasury (2019) - Breathing space impact assessment.

15.9. This circumstance would account for c.0.6% of the Breathing Space caseload. In addition to this proportion of the caseload, a further proportion might change their debt repayment behaviour against the advice of their adviser. Data to inform an assumption on the size of this caseload was not available, so it is assumed that the same proportion would change their behaviour against the advice of their debt adviser as would change it on their debt adviser's advice. 1.2% of the Breathing Space caseload is therefore assumed to change their debt repayment behaviour to stop repaying these debts.

15.10. In addition to revenue delayed by changes in debtor repayment behaviour, creditors could see revenue delayed as a result of the pausing of enforcement action during Breathing Space (for instance, reductions to benefits or enforcement agent action to recover debts). Debt advisers estimated that 17.5% of their clients were subject to enforcement action at the point of seeking debt advice.

15.11. Data on the creditor revenue derived from this enforcement action was unavailable, so it is assumed that this action generated the same amount of revenue as deliberate repayments – £294 per month, with Breathing Space covering two months. We assume the repayment of these debts would stop. Not all enforcement action would have yielded revenue in the counterfactual during the 60 days of Breathing Space, so this is likely to overstate the cost to creditors.

15.12. This suggests that £29m will be delayed in 2021-22, rising to £51m in 2030-31 as the Breathing Space caseload grows. The cost to creditors of this delay will be only a fraction of the delayed revenue. The money that creditors lend could derive from a variety of sources. In the interest of proportionality, it is assumed that all creditors borrow the capital that they lend. The cost of delayed revenue will therefore be equivalent to the cost to creditors of maintaining a leveraged position. In addition, there will be an opportunity cost for creditors, but this is not monetised.

15.13. Creditors could borrow from a variety of sources. Large creditors might have access to interbank rates, whereas smaller creditors are more likely to borrow at high-street rates. To account for the uncertainty discussed in section 23 around the proportion of businesses affected by Breathing Space of each size, a sensitivity analysis across these two rates is taken.

15.14. Amongst the cheapest borrowing rate that large creditors might have access to is the 12-month GBP London Interbank Overnight Rate (LIBOR). As at Thursday 1st August, the GBP LIBOR 12-month rate stands at 0.847%. Over two months, this rate is equivalent to a 0.14% interest rate. According to the Federation of Small Business, in Q2 2019, just over half of small businesses accessing credit did so at a rate lower than 5%, or 0.83% over a two-month period.²¹ The average of these two rates is 0.49%.

15.15. The cost to creditors of delayed revenue is therefore equivalent to 0.49% of the stock of delayed revenue, which is forecast to be £140,000 in 2021-22,

²¹ FSB (2019) *Voice of Small Business Index: Quarter 2, 2019*. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21_0

HM Treasury (2019) - Breathing space impact assessment.

rising to £250,000 in 2030-31. No assumption is made as to changes in the assumed interest rate over the course of the assessment period.

15.16. The benefit to debtors of retaining money that they otherwise would have paid to their creditors is taken to be the inverse of the cost to creditors. On a net basis, the impact of delayed revenue to society is therefore nil and delayed revenue is therefore considered to be an economic transfer.

15.17. No distributional weighting is applied, though the benefit to debtors is likely to be higher than the cost to creditors. Applying a formal distributional weight to delayed revenue would therefore increase the marginal benefit to debtors and decrease the marginal cost to creditors. Not applying this weighting therefore understates the benefit to debtors of delayed revenue.

15.18. The entirety of this cost is considered to be indirect, as the cost materialises only where debtors choose to alter their repayment behaviour, not as an automatic consequence of the policy.

16. Regulatory Breathing Space – costs – interest foregone – option 3

16.1. Breathing Space will freeze interest for 60 days. This will drive a cost to some creditors who charge interest, and an equal benefit to debtors and so this impact is considered to be an economic transfer.

16.2. The first step in quantifying the amount of interest that creditors will forego during Breathing Space is to quantify the principal that will fall within the protections of Breathing Space. The principal of debt falling within Breathing Space's protections is taken to be the forecast caseload in each year multiplied by the proportion of debtors with each type of debt. These proportions are based on evidence shared by debt advice agencies on the existing debt composition of the debtors who seek advice in the counterfactual.

16.3. The product is then multiplied by debt advice agencies' evidence on the average level of each type of debt, yielding the principal that falls within the protections of Breathing Space. This process is repeated for both cohorts who remain within the protections of Breathing Space for 60 days, 30 days, and, amongst those who enter via the mental Health Crisis Moratorium, 64 days.

16.4. The next step is to identify the average Annual Percentage Rate for each type of debt. In the case of credit card debt, the best available source is the Bank of England, which publishes monthly data.²² As at 30 June, this was 18.45%. Where such product-wide data is not available, and in the interests of proportionality, an indicative APR for each type of debt has been identified via open source credit comparison websites.

16.5. The amount of interest that will be foregone as a result of Breathing Space is sensitive to the frequency of the relevant compounding intervals. This will vary by debt, but, in the interests of proportionality, debts are assumed to compound monthly, with two compounding intervals falling within the 60 days of

²² Bank of England (2019) *Monthly Average of UK Resident Banks' Sterling Weighted Average Interest Rate, Credit Card Loans to Individuals and Individual Trusts* Available at: <https://www.bankofengland.co.uk/boeapps/database/fromshowcolumns.asp?Travel=NlxAZxSUx&FromSeries=1&ToSeries=50&DAT=RNG&FD=1&FM=Jan&FY=2010&TD=11&TM=May&TY=2025&FNY=Y&CSVF=TT&html.x=66&html.y=26&SeriesCodes=CFMZ6IR&UsingCodes=Y&Filter=N&title=CFMZ6IR&VPD=Y#notes>

HM Treasury (2019) - Breathing space impact assessment.

Breathing Space, two in the 64 days of the Mental Health Crisis Moratorium, and one in the 30 days of Breathing Space for the 10% of debtors who are removed at the 30-day checkpoint.

16.6. In the counterfactual, not all of the interest that would have been added to debt stocks during Breathing Space would have been repaid. Likewise, interest may not be added in all

16.7. Information on the specific repayment rates expected by creditors is market sensitive. In the absence of outturn data on repayment rates, an assumed repayment rate was derived from the proportion of debtors with a personal budget surplus after meeting their essential costs. Debt advisers estimated that 40% of their clients retained a budget surplus after meeting all of their ongoing liabilities. It is assumed that only debtors with a positive budget can meet their interest payments as they come due, such that the average repayment rate for interest payments across most debts is 40%.

16.8. Debt advisers suggested that the repayment rate of high cost credit products is likely to be lower than those of other forms of credit. Data shared by debt advice providers suggested that debt advice clients with high cost credit products were 33% less likely to be able to handle their debts on their own without a debt solution, or after maximising their incomes, compared to other debt advice clients. It is therefore assumed that the repayment rate of high cost credit products is 33% lower than that of other credit products, at 27%.

16.9. The amount of interest foregone is therefore expressed as the principal multiplied by the monthly interest rate, expressed to the power of the number of compounding intervals that fall within Breathing Space. This amount is then multiplied by the counterfactual repayment rate.

16.10. This process is repeated for each of the sub-cohorts of the Breathing Space caseload in order to facilitate segmentation of the overall cost into direct and indirect costs. As discussed in section 14, costs that are automatic – arising from debtors who do not change their behaviour in order to enter Breathing Space – are considered direct. Other costs are considered indirect. The breakdown of these costs is given in table 10 below.

	1	2	3	4	5	6	7	8	9	10
Interest foregone – direct/£	119	126	133	140	147	155	164	172	182	192
Interest foregone – indirect/£	8	17	18	19	20	21	22	23	24	25
Total/£m	127	142	150	158	167	176	185	195	206	217

Table 10: Direct and indirect costs of interest foregone between 2021-22 and 2030-31.

16.11. As discussed in paragraph 15.1, the cost of lending will vary by creditor. All creditors will face opportunity costs where counterfactual revenue is delayed and leveraged creditors will face additional costs of borrowing to lend. This also applies to foregone interest, where debtors' contractual interest liabilities will cover the risk taken by creditors, their profit margins, and the cost of servicing their own debts. For that reason, as in paragraph 15.14, the stock of interest foregone is multiplied by the assumed two-month cost of borrowing to lend, which is taken to be 0.49%. This increases the cost to creditors of interest

HM Treasury (2019) - Breathing space impact assessment.

foregone by £683,000 in 2021-22, rising to £1.2m by 2030-31. This cost is included in table 10.

16.12. This process is repeated for each of the debt types identified by debt advice agencies to identify the total cost to creditors of foregone interest in each year of the assessment period. The inverse of this cost is considered to be a benefit to debtors, so foregone interest is treated as an economic transfer. As set out in paragraph 15.16, distributional weighting is not applied, so the benefit to debtors of freezing interest is likely to be understated.

17. Regulatory Breathing Space – costs – charges foregone – option 3

17.1. Breathing Space will prevent the addition of new late-payment fees and charges. Creditors will therefore forego charge revenue. This will drive a cost to creditors and an equal benefit to debtors and so this impact is considered to be an economic transfer.

17.2. As with interest foregone as set out in section 16, the key drivers of the cost to creditors of freezing the addition of new late payment fees and charges are the number of charges that would have been added during Breathing Space, their average value, and the expected counterfactual repayment rate.

17.3. Debt advisers consulted as part of this Impact Assessment shared data on the number of debts held by debtors, disaggregated by debt type, and on the proportion of debtors with each type of debt. Where data on the number of debts held by each debtor was unavailable, it is ²³ assumed that debtors hold only one of each debt. It is assumed that late payment charges are added monthly, with one charge added each 30 days during the 60 days of Breathing Space.

17.4. Not all debts will be overdue at the point of entry into Breathing Space. Arrears will, by their nature, be overdue at the point of entry into Breathing Space. However, many other debts, such as those owed to financial services creditors (e.g. personal loans) may not be. In the absence of evidence to support an alternative assumption, it is assumed that 50% of debts are overdue at the point of entry into Breathing Space.

17.5. The number of charges due during Breathing Space is calculated as the Breathing Space caseload multiplied by the proportion of debtors with each type of debt, multiplied by the average number of debts held by debtors with each debt type.

17.6. The number of late payment charges due during Breathing Space is then multiplied by their average value. In the absence of sector-scale data on the average value of late payment charges, indicative values derived from open sources have been used.

17.7. The product is then adjusted for the expected counterfactual repayment rate, yielding the amount of charge revenue that will be foregone. For

²³ Bank of England (2019) *Monthly Average of UK Resident Banks' Sterling Weighted Average Interest Rate, Credit Card Loans to Individuals and Individual Trusts* Available at: <https://www.bankofengland.co.uk/boeapps/database/fromshowcolumns.asp?Travel=NlxAZxSUx&FromSeries=1&ToSeries=50&DAT=RNG&FD=1&FM=Jan&FY=2010&TD=11&TM=May&TY=2025&FNY=Y&CSVF=TT&html.x=66&html.y=26&SeriesCodes=CFMZ6IR&UsingCodes=Y&Filter=N&title=CFMZ6IR&VPD=Y#notes>

HM Treasury (2019) - Breathing space impact assessment.

consistency, it is assumed that the repayment rate of late-payment fees and charges is the same as that of interest.

17.8. This process is repeated for each of the sub-cohorts of the Breathing Space caseload in order to facilitate segmentation of the overall cost into direct and indirect costs. As discussed in section 14, costs that are automatic – arising from debtors who do not change their behaviour in order to enter Breathing Space – are considered direct. Other costs are considered indirect. The breakdown of these costs is given in table 11 below.

	1	2	3	4	5	6	7	8	9	10
Charges foregone – direct/£	16	18	19	20	21	22	24	25	26	28
Charges foregone – indirect/£	1	2	2	2	3	3	3	3	3	3
Total/£m	17	20	21	23	24	25	26	28	29	

Table 11: Direct and indirect costs of charges foregone between 2021-22 and 2030-31.

17.9. As in the case of interest foregone, the stock of charges foregone is multiplied by the assumed two-month cost of borrowing to lend, which is taken to be 0.49%, in order to establish the cost to leveraged creditors of foregone late-payment charge revenue. This increases the cost to creditors of charges foregone by £90,000 in 2021-22, rising to £159,000 by 2030-31. This cost is included in table 11.

17.10. This process is repeated for each of the debt types identified by debt advice agencies to derive the total cost to creditors of foregone late payment fees and charges. The inverse of this cost is considered to be a benefit to debtors. Not applying a distributional weighting is likely to understate the benefit to debtors of this economic transfer.

18. Regulatory Breathing Space – costs – creditor administration – option 3

18.1. Breathing Space will impose an additional administrative burden on some creditors, who will have to freeze interest, fees, and charges and pause enforcement action throughout Breathing Space.

18.2. Many of the creditors who responded to the government's consultation on the Breathing Space scheme pointed out that their sectors already provide similar protections to Breathing Space as part of their wider forbearance practices for some individuals, as discussed in paragraph 2.5. Trade bodies estimated that, for this reason, Breathing Space could impose no material additional administrative cost in 20% of cases.

18.3. In response to requests for information made as part of this Impact Assessment, creditors provided estimates for the number of minutes required to perform various administrative tasks, along with the average wage costs of the administrators who will perform them. In total, these actions are expected to take between 36.5 and 44 minutes. These administrative activities include:

18.3.1. Processing the notification of an entry into Breathing Space

HM Treasury (2019) - Breathing space impact assessment.

18.3.2. Suppressing contact relating to repayment ²⁴

18.3.3. Notifying enforcement agents to pause enforcement action, where it is ongoing

18.3.4. Suppressing the accrual of interest and addition of late payment charges

18.3.5. Reversing these actions at the conclusion of Breathing Space.

18.4. On average, debtors have numerous debts. Debt advisers consulted as part of this Impact Assessment suggested a range of between four and six debts per debtor. It may be that some debtors have multiple debts to the same creditor, in which case the creditor would be expected to incur administrative costs only once. However, no evidence was available on the extent to which debtors owe multiple debts to the same creditor, so this assessment assumes that all debts give rise to an administrative burden, rather than only a subset. This is likely to overstate the administrative costs of Breathing Space.

18.5. The cost of performing these interventions will be equivalent to the total number of hours that each type of intervention requires multiplied by the average £13 per hour wage costs of the administrators who will perform those actions, uplifted by 20.6% to reflect non-wage labour costs.

18.6. Pausing enforcement action will only be necessary in the subset of cases where it is ongoing at the point that debtors enter Breathing Space. Debt advisers estimated that it would be necessary to pause enforcement action in between 5% and 30% of cases, or 18% in the central scenario.

18.7. This process is repeated for each of the administrative interventions associated with Breathing Space as the caseload builds to derive the total administrative cost of Breathing Space. This is expected to be £26m in 2021-22, rising to £45m in 2030-31. This cost is considered to be direct as it arises automatically: compliance will be statutory.

19. Regulatory Breathing Space – costs – debt advisor administration – option 3

19.1. The same approach as outlined in section 18 is taken in assessing the administrative costs of Breathing Space to debt advisers, with the exception that no adjustment is made to account for administrative actions that are taken in the counterfactual: all of the administrative actions attributed to debt advisers are additive to those undertaken in the counterfactual.

19.2. Debt advice agencies suggested that debt advisers are paid an average of between £14 and £19 per hour. The activities that will be required under Breathing Space in addition to those that are required in the baseline scenario are listed below. Debt advisers estimated that they would take between 23 and 41 minutes in total.

19.2.1. Assessing eligibility for Breathing Space

19.2.2. Registering debtors on the Breathing Space digital portal

19.2.3. Administering a check on debtor eligibility at the 30-day point

²⁴ FCA analysis of data collected via the CCR003: Lenders regulatory return for reporting periods ending June 18 – May 19. Clearly misreported data were corrected for this analysis.

HM Treasury (2019) - Breathing space impact assessment.

19.2.4. Removing debtors from the Breathing Space portal

19.2.5. Informing debtors of their removal from the Breathing Space portal

19.3. The 30-day check will not be burdensome in the majority of cases. The debt adviser will have to confirm that the debtor has continued to engage in debt advice – information which should be readily available to them – and will only need to investigate whether a debtor has contravened other ongoing Breathing Space eligibility criteria where a creditor has proactively reported to them that this is the case. It is expected that the 30-day check will be administered in 10% of cases.

19.4. This suggests a debt advice provider administration cost of £5m in 2021-22, rising to £8m in 2030-31. This cost is considered to be direct as it arises automatically: compliance will be statutory.

20. Regulatory Breathing Space – costs – systems changes – option 3

20.1. Where creditors see a large number of their clients enter Breathing Space, it may be more economical for them to invest in IT systems changes than to comply with the policy purely via administrative workaround. Likewise, the largest debt advice agencies may choose to make IT systems changes to reduce their administrative burden.

20.2. Ahead of conducting further scoping work, creditors struggled to estimate the costs of changing their systems in order to comply with Breathing Space. The best available estimate was that systems changes would cost between £60,000 to £85,000. Given the uncertainty, only the upper estimate has been used in the calculations that follow. To account for the risk of cost escalation, the upper estimate of costs has been uplifted by 20% to account for optimism bias, leaving it at £102,000.

20.3. Firms are only expected to make systems changes where it is economical to do so. This will be a product of the number of debtors with debts owed to a firm who enter Breathing Space, which will, in turn, be a product of market concentration. This may not be the case for firms who, by virtue of their business model, depend on automation and for whom administrative workaround is either undesirable – for example where significant restructuring would be required, such as the hire of additional staff – or undeliverable – for example where the business model depends on rapid decision making. Sector-scale data was unavailable on the proportion of consumer lenders who depend on automation and so who might make systems changes where administrative workaround would nonetheless be more cost-effective.

20.4. 190 firms own 99% of outstanding consumer credit.²³ it is assumed that only these firms make systems changes. The remaining c.2600 firms who own 1% of outstanding consumer credit are likely to comply with Breathing Space via administrative workaround, which is likely to be more economical. In addition to these financial services creditors, representative organisations estimated that up to 60 energy firms and 25 water firms could need to make systems changes.

20.5. Some systems change costs will fall on the public sector. In particular, there will be costs associated with the development of a central digital portal

HM Treasury (2019) - Breathing space impact assessment.

that will act as an interface between debt advisers and creditors to facilitate implementation of Breathing Space.

20.6. Engagement with debt advice agencies suggests that only the largest nine debt advice agencies will need to make systems changes to deliver Breathing Space. For the approximately 900 smaller debt advice agencies, administrative workarounds are likely to be more economical than making systems changes. Indeed, in some cases debt advice agencies may have no bespoke systems to change.

20.7. This suggests that a total of 275 private sector creditors and 10 third sector debt advice agencies will need to make systems changes, at a cost of £102,000 per firm.

20.8. The systems change cost is therefore taken to be the cost of systems change multiplied by the number of firms making systems changes. 285 private and third sector firms are expected to make systems changes costing £102,000 each, at a present value cost of £29.1m.

20.9. In addition to the cost of private and third sector system changes, a small number of large public sector creditors are expected to make systems changes. The costs to public sector creditors of making systems changes is assumed to be the same as that which falls on private sector creditors. Work within the public sector is being undertaken to a longer timeline to reach more bespoke assessments of public sector system change costs.

20.10. This cost is considered to be indirect as systems changes will only be made where creditors or debt advice providers choose to make them. They will not be an automatic consequence of the policy.

21. Regulatory Breathing Space – costs – AMHP administration – option 3

21.1. Breathing Space will offer an alternative access mechanism for people receiving mental health crisis treatment. This group will be entered into the protections of Breathing Space by a debt adviser on the basis of an application which includes evidence from an Approved Mental Health Professional (AMHP) that the individual is receiving mental health crisis treatment.

21.2. This will introduce a new burden on the time of AMHPs, at an administrative cost. This cost will be a factor of the average hourly earnings of AMHPs, the amount of time taken to enter a patient into Breathing Space and then remove them from it, and the number of patients who will enter the protections of Breathing Space via this avenue.

21.3. It is forecast that 27,500 people will enter Breathing Space via this avenue in 2021-22, rising to 54,000 by 2030-31.

21.4. The Department for Health and Social Care (DHSC) estimate that the average hourly wage of an AMHP is £20.16. This is an approximation, as AMHP remuneration varies geographically and is not set centrally. Uplifted by 20.6% to account for non-wage labour costs, the average hourly cost of AMHP time rises to £24.32.

21.5. The specific form that will be used by AMHPs to enter patients into the protections of Breathing Space has not yet been developed. DHSC identified a suitable proxy form as Form A2 under Regulation 4(1)(a)(ii) of the Mental Health Act 1983. This form is used by AMHPs to admit a patient for

assessment.²⁵ DHSC estimated that it takes AMHPs 15 minutes to process this form.

21.6. In addition to entering patients into the Breathing Space alternative access mechanism, mental health professionals will need to inform debt advisers when treatment ends so that the breathing space can come to an end. It is estimated that this will take half as long as processing the initial entry. This suggests a total time requirement of 22.5 minutes per patient entering the mechanism. Per patient, this suggests that the administrative cost to AMHPs will be 37.5% of an hour's labour costs, which equates to an administrative cost of £9.12 per patient.

21.7. Multiplied by the forecast caseload, this suggests a 2021-22 cost of £250,000, rising to £500,000 by 2030-31. This is a cost to government and so features in the Net Present Value without a distinction being made as to whether the impact is direct or indirect.

22. Regulatory Breathing Space – costs – familiarisation

22.1. In order to comply with Breathing Space, firms will need to familiarise themselves with the relevant legislation and the accompanying guidance. Debt advice agencies will need to familiarise themselves with both the regulations and the government's guidance.

22.2. The costs of undertaking this familiarisation activity will vary between small and micro firms and debt advice agencies and larger ones. Small and micro firms and debt advice agencies are expected to engage consultants to assist them in familiarising themselves with the legislation and guidance. Larger firms are expected to engage the services of in-house legal and compliance professionals. The mean hourly wages of in-house compliance staff are expected to be £22 per hour, while those of external consultants are expected to be £24 per hour.²⁶ These wage costs are inflated by 20.6% to reflect non-wage labour costs. Small and micro firms and debt advice agencies are therefore expected to incur more significant familiarisation costs than larger ones. This is discussed in more detail in the small and micro business assessment.

22.3. 275 large firms and 2,600 small firms are expected to familiarise themselves with the Breathing Space regulations and guidance. This large firms figure is the sum of the 190 large consumer lenders, 60 large energy firms, and 25 large water firms. In addition, 909 large and small debt advice agencies are expected to familiarise themselves with the relevant regulations and guidance. In addition, a small number of large public-sector creditors, a small number of central government departments are expected to familiarise themselves with the relevant regulations and guidance. The costs for these bodies is assumed to be the same as for those of large creditors.

22.4. Reading speed declines with text complexity. An assessment of the complexity of the Breathing Space regulations yields a Flesch-Kincaid readability score that suggests a reading speed of 100 words per minute. The draft regulations are currently 7,352 words long. It is assumed that the as yet unwritten guidance accompanying the regulations will be as long as the original regulations. Taken together, this suggests a reading time of 2.45 hours. The familiarisation costs to creditors and debt advice agencies will therefore be £445,000 in 2021-22, with no ongoing costs. This cost is considered to be direct as it arises automatically: compliance will be statutory.

²⁵ An image of the form is available here: <https://blogs.kcl.ac.uk/socialcareworkforce/wp-content/blogs.dir/7/files/2017/07/Form-A2-Section-2-appl-by-AMHP-for-admiss-for-assess-page-001-724x1024.jpg>

²⁶ Office for National Statistics (2018) Annual Survey of Hours and Earnings, Table 4.5a – gross hourly pay by SIC07

23. Statutory Breathing Space – Costs – Dissemination

Debt advisers will need a deep understanding of the Breathing Space regulations and guidance in order to advise their clients effectively. The exact cost of gaining this understanding will vary at an individual scale, but debt advisers consulted as part of this Impact Assessment agreed that a day of face to face training supported by one hour of e-learning would be an effective means of disseminating awareness of Breathing Space to debt advisers.

23.2. One debt advice training provider suggested that the cost of developing an e-learning package would be £17,000. They suggested that the cost of accessing that learning would be £55 per debt advisor. In addition, they suggested that the cost of delivering face to face training would be £600 per group of twelve debt advisers.

23.3. Evidence shared by a debt advice organisation suggests that there are approximately 900 professional debt advice agencies in England and Wales. National scale data is not collected on the number of debt advisers, but one large debt advice training provider estimated that a central estimate for the number of debt advisers would be 7,300. This estimate is based on that provider's assessment of their market share, which excludes the largest debt advice agencies.

23.4. Two large debt advice agencies contacted with a request for information to inform this Impact Assessment suggested that they had 116 debt advisers each. There are nine other large debt advice agencies. It is assumed that all have the same number of debt advisers, suggesting that there are 1,040 debt advisers at these firms in addition to the 7,300 debt advisers identified by the training provider. Free training is already provided for 4,250 providers per year.

23.5. This suggests that the Breathing Space dissemination cost is likely to be £1.9m, a transitional cost that will be felt only in 2021-22. This cost is considered to be direct as it arises automatically: compliance will be statutory.

23.6. Creditor administrators will not require a deep understanding of Breathing Space. They will be expected to respond reactively to notifications from the Insolvency Service notifying them of the entry of their clients into Breathing Space. As these notifications will provide clear information on the actions required of creditors, there will be no requirement for creditor administrators proactively to develop their understanding of Breathing Space policy. This is not the case with systems architects, who will need to understand the policy in great detail in order to make systems changes. This cost is treated as a familiarisation issue and is addressed in section 21.

24. Small and Microbusiness Assessment – sectoral composition

24.1. The costs to creditors of Breathing Space are a result of foregone interest and charges, delayed revenue, additional administration, systems changes, dissemination, and familiarisation. Businesses will face fixed costs, such as systems changes, and variable costs, such as delayed revenue, that are proportionate to the number of customers that each creditor sees enter Breathing Space. As discussed elsewhere, the majority of the costs faced by most businesses will be variable, with the majority of the fixed costs falling on larger firms who will see a large number of clients enter Breathing Space.

HM Treasury (2019) - Breathing space impact assessment.

24.2. Firms with a higher risk appetite will see a larger proportion of their clients enter Breathing Space than more conservative lenders. The Breathing Space caseload will be made up of people in problem debt, who will be riskier clients for creditors: those who choose to engage with riskier clients will see a larger proportion of their client base enter Breathing Space. Information about risk appetite is commercially sensitive, so it was not available for the purposes of this impact assessment. This does not apply in the case of involuntary creditors, who do not choose which clients they lend to.

24.3. The other part of this calculation is the number of clients that each firm will have. This is a product of their market concentration, which will vary by sector. The best available source of evidence on this question is the Business Population Estimates.²⁷ This data is arranged by sector (grouped by Standard Industrial Classification) and disaggregated by business size in terms of number of employees.

24.4. Breathing Space will operate in England and Wales only. At this scale, the Business Population Estimates provide data only by 1-digit Standard Industrial Classification code, grouping utility companies with those engaged in mining and quarrying, for example. This provides a potentially misleading picture about the number of SMBs likely to be affected by Breathing Space.

24.5. For that reason, UK-scale 2-digit Standard Industrial Classification codes are used as a proxy for the sectoral compositions of England and Wales. This provides a higher level of granularity, with some risk of reduced accuracy. This data suggests that, by employment, 9.3% of businesses engaged in financial and insurance activities are SMBs. Clearly, not all of these businesses will be consumer-facing credit-issuing firms, but more granular data was not available.

24.6. The fact that 9.3% of firms by employment are SMBs does not suggest that 9.3% of the burden of Breathing Space will fall on SMBs: the number of clients of each firm will not be directly proportional to the firm's number of employees. Sector-level market concentration data is unavailable in the Business Population Estimates for this sector, but stakeholders consulted as part of this impact assessment suggested that the vast majority of borrowers engage with large creditors. FCA analysis suggests that 190 firms own 99% of outstanding consumer credit.²⁸ Some of the further c.2600 firms who own 1% of outstanding consumer credit may be SMBs, but data on the proportion of these firms who are SMBs was unavailable.

24.7. SMBs might still face a disproportionate cost if their clients were more likely than those of larger businesses to enter Breathing Space. However, stakeholders consulted as part of this impact assessment suggested that there was no reason to believe that SMBs deal with higher risk clients than larger businesses. Indeed, given SMBs' lower capacity to absorb write-offs relative to larger firms, stakeholders suggested that SMBs might be less likely to see clients enter Breathing Space than larger businesses, where SMBs are

²⁷ Department for Business, Energy & Industrial Strategy (2019) *Business population estimates 2019* Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2019>

²⁸ FCA analysis of data collected via the CCR003: Lenders regulatory return for reporting periods ending June 18 – May 19. Clearly misreported data were corrected for this analysis.

voluntary creditors who choose which clients to issue with credit. This may not be the case for involuntary creditors.

24.8. Similar data availability issues were faced with other sectors. For example, trade bodies suggested that there are 60 consumer-facing energy companies operating in the UK, but that data was not available for England and Wales specifically, on the market concentration of each firm, and on the size of each firm by number of employees.

24.9. Likewise, a trade body reported that there are 25 water companies operating in England and Wales, eight of which serve limited geographical areas. Although these firms might be assumed to be SMBs, this could not be confirmed. In any case, their market concentration was unknown.

24.10. Data on the housing sector was more readily available. Debt advisers suggested that 13% of those presenting for debt advice would have rent arrears. Of these, data published in the Wyman Review suggested that 35% would dwell in private tenancies and 44% in social ones.²⁹ The remainder, who have rent arrears but fall into neither category, are likely to be from 'other' tenancies, such as informal ones. Such arrangements do not impact business.

24.11. Of the 44% of people in Breathing Space with rent arrears who live in the Social Rented Sector, 60% are likely to live in Housing Association-administered tenancies, with the remaining 40% in Local Authority housing.³⁰ The National Housing Federation suggested that 4% of social tenancies with Housing Associations might be with SMB associations. The Local Government Association suggested that all Local Authority social landlords would have more than 50 employees. This suggests that 1% of people in Breathing Space with rent arrears will dwell in the social rented sector and have an SMB landlord.

24.12. Of the 35% of people in Breathing Space with rent arrears who dwell in private tenancies, the English Private Landlords Survey suggests that 97% will be with landlords who own fewer than 101 rental properties.³¹ Data on the number of employees of these landlords was unavailable, so it is assumed that all are SMBs. This suggests that 34% of people in Breathing

Space with rent arrears will dwell in the private rented sector and have an SMB landlord. This suggests that there will be a disproportionate impact on SMB private landlords of any net costs of Breathing Space.

25. Small and Microbusiness Assessment – relative costs

25.1. Debtors in the scheme will be required to continue to meet their ongoing liabilities, such as paying their rent. As explained in paragraph 15.8, only a minority of debtors are expected to stop making arrears repayments during Breathing Space, which is not intended to be a repayment holiday. As discussed in paragraph 15.1, the cost to creditors of delayed revenue will be a

²⁹ Wyman (2018)

³⁰ Ministry of Housing, Communities & Local Government (2019) *English Housing Survey 2017 to 2018: social rented sector* Available at: <https://www.gov.uk/government/statistics/english-housing-survey-2017-to-2018-social-rented-sector> Percentages derived from figure 3.3.

³¹ Ministry of Housing, Communities & Local Government (2019) *English Private Landlord Survey 2018: main report* Available at: <https://www.gov.uk/government/publications/english-private-landlord-survey-2018-main-report>

factor of the source of the money lent to debtors. In some cases, this will be the cost of borrowing to lend. If SMBs needed to access finance as a result of delayed revenue this will be, in some cases, at a higher borrowing rate than those that larger businesses will have access to. In the case of landlords and other involuntary creditors, this might arise where a landlord was forced to borrow as an opportunity cost of not receiving rent arrears payments that might have been made in the counterfactual. Conversely, people in Breathing Space will be offered specialist debt advice and support whilst on the scheme, which may help landlords recover some of the owing rent arrears.

25.2. Large businesses may be able to borrow at close to the London Inter-Bank Overnight Rate, as discussed in section 15. As at Thursday 1st August, the GBP LIBOR 12-month rate stood at 0.847%. Over two months, this rate is equivalent to a 0.14% interest rate. This rate is likely to be far below that accessible to SMBs. According to the Federation of Small Business's quarterly *Voice of Small Business Index*, 53.1% of SMBs who borrowed in Q2 2019 did so at beneath 5% APR, or 0.83% over a two-month period.³²

25.3. The extent to which disproportionate costs fall on SMBs will be a factor of their market concentration and their risk appetite, which will dictate the number of debtors that SMBs are likely to see enter Breathing Space. As data to inform a specific assessment of the proportion of costs that will fall on SMBs was unavailable, a sensitivity analysis was applied: the cost of delayed revenue for all creditors in Breathing Space is assumed to be the average of 0.14% and 0.83%, which is 0.49%. This is likely to overstate the cost of delayed revenue as, in reality, the market share of SMBs in sectors affected by Breathing Space is likely to be very small, with the exception – as described above – of private landlords. For that reason, most creditors affected by Breathing Space will face lower delayed revenue costs than the level assumed by this sensitivity analysis.

25.4. SMBs are likely to face higher familiarisation costs than larger businesses. As explained in section 21, SMBs are less likely to employ in-house legal and accounting professionals than larger firms. As a result, they are expected to familiarise themselves with Breathing Space by engaging external consultants. According to the Office for National Statistics, the mean hourly gross wage of workers engaged in management consultancy activities is £2 more per hour than that of workers engaged in legal and accounting activities.³³ As a result, the expected cost of familiarisation is expected to be 8% higher for SMBs than for larger firms.

25.5. Not all of the additional cost of engaging management consultants is attributable to their increased labour costs, so the true additional cost is likely to be higher than 8%. Quantifying the full additional cost would require data on the costs to SMBs of engaging the services of management consultants, rather than the management consultants' hourly wage costs. This data is not

³² Federation of Small Business (2019) *FSB Voice of Small Business Index: Quarter 2, 2019* Available at: https://www.fsb.org.uk/docs/defaultsource/fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21_0

³³ ONS (2018) 'Annual Survey of Hours and Earnings 2018, table 4.5a: gross hourly pay for all employee jobs by industry SIC (2007)'. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsicashetable4>

available, but it is clear that SMB familiarisation costs will be higher than those of larger businesses.

25.6. SMBs would face higher costs of foregone interest and charges if a higher proportion of their clients entered Breathing Space, or if those clients carried larger debts than those of larger businesses, or if SMBs charged higher interest rates than larger firms. As discussed above, data on market concentration was unavailable. As credit risk appetite varies by firm and would be commercially disclosive, respondents to requests for information submitted as part of this impact assessment were not able to quantify whether SMBs operate more risk tolerant lending strategies than larger firms or whether they lend at less competitive rates. They suggested – anecdotally – that this was unlikely to be the case. Therefore, SMBs are not expected to bear disproportionate costs as a result of interest and charges foregone.

25.7. As discussed in section 20, firms are expected to make systems changes only where it is economical to do so. Whether or not this is the case will be a factor of the costs of complying with the policy manually via administrative workaround, which will be a product of the number of interventions required, which will in turn be a product of the number of people that each business sees enter Breathing Space. As discussed above, it was not possible to assess whether SMBs were more likely to see their clients enter Breathing Space than larger firms, though anecdotal evidence suggests that this is unlikely. For that reason, SMBs are not expected to face higher systems change costs than larger firms.

25.8. Some firms may be forced to make systems changes not because doing so is more economical than complying with Breathing Space via administrative intervention, but because of their business models. For example, firms that depend upon a high level of automation might not be able to hire the staff required to make administrative changes without fundamentally restructuring. Data on the extent to which firms rely on automation was not available, so it has not been possible to assess the extent to which SMBs might be forced to make systems changes.

26. Small and Microbusiness Assessment – exemption and mitigations

26.1. The assessment above identified some disproportionate costs to SMBs. Although there is no evidence – save for in the housing sector – that SMBs will see more of their clients enter Breathing Space than larger firms, there is strong evidence that SMBs will face higher costs per debtor in Breathing Space than larger firms. For example, the costs to SMBs of delayed revenue and of familiarisation with the policy will be higher than those faced by larger businesses.

26.2. For that reason, the government considered full exemption for SMBs. This would mean that debts owed to SMBs would not fall within the protections of Breathing Space. The government concluded that this would undermine the wider policy intent of incentivising people in problem debt to take-up debt advice and of promoting more positive debt advice outcomes, as it would not provide genuine respite from enforcement action and spiralling debts, particularly where debtors' liabilities were mostly or entirely to creditors who were excluded from the protections of the scheme. This would mean that debtors with the same debt types and levels would be treated differently on the

HM Treasury (2019) - Breathing space impact assessment.

basis of the number of employees of their creditor. For debtors whose only debts were to SMBs, there would be no additional incentive to seek debt advice. For those undergoing enforcement action and continuing to accrue interest and charges on some of their debts, they would not have the headspace to identify and enter the most appropriate debt solution, rather than the most readily accessible.

26.3. Separately, full exemption would impose an excessive administrative burden on debt advice agencies or an undeliverable obligation on the Insolvency Service: either debt advice agencies or the Insolvency Service would need to verify that a creditor was an SMB. As such evidence is not readily available, this would require administratively burdensome investigation and verification, as well as introducing the risk of gaming on the part of unscrupulous creditors.

26.4. As full exemption would not achieve the policy intent and would be undeliverable, the government considered a range of mitigations.

26.4.1. In recognition of the fact that SMBs will face higher familiarisation costs, the government could provide additional time for SMB creditors to comply with Breathing Space, bringing SMB debts into Breathing Space at a later date than the commencement of the wider policy. This would not be proportionate, given that the costs to SMBs are not forecast to be significantly higher than to larger businesses. It would also undermine the policy intent for debtors who have debts only to SMBs.

26.4.2. The government could apply the protections of Breathing Space to debts owed to SMBs only in respect of pausing enforcement, allowing SMBs to continue charging interest and adding charges. This would not achieve the policy intent, as the effect on debtors undergoing enforcement action in respect of one creditor is similar to that of debtors undergoing enforcement action across a range of creditors: it would reduce their headspace to engage with debt advice, undermining the policy intent of promoting more positive debt advice outcomes. In addition, the operational difficulty set out in paragraph 25.3 would apply.

26.4.3. The government could reduce the duration of Breathing Space in respect of debts owed to SMBs. This would reduce the ongoing costs to SMB creditors, such as delayed revenue, but not the transitional costs of, for example, familiarisation. As with the mitigations discussed above, this mitigation would compromise the policy intent while delivering only a small benefit to SMBs, so this mitigation would be disproportionate. The operational challenge set out in paragraph 25.3 would apply.

26.5. All of these mitigations would significantly undermine the policy intent, so the government will not provide mitigations for SMBs. Exemption would also critically undermine the policy intent. The government does not propose to treat debts owed to SMBs differently to those owed to larger creditors.

27. Wider impacts

27.1. The government's preferred option has been formulated with due regard to the Public Sector Equality Duty. Several potential disadvantages in access to Breathing Space have been identified as arising as a consequence of debtors' protected characteristics. These have been mitigated appropriately.

27.1.1. **Age:** the Money Advice Service estimates that 1% of the overindebted population is aged over 65.³⁴ The Wyman Review suggests that 7% of debt advice clients are aged over 65.³⁵ This suggests that people in problem debt who are aged over-65 will benefit disproportionately from Breathing Space. However, evidence from Ofcom suggests that people aged over-65 may be less able to access debt advice via online or telephone channels than the general population. For example, people aged 65-74 are 15 percentage points less likely than the adult population to use a mobile phone, nine percentage points less likely to use a computer, and 16 percentage points less likely to use a tablet.³⁶ To ensure that this inequality of access to debt advice delivered via telephone or online channels does not discriminate against those aged over-65, the government will make Breathing Space accessible via either telephone, online, or face-to-face debt advice channels.

27.1.2. **Gender:** the Money Advice Service estimates that 64% of overindebted people are female.³⁷ The Wyman Review suggests that 59% of debt advice clients are female.³⁸ This suggests that Breathing Space is more likely to benefit females than males, both because females are more likely to be overindebted but also because they are more likely to take-up debt advice.

27.1.3. **Disability:** the Wyman Review estimates that 40% of debt advice clients suffer from a disability or long-term health condition.³⁹ Disability may restrict the channels through which debtors may seek advice. For example, the Money and Mental Health Policy Institute suggests that those with mental health problems are 22 percentage points more likely than the population in general to have serious difficulty carrying out essential administration over the phone.⁴⁰ Likewise, difficulties of physical access may make seeking face-to-face debt advice problematic for those with physical health problems.

27.1.4. To ensure that difficulties in accessing debt advice via some channels does not discriminate against disabled people accessing Breathing Space, the government will make Breathing Space accessible via a range of debt advice channels, including telephone, online, and face-to-face. The government has committed to mitigations to ensure that Breathing Space is accessible to people receiving treatment for

³⁴ Money Advice Service (2013) *Indebted Lives: The Complexities Of Life In Debt*. Available at: https://mascdn.azureedge.net/cms/cs-indebtedlives-the-complexities-of-life-in-debt_november-2013.pdf

³⁵ Wyman (2018)

³⁶ Ofcom (2017) *Adults' Media Use and Attitudes Report 2017*. Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0019/102772/section-5-digital-media.pdf

³⁷ Money Advice Service (2013)

³⁸ Wyman (2018)

³⁹ *Ibid.*

⁴⁰ Money and Mental Health Policy Institute (2019) *Annual review 2018/19*. Available at: <https://www.moneyandmentalhealth.org/wpcontent/uploads/2019/07/Money-and-Mental-Health-Annual-Review-2018-19.pdf>

HM Treasury (2019) - Breathing space impact assessment.

mental health crisis. They will be able to enter Breathing Space without seeking advice from a debt adviser and will have access to its protections throughout their crisis treatment and then for a further 30 days, after which they will have the option of entering the protections of the main scheme for its full 60-day duration.

27.2. Breathing Space is accessible only via professional debt advice. The debt advice sector makes a variety of adaptations to ensure that advice is accessible to those with protected characteristics. For example, StepChange – a debt charity – has an advocacy team who provide additional practical support to vulnerable debt advice clients. This support is delivered in partnership with dedicated support organisations including Macmillan, Age UK, Dementia Friends, Mind, and Samaritans. It can involve offering supplementary debt advice sessions, referring debt advice clients to specialist third party organisations, and submitting debt write-off requests to creditors in certain circumstances - ensuring that people with protected characteristics have access to debt advice.

27.3. **Family Test:** The costs of problem debt are felt strongly by families. *StepChange*, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances.

27.4. Debt advice agencies responding to requests for information submitted as part of this Impact Assessment were unanimous in reporting that Breathing Space would reduce rates of family breakdown amongst those in problem debt. They suggested that, in promoting more positive debt advice outcomes, Breathing Space would reduce the psychosocial burdens of problem debt. Amongst those who seek debt advice in the counterfactual, debt advice agencies suggested that over 50% of their clients had reported improved personal relationships after having received advice.⁴¹

28. Trade implications

28.1. No trade impact is expected as a result of Breathing Space.

29. Summary

29.1. The Net Present Value of a regulatory Breathing Space is substantially higher than that of a voluntary Breathing Space. Both options have higher net present values than doing nothing. A regulatory Breathing Space is therefore the government's preferred option.

29.2. In present value terms, the forecast benefits of Breathing Space – £13,644m – would need to fall to £2,067m for the Net Present Value of Breathing Space to be nil.

⁴¹ The Children's Society and StepChange (2014) *The Debt Trap: Exposing the impact of problem debt on children*. Available at: <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/publications-library/debt-trap-exposing-impact-problem-debt-ch>

HM Treasury (2019) - Breathing space impact assessment.

29.3. In the worst-case scenario, the marginal increase in the benefit of debt advice under Breathing Space would be nil and, as a result, no additional debtors would take up debt advice. In this extreme scenario, the Net Present Value of Breathing Space would be -£42m. The £1,802m residual benefit would be derived from debtors receiving mental health crisis treatment. This group will benefit from improved wellbeing and from economic transfers as a result of not being charged interest or fees and, for debtors who choose to alter their repayment behaviour, from retaining money that would otherwise have been paid to their creditors. This is considered to be the floor in the Net Present Value of Breathing Space, as there is a high degree of certainty that this group will enter the mental health crisis moratorium without altering their behaviour and that they will benefit to the same degree as debtors who receive debt advice in the counterfactual.

29.4. If the costs of Breathing Space materialise but the benefits for creditors do not, there is a risk that these costs are passed through to debtors in the form of higher interest rates and more limited access to credit.

29.5. There is consensus within the debt advice sector that Breathing Space will increase the value of debt advice and that it will increase the incentive for people in problem debt to take-up debt advice. There is a strong evidence base to support the assertion that more positive debt advice outcomes generate higher recoveries for creditors and reduce debt collection costs. The risk of pass through is therefore considered to be limited.

29.6. Breathing Space may increase demand for the services of debt advice providers in the short term. In the long term, by supporting people in problem debt to enter debt solutions that are sustainable in the long term, Breathing Space should reduce demand for debt advice, all other variables remaining equal.

29.7. The costs and benefits of a regulatory Breathing Space are expressed in present value terms in table 12 below.

	Costs/£m	Impact on business
Business charges foregone	186.2	Direct
Business charges foregone	21.5	Indirect
Business interest foregone	1296.8	Direct
Business interest foregone	164.0	Indirect
Govt interest and charges foregone and delayed revenue	3.7	N/A
Business delayed revenue	1.4	Indirect
Business and debt advice provider administration	358.2	Direct
Approved Mental Health Professional administration	3.1	N/A
Business and debt advice provider systems changes	29.1	Indirect
Government systems changes	0.3	N/A
Familiarisation	0.4	Direct
Dissemination	1.9	Direct
Total costs	2066.8	N/A

HM Treasury (2019) - Breathing space impact assessment.

Higher recoveries	6108.9	Indirect
Higher employee productivity	3708.3	Indirect
Higher debtor wellbeing	2153.4	N/A
Economic transfers	1673.7	N/A
Total benefits	13644.4	N/A
Net Present Value	11577.5	N/A

Table 12: Summary of costs and benefits of Breathing Space expressed in present value

30. Description of implementation plan

30.1. This impact assessment demonstrates the significant benefit that Breathing Space will deliver. The government recognises the strong parliamentary interest in delivering the policy and its benefits as quickly as possible.

30.2. The government will lay regulations on Breathing Space before the end of 2019, and then intends to implement the policy in early 2021. The intervening period is vital in ensuring that creditors and debt advisers are prepared to deliver breathing space from the outset. HM Treasury is working closely with expert external stakeholders including debt advisers, creditors, and trade bodies to help them to prepare to deliver Breathing Space in practice.

30.3. As discussed in paragraph 14.3, creditors will be required to perform a variety of administrative tasks to comply with Breathing Space, including processing the notification of an entry into Breathing Space, suppressing contact relating to repayment, notifying enforcement agents, and pausing interest, fees and charges. Creditors will need some time to prepare to perform these actions, for example by making systems changes as accounted for in section 20.

30.4. A key element in the success of breathing space will be the development of an IT portal that will record entries into Breathing Space, notifying creditors accordingly that they should initiate the protections of Breathing Space. The portal will be developed by the Insolvency Service and used by debt advisers. HM Treasury is working closely with the Insolvency Service to ensure that the portal meets the needs of creditors, and debt advisers, as well as recording some of the management information that will be required to evaluate the policy.

30.5. The government commissioned advice from MAPS on raising awareness of Breathing Space amongst both people in problem in debt and creditors in advance of the policy's commencement.⁴² This will be central to the policy's implementation.

30.6. MAPS recommended that the government explore a one-off awareness-raising and marketing campaign. This would seek to de-stigmatise debt advice, so that people who are either unaware of their debt problem, see their problem debt as manageable, or who are ashamed to seek advice choose to come forward.

⁴² Money and Pensions Service (2019) *Response to Request for Advice*. Available at: <https://www.gov.uk/government/publications/breathingspace-scheme-money-and-pensions-service-advice>

30.7. MAPS highlighted the specific need for the benefits of Breathing Space and of debt advice to be highlighted to potential beneficiaries of the scheme. This would encourage more people to seek advice and to do so sooner, before they reach crisis point.

30.8. For people with multiple complex needs, MAPS recommended that the government ensures that Breathing Space is compatible with referral between specialist debt advice agencies so that people with specific needs receive the support that they need.

30.9. MAPS also highlighted the need for the government to ensure that creditors are prepared to comply with Breathing Space. MAPS recommended that this work is pursued via existing avenues, such as trade bodies and sector-specific forums. The government is developing its implementation plans following receipt of MAPS's advice.

31. Post-Implementation Review Plan

31.1. The same advice from the MAPS also covered evaluation of Breathing Space.⁴³ MAPS recommended that this work is advanced via three work streams: one evaluating the policy's operational processes, one evaluating the policy's impact, and another monitoring the evolving counterfactual.

31.2. MAPS highlighted several specific areas where monitoring of the counterfactual could focus. These included: overall levels of over-indebtedness, creditor repayments, and debt advice take-up, as well as debtor's mental wellbeing, the distribution of debt solutions that debtors choose to enter, the numbers of people entering those solutions, and the sustainability of those debt solutions.

31.3. MAPS recommended that the government establishes an advisory group of expert stakeholders to help inform the evaluation design. MAPS suggested that the group should include members drawn both from the debt advice and creditor sectors.

31.4. The government is developing on a monitoring and evaluation strategy to ensure that appropriate management information is captured in order to facilitate an effective post implementation review.

31.5. The Breathing Space scheme consists of two parts: Breathing Space, which has been assessed here, and the Statutory Debt Repayment Plan (SDRP). The government intends to implement Breathing Space in early 2021, with the SDRP developed to a slower timeline. The SDRP will extend the protections of Breathing Space to debtors who commit to fully repaying their debts to a manageable timeline. Each part of the scheme will be evaluated separately. This will require the impact of each part of the scheme to be isolated, as there will be some overlap between the two parts. The phased implementation of the two parts of the scheme will allow the government to evaluate the impacts of Breathing Space alone and then the two parts of the scheme combined.

⁴³ *Ibid*

Agenda Item 10.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are subject to the affirmative procedure and were laid in draft before the UK Parliament on 8 October 2020. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213102/>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.
4. The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.
5. The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.
6. The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (the 2019 Regulations) and technical repeals to redundant provisions within primary legislation arising from EUWA.

7. The provisions in the SI to which this Memorandum relates vary in territorial extent and application. The territorial extent and application of regulations 2, 3 and 4 which amend the Interpretation Act 1978, EUWA and the 2019 Regulations is the United Kingdom. Regulation 8 which amends the Legislation (Wales) Act 2019 extends and applies to Wales. Regulation 9 and the Schedule which repeals and revokes a number of provisions contained in primary legislation extends and applies to the United Kingdom.

Relevant Provision to be made by the SI

8. Regulations 2 and 8 make consequential amendments to the Interpretation Act 1978 (c. 30) and the Legislation (Wales) Act 2019 (anaw 4) to make interpretative provision for references in domestic legislation to EU instruments which form part of relevant separation agreement law following the end of the transition period.
9. It is the view of the Welsh Government that the provisions described in paragraph 8 above relate to subject matters that are within the legislative competence of the Senedd. The term “relevant separation agreement law” has a broad definition in section 7C of EUWA. This includes domestic legislation that may be made by a Minister of the Crown or the Welsh Ministers to implement separation issues in Part 3 of the Withdrawal Agreement, such as matters relating to state aid and procurement which fall within the Senedd’s legislative competence. It also captures domestic legislation that may be made to implement the Protocol on Ireland/Northern Ireland, which could include provisions relating to a number of matters that are within the Senedd’s legislative competence, such as fisheries and food.

Why it is appropriate for the SI to make this provision

10. There is no divergence between the Welsh Government and the UK Government (The Cabinet Office) on the amendments being made by the SI. It is to be made under section 23 of EUWA and section 41 of WAA which confer powers on a Minister of the Crown to make provision in consequence of both of those Acts. Equivalent powers to make consequential provision are not conferred on the Welsh Ministers and therefore the Welsh Ministers could not make a separate Welsh SI containing provision for the interpretation of legislation that is within the Senedd’s legislative competence.
11. The SI makes a number of technical amendments to the Interpretation Acts which are designed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland operate effectively following the end of the transition period.
12. It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. In the case of the changes made by this SI, the Welsh Ministers do not have the powers.

Consequently, given the requirement for the amendments to be made by the end of the transition period, the only alternative way to make the amendments in Wales would be to take primary legislation through the Senedd and for it to receive Royal Assent by the end of the year. This would not be a proportionate use of time and resources.

13. The amendments have been considered fully and there is no divergence on them. Given the technical nature of the amendments and the need for interpretative provisions to be in place by the end of the year, it is considered appropriate for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Financial implications

14. There are no financial implications in consenting to the provisions in the SI.

Jeremy Miles MS

Counsel General and Minister for European Transition

October 2020

DRAFT STATUTORY INSTRUMENTS

2020 No. 000

EXITING THE EUROPEAN UNION

EUROPEAN UNION

**The European Union Withdrawal (Consequential Modifications)
(EU Exit) Regulations 2020**

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a), and section 41(1) and (2) of the European Union (Withdrawal Agreement) Act 2020(b).

In accordance with paragraph 15(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020.

(2) Regulation 1 and regulation 10 come into force immediately before IP completion day.

(3) Otherwise these Regulations come into force on IP completion day.

(4) A provision of these Regulations that amends or repeals an enactment has the same extent as the enactment amended or repealed.

(5) In these Regulations, “the 2019 Regulations” means the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019(c).

(a) 2018 c. 16. Paragraph 21(b) of Schedule 7 was amended by paragraph 53(2)(b) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) 2020 c. 1.

(c) S.I. 2019/628.

PART 2

Amendment of UK primary legislation

Amendment of Interpretation Act 1978

- 2.**—(1) The Interpretation Act 1978^(a) is amended as follows.
- (2) In section 20 (references to other enactments)—
- (a) in the heading after “enactments” insert “etc.”,
 - (b) after subsection (2), insert—
“(2A) Where—
 - (a) an Act passed on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and
 - (b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),the reference, unless the contrary intention appears and so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”,
 - (c) in subsection (3), for “Where” substitute “Subject to subsection (2A), where”,
 - (d) in subsection (5)—
 - (i) for “subsection (3) or” substitute “subsections (2A) to”, and
 - (ii) for “that subsection” substitute “the subsection concerned”,
 - (e) after subsection (5), insert—
“(6) In this section—
“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”.
- (3) In section 20A (references to EU instruments), in the heading, after “to” insert “certain”.
- (4) In section 22(1) (application to Acts and Measures)—
- (a) for “20(3) to (5)” substitute “20(2A) to (6)”, and
 - (b) for “in section 20(3)” substitute “in section 20(2A) or (3)”.
- (5) After paragraph 7 of Schedule 2, insert—
- “**8.** The definition in Schedule 1 of “enactment”, in so far as it relates to retained direct EU legislation, applies to subordinate legislation made at any time before the commencement of this Act as it applies to Acts passed at that time.”.

Amendment of European Union (Withdrawal) Act 2018

- 3.**—(1) The European Union (Withdrawal) Act 2018^(b) is amended as follows.
- (2) In Schedule 8 (consequential, transitional, transitory and saving provision)—
- (a) in paragraph 1—
 - (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
 - (ii) in sub-paragraph (2) for “which” substitute “so far as it”,
 - (b) after paragraph 1, insert—

(a) 1978 c. 30.

(b) 2018 c. 16.

“Existing ambulatory references to relevant separation agreement law

1A.—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and
- (b) is a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

is, if the treaty, instrument or document has effect on or after IP completion day by virtue of section 7A or 7B and so far as required for the purposes of relevant separation agreement law, to be read on or after that day as, or including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(2) In sub-paragraph (1) “treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).

(3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.”

(c) in paragraph 2—

- (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
- (ii) in sub-paragraph (2) for “which” substitute “so far as it”.

(d) after paragraph 2, insert—

“Existing non-ambulatory references

2A.—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
 - (i) any enactment, or
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, and
- (b) is a reference to any of the EU Treaties, any EU instrument or any other document of an EU entity as it has effect at a particular time which is earlier than IP completion day,

is to be read, on or after IP completion day, in accordance with one or more of sub-paragraphs (2) to (4).

(2) If the treaty, instrument or document has effect by virtue of section 7A or 7B on or after IP completion day and so far as required for the purposes of relevant separation agreement law, the reference is to be read on or after that day as, or as including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) So far as—

- (a) the reference is a reference to—
 - (i) any EU regulation, EU decision or EU tertiary legislation,
 - (ii) any provision of the EEA agreement, or
 - (iii) any part of anything falling within sub-paragraph (i) or (ii),

- (b) what has been referred to (“the subject law”) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (c) there has been no relevant modification of the subject law after the particular time and before IP completion day (or, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, before exit day),

the reference is to be read, on or after IP completion day, as a reference to the subject law as it forms part of domestic law by virtue of section 3 or (as the case may be) section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

(4) So far as the reference is not to be read in accordance with sub-paragraphs (2) and (3), the reference is to be read, on or after IP completion day, as a reference to the treaty, instrument or document as it had effect in EU law at the particular time.

(5) Sub-paragraph (3) does not determine whether, where the subject law is modified by domestic law on or after IP completion day, the reference is to be read as a reference to the subject law as modified; but, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 and is modified by domestic law before IP completion day, the reference is to be read by virtue of sub-paragraph (3) as a reference to the subject law as so modified.

(6) This paragraph is subject to any provision made by or under this Act or any other enactment.

(7) In this paragraph—

“relevant modification” means any modification in EU law which—

- (a) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (b) would, if the reference were to the subject law as modified, result in an alteration to the effect of the reference (ignoring any alteration which is irrelevant in the context concerned);

“the subject law” has the meaning given by sub-paragraph (3)(b);

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”.

PART 3

Amendment of the 2019 Regulations

Replacement of references to “exit day” with “IP completion day”

4. In regulation 5(2) of the 2019 Regulations, for “exit day”, substitute “IP completion day”.

PART 4

Scotland

Amendment of Interpretation and Legislative Reform (Scotland) Act 2010

5.—(1) The Interpretation and Legislative Reform (Scotland) Act 2010(a) is amended as follows.

(2) In section 1 (application of Part 1 of the Act), after subsection (1) insert—

“(1A) Subsection (1) is subject to section 14(2A) and (3).”

(3) In section 12 (references to EU instruments), in the heading, after “to” insert “certain”.

(4) In section 14 (references to other legislative provisions)—

(a) after subsection (2), insert—

“(2A) Where—

(a) there is a reference in—

(i) an Act of the Scottish Parliament the Bill for which received Royal Assent on or after IP completion day, or

(ii) a Scottish instrument made on or after IP completion day,

to any treaty relating to the EU or any instrument or other document of an EU entity, and

(b) the treaty, instrument or document referred to has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),

the reference, so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”,

(b) in subsection (3), at the beginning insert “Subject to subsection (2A).”,

(c) in subsection (5)—

(i) for “subsection (3) or” substitute “subsections (2A) to”, and

(ii) for “that subsection” substitute “the subsection concerned”,

(d) after subsection (5) insert—

“(6) In this section—

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”

6.—(1) The fact that by virtue of regulation 4(5) of the 2019 Regulations—

(a) the definitions of “the Treaties” and “the EU Treaties” (as defined by section 1(2) of the European Communities Act 1972(b)) in Schedule 2 to the 1999 Order are treated as revoked, and

(a) 2010 asp 10. Section 14 is amended by regulation 4 of S.I. 2019/628 as amended by S.I. 2020/463. Schedule 1 is amended by S.I. 2019/628, paragraph 37 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 4 of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2). There are other amendments not relevant to this instrument.

(b) The definition of “the Treaties” and “the EU Treaties” in section 1(2) of the European Communities Act 1972 (c. 68) was amended by the European Communities (Greek Accession) Act 1979 (c. 57), section 1; the European Communities (Spanish and Portuguese Accession) Act 1985 (c. 75), section 1; the European Communities (Amendment) Act 1986 (c. 58), section 1; the European Communities (Amendment) Act 1993 (c. 32), section 1; the European Parliamentary Elections Act 1993 (c. 41), section 3; the European Economic Area Act 1993 (c. 51), section 1; the European Union (Accessions) Act 1994 (c. 38), section 1; the European Communities (Amendment) Act 1998 (c. 21), section 1; the European Communities

(b) definitions of those expressions are treated as inserted into that Schedule,

does not affect the interpretation of those expressions on and after IP completion day in relation to a time before IP completion day.

(2) In its application to Acts of the Scottish Parliament the Bills for which received Royal Assent before 19th June 2008 or to Scottish subordinate legislation made before that date, the definition of “the Communities”, which by virtue of regulation 4(5) of the 2019 Regulations is treated as inserted into Schedule 2 to the 1999 Order, has effect on and after IP completion day, in its application in relation to a time before 19th June 2008, as if the words from “but” to the end were omitted.

(3) In this regulation—

“the 1999 Order” means the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(a);

“Scottish subordinate legislation” has the same meaning as in the 1999 Order.

PART 5

Northern Ireland

Amendment of the Interpretation Act (Northern Ireland) 1954

7. — (1) The Interpretation Act (Northern Ireland) 1954(b) is amended as follows.

(2) In section 11 (references in enactments)—

(a) for subsections (1A) and (1B), substitute—

“(1A) Except to the extent provided by subsection (1AA), subsection (1) does not apply to a reference in an enactment to retained direct EU legislation (but, for provision about references to EU legislation, see—

- (a) paragraphs 1 to 2A of Schedule 8 to the European Union (Withdrawal) Act 2018,
- (b) subsections (1B) to (1F), and
- (c) section 11A).

(1AA) A reference in an enactment to a statutory provision which is subordinate legislation made under retained direct EU legislation is a reference to which subsection (1) applies; and “subordinate legislation” here means subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act).

(1B) Subsection (1C) applies to a reference in an enactment so far as the reference is to be read in accordance with paragraph 2A(3) of Schedule 8 to the European Union (Withdrawal) Act 2018 (certain references to certain EU laws to be read as referring to those laws as they form part of domestic law).”,

(b) in subsection (1C), for the words from the beginning to “referred to” substitute “The reference is not only to be read in accordance with paragraph 2A(3) of Schedule 8 to that Act but shall also be construed as referring to the subject law (within the meaning given by paragraph 2A(3)(b) of that Schedule)”,

(c) in subsection (1D)(b), after “domestic law” insert “(to any extent)”,

(Finance) Act 2001 (c. 22), section 1; the European Communities (Amendment) Act 2002 (c. 3), section 1; the European Union (Accessions) Act 2003 (c. 35), section 1; the European Union (Accessions) Act 2006 (c. 2), section 1; the European Union (Amendment) Act 2008 (c. 7), paragraph 1, the Schedule; the European Union Act 2011 (c. 12), section 15; the European Union (Croatian Accession and Irish Protocol) Act 2013 (c. 5), section 3; the European Union (Finance) 2015 (c. 2015 (c. 32), section 1; S.I. 2011/1043.

(a) S.I. 1999/1379; revoked by article 8 of that Order but subject to savings specified in s. 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(b) 1954 c. 33 (N.I.).

- (d) in subsection (1E), at the beginning insert “Subject to section 11A,”.
- (3) After section 11 insert—

“References to EU instruments etc which have direct effect

11A.—(1) Subsection (2) applies where—

- (a) an enactment passed or made on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and
- (b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc).

(2) So far as required for the purposes of relevant separation agreement law, the reference shall be construed as a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) In this section—

“EU entity” has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018; and

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

PART 6

Wales

Amendment of Legislation (Wales) Act 2019

8.—(1) The Legislation (Wales) Act 2019(a) is amended as follows.

(2) In section 24 (references to direct EU legislation retained in domestic law after EU exit), after subsection (2)—

(a) in the English language text insert—

“(2A) But this is subject to section 25A (references to relevant separation agreement law).”;

(b) in the Welsh language text insert—

“(2A) Ond mae hyn yn ddarostyngedig i adran 25A (cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu).”;

(3) After section 25—

(a) in the English language text insert—

“References to relevant separation agreement law

25A. —(1) This section applies where—

- (a) an Act of Senedd Cymru receives Royal Assent, or a Welsh subordinate instrument is made, on or after implementation period completion day, and
- (b) the Act or instrument refers to any treaty relating to the EU, or any instrument or other document of any EU entity, which has effect by virtue of section 7A or 7B of

(a) 2019 anaw 4. Section 24 is amended by paragraph 59 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and S.I. 2020/463. There are other amendments not relevant to this instrument.

the European Union (Withdrawal) Act 2018 (c. 16) (general implementation of remainder of EU withdrawal agreement etc.).

(2) The reference is, so far as required for the purposes of relevant separation agreement law, a reference to the treaty, instrument or document as it has effect by virtue of that section (including, so far as required, as it has effect from time to time).

(3) In this section—

“EU entity” (“*endid o’r UE*”) has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” (“*cyfraith berthnasol y cytundebau gwahanu*”) has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018;

“treaty” (“*cytuniad*”) includes any international agreement (and any protocol or annex to a treaty or international agreement). ”

(b) in the Welsh language text insert—

“Cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu

25A.—(1) Mae’r adran hon yn gymwys—

(a) pan fo Deddf gan Senedd Cymru yn cael y Cydsyniad Brenhinol, neu pan fo is-offeryn Cymreig yn cael ei wneud, ar neu ar ôl diwrnod cwblhau’r cyfnod gweithredu, a

(b) pan fo’r Ddeddf neu’r offeryn yn cyfeirio at unrhyw gytuniad sy’n ymwneud â’r UE, neu unrhyw offeryn neu ddogfen arall gan unrhyw endid o’r UE, sy’n cael effaith yn rhinwedd adran 7A neu 7B o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) (gweithredu gweddill y cytundeb ymadael â’r UE etc. yn gyffredinol).

(2) Mae’r cyfeiriad, i’r graddau y mae’n ofynnol at ddibenion cyfraith berthnasol y cytundebau gwahanu, yn gyfeiriad at y cytuniad, yr offeryn neu’r ddogfen fel y mae’n cael effaith yn rhinwedd yr adran honno (gan gynnwys, i’r graddau y mae’n ofynnol, fel y mae’n cael effaith o bryd i’w gilydd).

(3) Yn yr adran hon—

mae i “cyfraith berthnasol y cytundebau gwahanu” yr ystyr a roddir i “relevant separation agreement law” gan adran 7C(3) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018;

mae “cytuniad” (“*treaty*”) yn cynnwys unrhyw gytundeb rhyngwladol (ac unrhyw brotocol neu atodiad i gytuniad neu gytundeb rhyngwladol);

mae i “endid o’r UE” yr ystyr a roddir i “EU entity” gan adran 20(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. ”

(4) In section 26 (references to EU instruments)—

(a) in the English language text—

(i) in the heading after “to” insert “certain”,

(ii) in subsection (3), for “regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628)” substitute “paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018 (c.16)”.

(b) in the Welsh language text—

(i) in the heading for “offerynnau’r UE” substitute “offerynnau penodol gan yr UE”,

(ii) in subsection (3), for “reoliad 2 o Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau Canlyniadol a Diddymiadau a Dirymiadau) (Ymadael â’r UE) 2019 (O.S. 2019/628)” substitute “baragraff 2A o Atodlen 8 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16)”.

PART 7

Repeals and revocations

Repeals

9.—(1) The enactments mentioned in the Schedule are repealed to the extent specified.

(2) Where—

- (a) paragraph (1) and the Schedule repeal an enactment (“the amending enactment”) which inserts or otherwise amends another enactment, and
- (b) the inserted or amended enactment is repealed by the European Union (Withdrawal) Act 2018 and there is related transitional or saving provision,

the repeal of the amending enactment does not affect the operation of that transitional or saving provision.

Revocations

10. In the 2019 Regulations, regulation 2 is omitted.

PART 8

Amendments consequential on this instrument

Amendment of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

11. In article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(a), in paragraph (3A), for “regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019”, substitute “paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018”.

Date _____

Name
[Minister for the Cabinet Office]
Cabinet Office

SCHEDULE

Regulation 9

Repeals

<i>Short title</i>	<i>Extent of repeal</i>
Criminal Law Act 1977(b)	Section 32(3). Section 65(10)(e).
Customs and Excise Management Act 1979(c)	In Schedule 4, in paragraph 12, in Part 1 of the Table, the entries relating to section 6(5) and (6) of the European Communities Act 1972 (and the heading preceding those entries).

- (a) S.I. 2013/419. Paragraph (3A) was inserted into article 1 of that Order by S.I. 2019/1416 and substituted by S.I. 2020/117.
(b) 1977 c. 45.
(c) 1979 c. 2.

Customs and Excise Duties (General Reliefs) Act 1979(a)	In Schedule 2, paragraphs 3 to 5 (and the heading preceding those paragraphs).
Agricultural Statistics Act 1979(b)	In Schedule 1, paragraph 4 (and the heading preceding that paragraph).
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(c)	In Schedule 4, paragraph 8 (and the heading preceding that paragraph).
Justice (Northern Ireland) Act 2002(d)	In Schedule 7, paragraph 1(3).
Railways and Transport Safety Act 2003(e)	In section 103(2), the words “or under section 2 of the European Communities Act 1972 (c.68) (implementation of Community obligations)”.
	In Schedule 6, in paragraph 1(1)(b), the words “or section 2 of the European Communities Act 1972 (c.68) (implementation of Community obligations)”.
	In Schedule 6, paragraph 10(b) and the “or” before that paragraph.
Criminal Justice Act 2003(f)	In Schedule 27, paragraph 3 (and the heading preceding that paragraph).
Constitutional Reform Act 2005(g)	In Schedule 9, paragraphs 97 and 110.
Legislative and Regulatory Reform Act 2006(h)	Section 20.
	Section 26(1).
	Section 27(1), (2) and (4).
	Section 28.
	Section 29.
Wales Act 2017(i)	Section 12(2)(b).
	Section 20.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) and section 41(1) and (2) of the European Union (Withdrawal Agreement) Act 2020 (c.1).

Regulation 2 amends the Interpretation Act 1978 (c. 30) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act). It also amends the Interpretation Act 1978 to make it clear that the new definition of “enactment” (i.e. including retained direct EU legislation) which was added by the 2018 Act(j) applies to the interpretation of subordinate legislation (as well as Acts) made or passed before the Interpretation Act 1978 came into force.

(a) 1979 c. 3.

(b) 1979 c. 13.

(c) 1995 c. 40.

(d) 2002 c. 26 (N.I.).

(e) 2003 c. 20.

(f) 2003 c. 44.

(g) 2005 c. 4.

(h) 2006 c. 51.

(i) 2017 c. 4.

(j) Paragraph 22(d) of Schedule 8 to the European Union (Withdrawal) Act 2018 amended the definition of “enactment” in Schedule 1 to the Interpretation Act 1978.

Regulation 3 amends Schedule 8 to the 2018 Act to make general provision about what happens on IP completion day to non-ambulatory cross-references to EU instruments and in respect of references to relevant separation agreement law. General provision about what happens on IP completion day to ambulatory references to EU instruments is found at paragraphs 1 and 2 of Schedule 8 to the 2018 Act.

Regulation 4 makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) (“the 2019 Regulations”) to change certain references to “exit day” to “IP completion day”.

Regulation 5 amends the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) by regulation 4(5) of the 2019 Regulations.

Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 8 amends the Legislation (Wales) Act 2019 (anaw 4) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 9 and the Schedule to these Regulations repeal primary legislation that has become redundant in consequence of the 2018 Act or this instrument.

Regulation 10 revokes certain provisions of the 2019 Regulations where alternative provision is made in this instrument.

Regulation 11 makes a consequential amendment to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) as a result of the revocation of regulation 2 of the 2019 Regulations by regulation 10 of this instrument.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

© Crown copyright 2020

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

UK202010081015 10/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348213102>

Pack Page 376

ISBN 978-0-34-821310-2



9 780348 213102

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION WITHDRAWAL (CONSEQUENTIAL MODIFICATIONS)
(EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to ensure that the UK statute book works coherently and effectively following the end of the transition period.
- 2.2 It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. As part of this, the instrument clarifies how cross references to EU legislation should be read.
- 2.3 The instrument makes technical repeals to redundant provisions within primary legislation arising from the European Union (Withdrawal) Act 2018 (“EUWA”). These are primarily repeals of *amending* provisions, in particular relating to the European Communities Act 1972 (“the ECA”), where EUWA has already provided for the repeal of the *amended* provisions. The purpose of the repeals in these Regulations is to tidy up the statute book and they have no substantive effect.
- 2.4 The instrument amends the Interpretation Act 1978 (and the devolved equivalents) in relation to the interpretation of references to “*relevant separation agreement law*”. The instrument also amends EUWA to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read. It also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019¹(S.I. 2019/628) (“the 2019 Regulations”) and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.
- 2.5 The instrument makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies, whether the retained version or the version applied by the Withdrawal Agreement. The instrument provides a general gloss to ensure that the correct interpretation of the EU instrument applies. SIs being prepared by other departments in order to implement the Withdrawal Agreement, including the Northern Ireland Protocol are relying on these glosses. These SIs are required for IP completion day.

¹ as amended by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (S.I. 2020/463).

Explanations

What did any relevant EU law do before IP completion day?

- 2.6 This instrument does not amend retained direct EU legislation (“RDEUL”) or relevant separation agreement law, but makes general interpretative provision and makes various repeals to redundant EU-derived domestic legislation.
- 2.7 The EU-derived domestic legislation that is being repealed is domestic law rather than EU law. The provisions being repealed amended the ECA and other Acts repealed by EUWA. More detailed information on the repeals is found in section 7 of this explanatory memorandum.
- 2.8 The interpretation legislation amended by this instrument is not EU law; it is domestic legislation, which is being updated in consequence of EUWA and WAA.

Why is it being changed?

- 2.9 Certain provisions within primary legislation are being repealed because they are redundant in consequence of EUWA. These are primarily repeals of amending provisions, in particular relating to the ECA, where EUWA has already repealed the amended provisions. The repeals are being made to ensure a clean and tidy statute book after IP Completion Day and to ensure that the UK’s legal system continues to function effectively. More information on the changes is included at section 7.
- 2.10 Domestic interpretation legislation is being amended to clarify how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. Transitional provision is also needed to clarify how ambulatory and non-ambulatory references to EU legislation in pre-exit legislation are to be read after IP completion day.

What will it now do?

- 2.11 These Regulations make a further amendment to the Interpretation Act 1978 to incorporate RDEUL and relevant separation agreement law. Equivalent amendments are being made to the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954 and Amendment of Legislation (Wales) Act 2019.
- 2.12 The Regulations clarify the interpretation of certain EU-related definitions included in Scottish interpretation legislation by virtue of the 2019 Regulations.
- 2.13 Ambulatory references to direct EU legislation that forms part of relevant separation agreement law are to be read as that legislation applies under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 2.14 Non-ambulatory references to direct EU legislation which does not form part of relevant separation agreement law and which are intended to relate to a time before IP completion day will continue to do so.
- 2.15 Non-ambulatory references to direct EU legislation which forms part of relevant separation agreement law are to be read as that EU legislation applies under the terms of the Withdrawal Agreement.
- 2.16 The EU-derived domestic legislation that is redundant is being repealed and will no longer have effect. It will no longer sit on the UK statute book, reflecting the UK’s status as a non-EU member state.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments].

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom, subject to the paragraphs 4.2-4.5 below.

4.2 Regulations 5 and 6 amend the Interpretation and Legislative Reform (Scotland) Act 2010 and extend and apply to Scotland.

4.3 Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 and extends and applies to Northern Ireland.

4.4 Regulation 8 amends the Legislation (Wales) Act 2019 and extends and applies to Wales.

4.5 Regulation 9 and the Schedule make provision to repeal primary legislation. The extent and application of these provisions is the United Kingdom (given the extent and application of all the legislation being repealed or revoked is the United Kingdom).

5. European Convention on Human Rights

5.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 The UK left the EU on 31 January 2020 at 11pm (“exit day”), following which the supremacy of the EU law over UK law came to an end. EUWA achieved this legal severance through the repeal of the ECA on exit day.

6.2 The Withdrawal Agreement agreed between the UK and the EU came into force on exit day. The Withdrawal Agreement aims to ensure an orderly withdrawal of the UK from the EU. WAA implemented the Withdrawal Agreement and provides the vehicle for the Government to give effect to the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.

6.3 The UK and the EU agreed in the Withdrawal Agreement that the UK’s exit from the EU would be followed by a time-limited transition period (“the Transition Period”). The Transition Period started on exit day and ends at 11pm on 31 December 2020 (“IP Completion Day”). Although the ECA was repealed on exit day, certain parts of the ECA are kept in force by EUWA and EU law continues to apply during the Transition Period under the terms set out in the Withdrawal Agreement.

- 6.4 To ensure that the domestic legal system continues to function correctly outside the EU, EUWA converts and saves particular elements of EU law as it stands at the end of the Transition Period. In doing so, EUWA creates a new body of domestic law, known as “retained EU law”. Retained EU law is made up of three categories, RDEUL, EU derived domestic legislation and other directly effective EU law rights.² Retained EU law was created before the Withdrawal Agreement was agreed and before WAA came into force. Retained EU law was originally due to apply from exit day. WAA amended EUWA to provide for the Transition Period and to provide that retained EU law comes into effect on IP Completion Day instead of exit day.
- 6.5 In addition, WAA establishes “relevant separation agreement law”. Relevant separation agreement law includes (1) provisions of domestic law that give effect to the Withdrawal Agreement or the EEA EFTA Separation Agreement and (2) provisions of the Withdrawal Agreement and the EEA EFTA Separation Agreement (and the EU law applied by them) which take effect directly in domestic law via the provisions of EUWA.
- 6.6 The provisions of EUWA and the amendments made to EUWA by WAA mean that it is possible for EU instruments to form part of retained EU law for some purposes and have effect as relevant separation agreement law for other purposes. This means that after IP Completion Day, references to EU instruments in domestic legislation can have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes.
- 6.7 EUWA and WAA provide temporary powers to make provisions that Ministers consider appropriate in consequence of those Acts. These Regulations are made in exercise of the consequential powers at section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to EUWA and section 41(1) and (2) of WAA.
- 6.8 The 2019 Regulations amended the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation. That instrument also provided for how cross-references to EU legislation post-exit and non-ambulatory cross-references to EU legislation up to the point immediately before exit should be read. It added a number of words and expressions to the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954 and provided general rules of interpretation in light of the introduction of “retained EU law”. It also repealed and revoked primary and secondary legislation in consequence of the repeal of the ECA and arising from the withdrawal of the UK from the EU.
- 6.9 These Regulations make further provision relating to the interpretation of certain EU-related definitions and non-ambulatory references. In light of the introduction of “relevant separation agreement law”, these Regulations make provision for how references to EU instruments that have effect as relevant separation agreement law should be interpreted. This includes amendments to the Interpretation Act 1978 and equivalent amendments to the devolved authorities’ interpretive legislation. In addition, these Regulations make further changes to the Interpretation Act 1978 on the general rules of interpretation to ensure that the rules and definitions apply, as appropriate, to retained EU law.

² A definition of retained EU law can be found at section 6(7) of EUWA.

- 6.10 The Regulations also make consequential amendments to the 2019 Regulations and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013. They make further repeals which are necessary to remove provisions of legislation which are redundant in consequence of EUWA and revoke provisions of the 2019 Regulations which are being replaced by provisions made by these Regulations

7. Policy background

What is being done and why?

- 7.1 These Regulations make various consequential amendments and repeals in respect of retained EU law, relevant separation agreement law and other EU-derived domestic legislation. This is to ensure that the UK statute book operates effectively and coherently in relation to EU-derived domestic legislation, and removes from the statute book domestic legislation that is made redundant as a result of EUWA.

Amendment of Interpretation Act 1978

- 7.2 As discussed above at paragraph 6.4, EUWA ensures that direct EU legislation, which applies to the UK by virtue of the ECA, is converted and saved to the UK statute book as RDEUL. An example of such legislation would be EU Regulations. To ensure that RDEUL functions effectively in UK law, the Interpretation Act 1978 was amended by EUWA to clarify that the definition of “enactment” included RDEUL.
- 7.3 In addition, WAA establishes “relevant separation agreement law” which includes (1) provisions of domestic law that give effect to the Withdrawal Agreement/EEA EFTA Separation Agreement and (2) provisions of domestic law that give effect to the Withdrawal Agreement and the EEA EFTA Separation Agreement. In light of the introduction of relevant separation agreement law, regulation 2 makes amendments to the Interpretation Act 1978 to provide for how references in UK legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be interpreted as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.4 As part of this, regulation 2 amends existing interpretive provisions that have already been made for references to RDEUL. This is to provide for situations where references to EU instruments in domestic legislation have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument forms part of RDEUL.
- 7.5 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without

these provisions it would be unclear what version of an EU instrument cross references to EU legislation was being referred to.

- 7.6 These Regulations make a further amendment to the Interpretation Act 1978, to make it clear that the new definition of “enactment” (including RDEUL) applies to any statutory reference to “enactment”. Without this change, there could have been questions about whether references to “enactment” found in subordinate legislation made *prior* to the Interpretation Act 1978 were covered.

Amendment of European Union (Withdrawal) Act 2018

- 7.7 Regulation 3 makes amendments to EUWA to provide how existing ambulatory references to EU instruments that will have effect as relevant separation agreement law are to be interpreted after IP Completion Day. Ambulatory references are references to EU instruments that automatically update when the EU instrument is updated.
- 7.8 EUWA already makes interpretive provision for ambulatory references to EU instruments that will form part of RDEUL and those instruments that will not form part of RDEUL. The introduction of “relevant separation agreement law” by WAA means that this additional interpretive provision is needed. Regulation 3(2)(b) inserts new paragraph 1A into Schedule 8 of EUWA which sets out that existing ambulatory references to EU instruments that will take effect as relevant separation agreement law are to be read as a reference to the instrument as it has effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.9 As part of the amendments to EUWA, regulation 3 amends existing interpretive provisions for ambulatory references. This is to provide for instances where the EU instrument referred to has a dual meaning. For example, the EU instrument forms part of RDEUL for some purposes and relevant separation agreement law for other purposes. In these instances the interpretive provision for relevant separation agreement law applies to the extent that the legislation referred to takes effect as relevant separation agreement law; the interpretive provision for RDEUL can then apply to the extent that the legislation referred to forms part of RDEUL. If these provisions were not made it would be unclear what version of an EU instrument ambulatory references were referring to, the original version that has effect as relevant separation agreement law or the domestic version that forms part of RDEUL.
- 7.10 The 2019 Regulations made provision for how non-ambulatory cross-references to EU legislation up to the point immediately before “exit” should be read. Non-ambulatory references are references to an EU instrument in the form it was in when the reference was made (regardless of whether the EU instrument has been subsequently amended). This is in contrast to ambulatory references, which are references to EU instruments that automatically update when the EU instrument is updated. This provision made by the 2019 Regulations needs updating as a result of the introduction of relevant separation agreement law and as a result of RDEUL applying from IP Completion Day rather than exit day. Regulation 3(2)(d) inserts new interpretive provisions into EUWA for how non-ambulatory cross-references to EU legislation up to the point of IP Completion Day should be read. This replaces the previous provisions made by the 2019 Regulations. As part of this, regulation 10 of these Regulations revokes the provisions of the 2019 Regulations that are being replaced by these provisions.
- 7.11 Regulation 3(2)(d) inserts new paragraph 2A of Schedule 8 to EUWA to set out that after IP Completion Day, existing non-ambulatory references to EU legislation should

be read in accordance with “one or more” of the three interpretive provisions set out (new paragraph 2A(1) of EUWA). The flexibility of “one or more” of the interpretive provisions applying is built in to provide for instances where references to EU instruments have more than one meaning, for example, referring to the EU instrument as it has effect as relevant separation agreement law for some purposes and referring to the EU instrument as incorporated into RDEUL for other purposes.

- 7.12 The three interpretive provisions created by new paragraph 2A(1) of EUWA set out that following IP Completion Day, non-ambulatory cross references to EU instruments that have effect as relevant separation agreement law should be read as a reference to the version of that legislation that has effect under the terms of the Withdrawal Agreement/EEA EFTA separation agreement. Up-to-date non-ambulatory cross references to EU legislation should be read as references to the retained version of that legislation (as retained under section 3 of EUWA or as the case may be retained under section 1 of the Direct Payments to Farmers Act 2020). All other non-ambulatory cross references to EU legislation should be read as a reference to the legislation in the form it was in at the time the reference was made.

Amendment of reference to “exit day” with “IP completion day”

- 7.13 The 2019 Regulations were made before the Withdrawal Agreement was made and before WAA was enacted. WAA contains a number of important provisions that affect the 2019 Regulations, including amending EUWA to provide that retained EU law comes into effect on IP Completion Day instead of exit day and delaying the commencement of EU-exit SIs until IP Completion Day.
- 7.14 Regulation 5(1) of the 2019 Regulations updated the definition of “statutory provisions” in the Interpretation Act (Northern Ireland) 1954 to include retained EU law. The 2019 Regulations made it clear that this didn’t affect any references to “statutory provisions” contained in legislation made before “exit day” unless there was a contrary intention. Regulation 5 of the 2019 Regulations was originally due to come into force on exit day, but commencement was delayed by WAA to IP Completion Day.
- 7.15 Whilst the commencement of regulation 5 of the 2019 Regulations was delayed until IP Completion Day, regulation 5 still refers to “exit day” rather than IP Completion Day. Regulation 4 of these Regulations updates the reference in regulation 5 of the 2019 Regulations so that it refers to “IP Completion Day” rather than “exit day”. This is needed to ensure that the 2019 Regulations operate effectively on IP Completion Day.

Amendment of Interpretation and Legislation Reform (Scotland) Act 2010

- 7.16 Regulation 5 of the Regulations makes amendments to the Interpretation and Legislative Reform (Scotland) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.17 The amendments made to the Interpretation and Legislative Reform (Scotland) Act 2010 provide for how references in Scottish legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those

instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.

- 7.18 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. Again, this is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument referred to forms part of RDEUL.
- 7.19 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”

- 7.20 Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, which sets out general rules of interpretation for Scottish legislation made before 4 June 2010.³ In essence, this regulation saves the pre-IP Completion Day meaning of terms including “Treaties”, “EU treaties” or “Communities” for a number of limited purposes, for example as such terms may apply to pre-exit matters.
- 7.21 At present, references to EU Treaties will, after IP Completion Day, become references to the EU Treaties as they stood immediately before IP completion day. However, there are certain situations where pre-IP completion day legislation refers to “the Treaties” or “the EU treaties” and on or after IP completion day the expression will need to be interpreted in relation to a time before IP completion day. This regulation retains the existing position and ensures that the interpretation of the reference to the EU Treaties on and after IP completion day is unaffected by the new definition of EU Treaties as applying as they stood immediately before IP completion day.
- 7.22 The new definition of “the Communities” includes the words “but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU”. Those words reflect the effect of the gloss in section 3(6) of the EU (Amendment) Act 2008. But they go wider than that gloss as the section 3(6) gloss does not apply to Acts passed or instruments made before the passing of the 2008 Act (19 June 2008) in their application to a reference to any or all of the Communities in relation to a time before the passing of that Act. Provision is needed to ensure that the “but a reference...” wording in the new definition does not apply in such a pre-19 June 2008 case.

³ Regulation 1(2)(b)(3), 4(5)(a) and (b) of the 2019 Regulations added these terms to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of Scottish Parliament) Order 1999 by amending section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. S.I. 1999/1379 was revoked by article 8 of that Order but subject to savings specified in section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Interpretation of the Interpretation Act (Northern Ireland) 1954

- 7.23 Regulation 7 of the Regulations makes amendments to the Interpretation Act (Northern Ireland) 1954 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.24 The amendments made to the Interpretation Act (Northern Ireland) 1954 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.25 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.26 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Amendment of Legislation (Wales) Act 2019

- 7.27 Regulation 8 of the Regulations makes amendments to the Legislation (Wales) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2(1)-(4) of these Regulations
- 7.28 The amendments made to the Legislation (Wales) Act 2010 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.29 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.30 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Repeals

- 7.31 Regulation 9 and the Schedule repeal provisions within primary legislation that have become redundant as a result of EUWA. EUWA repealed a number of *amended* provisions of legislation, and these Regulations repeal the *amending* provisions that lay behind them. Their existence in the statute book has no practical effect in light of the repeals already provided for in EUWA. The purpose of the repeals in these Regulations is merely to tidy up the statute book to ensure that it is clear and effective on IP completion day.
- 7.32 Most of the amending enactments repealed by the Schedule to these Regulations amend the ECA. The ECA is repealed by section 1 of EUWA and the continuing effect of regulations made under section 2(2) of the ECA is provided for by section 2 of EUWA. These Regulations include a saving provision in regulation 3(2) to make clear that the repeals are not intended to interfere with the operation of any related saving or transitional provision where the amending enactment is repealed by EUWA.
- 7.33 The following paragraphs explain what is being repealed.
- 7.34 Section 32(3) of the Criminal Law Act 1977 amends paragraph 1(1)(d) of Schedule 2 to the ECA, which sets the maximum daily fine that regulations under section 2(2) of that Act can impose. Section 65(10)(e) sets out the territorial extent of that provision. As the ECA is being repealed, these provisions will be redundant and are being removed from the UK statute book.
- 7.35 Paragraph 12, in Part 1 of the Table, in Schedule 4 to the Customs and Excise Management Act 1979 amends sections 6(5) & (6) of the ECA (agricultural levies of the EU to be levied collected and paid etc as if they were EU customs duties), by updating references to legislation (including replacing a reference to the Customs and Excise Act 1952 with a reference to the Customs and Excise Management Act 1979). As the ECA is being repealed, these amending provisions are redundant and are therefore also being repealed.
- 7.36 Paragraphs 3 to 5 in Schedule 2 to the Customs and Excise Duties (General Reliefs) Act 1979 make several amendments to the ECA, including provisions on the form and procedure for orders made under section 5(1) or (2) of that Act (customs duties) 2 and related reporting requirements to Parliament. Again, the repeal of the ECA makes these sections redundant and so they are also being repealed.
- 7.37 Paragraph 4 of Schedule 1 to the Agricultural Statistics Act 1979 amends section 12 of the ECA (furnishing of information to Communities) by substituting a reference to the Agriculture Act 1947 with a reference to the Agricultural Statistics Act 1979. As the ECA is being repealed, this provision is redundant and is also being repealed.
- 7.38 Paragraph 8 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 amends section 11 of the ECA (offence of making a false statement before the European Court). This provision updates a reference in section 11 of the ECA to the “False Oaths (Scotland) Act 1933” with a reference to the “Criminal Law (Consolidation) (Scotland) Act 1995”. This amending provision is redundant on the repeal of the ECA and so is also being repealed.
- 7.39 Paragraph 1(3) in Schedule 7 to the Justice (Northern Ireland) Act 2002 amends section 12(2) of the Northern Ireland Act 1998, which relates to the procedure to be followed where the Northern Ireland Assembly wishes to reconsider a Bill referred to the ECJ. In particular, it changes references to Northern Ireland Law Officers. As

section 12 of the Northern Ireland Act 1998 is repealed by EUWA⁴, this amending provision is redundant and is also being repealed.

- 7.40 Section 103(2), and paragraph 1(1)(b) and 10(b) of Schedule 6 to, the Railways and Transport Safety Act 2003 make references to section 2 of the ECA. These are redundant on the repeal of the ECA and are therefore also being repealed.
- 7.41 Paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 amends para 1 of Schedule 2 to the ECA (maximum term of imprisonment section 2(2) regulations can impose). On the repeal of the ECA, this provision is redundant and is therefore also being repealed.
- 7.42 Paragraphs 97 and 110 of Schedule 9 to the Constitutional Reform Act 2005 amend section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 respectively. These provisions substitute “Supreme Court” for “Judicial Committee” in relation to ECJ references. As section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 are repealed by EUWA⁵, the amending provisions are redundant and so are also being repealed.
- 7.43 Section 20 of the Legislative and Regulatory Reform Act 2006 (“LRRRA 2006”) enables new order-making powers to be exercised together with and by the same instrument as the power to make an order under section 2(2) ECA. Section 29 provides for the procedure which applies. These sections are being repealed, as after the UK leaves the EU, powers under section 2(2) ECA will no longer apply, and the sections will therefore become redundant.
- 7.44 Section 27(1) and (2) makes consequential amendments to the ECA, changing the word “regulations” to “order, rules, regulations or scheme”. Section 28 amends the ECA by inserting a provision to allow subordinate legislation to make ambulatory references to EU legislation. As the ECA is repealed, these provisions are redundant and are also being repealed.
- 7.45 The LRRRA 2006 also amends the Interpretation Act 1978 and the Scotland Act 1998. Section 26(1) inserts definitions of the “EEA agreement” and “EEA state” into the Interpretation Act 1978. As the definitions are being repealed and replaced by EUWA⁶, this provision is redundant and is also being repealed. Section 27(4) makes a consequential amendment to paragraph 15(3) of Schedule 8 to the Scotland Act 1998, reflecting a change made to the ECA, so that the word “regulations” is changed to “order, rules, regulations or scheme”. Paragraph 15 of Schedule 8 to the Scotland Act 1998 is repealed by EUWA making the amending provision redundant too.⁷
- 7.46 Section 12(2)(b) of the Wales Act 2017 amends section 113(2)(a) of the Government of Wales Act 2006 (“GOWA 2006”), which relates to ECJ references, to replace the term “Clerk” with “Presiding Officer”. Section 20 of the Wales Act 2017 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 implementing EU law by inserting a new section 58B into, and amending section 59 of, the GOWA 2006. Sections 113, 58B and the relevant parts of section 59 of the GOWA 2006 are repealed by Part 3 of Schedule 3 of

⁴ See paragraph 52 in Part 3 of Schedule 3 to EUWA.

⁵ See paragraphs 11 and 52 of Part 3 of Schedule 3 to EUWA.

⁶ See paragraph 22 of Schedule 8 EUWA.

⁷ Paragraph 15 of the Scotland Act 1998 is repealed by Part 3 of Schedule 3 to EUWA.

EUWA, which makes the amending provisions contained in the Wales Act 2017 redundant and so these are also being repealed.

Revocations

- 7.47 Regulation 10 of these Regulations revokes regulation 2 of the 2019 Regulations.
- 7.48 Regulation 2 of the 2019 Regulations made interpretive provision for non-ambulatory references to direct EU legislation. Regulation 2 is not yet in force and was made before the enactment of WAA and the introduction of relevant separation agreement law. These Regulations replace the interpretive provision for non-ambulatory references provided by the 2019 Regulations with updated provisions to include interpretive provision for non-ambulatory references to relevant separation agreement law (regulation 3(2) and new paragraph 2A of Schedule 8 to EUWA).

Amendment of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.

- 7.49 Art 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order cross refers to the interpretation provisions for non-ambulatory cross references to EU law provided by regulation 2 of the 2019 Regulations.
- 7.50 Regulation 2 of the 2019 Regulations is being revoked by regulation 10 of these Regulations and updated interpretive provision for non-ambulatory cross references to EU instruments is being provided by new paragraph 2A of Schedule 8 to EUWA introduced by regulation 3 of these Regulations.
- 7.51 Regulation 11 updates the cross reference to Article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions Order) to refer to the updated interpretive provisions in new paragraph 2A of Schedule 8 to EUWA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, EUWA and section 41(1) and 41(2) of WAA. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because we expect it to have no impact on businesses.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018 and the European Union (Withdrawal Agreement) Act 2020, no review clause is required.

15. Contact

- 15.1 The Transition Taskforce at the Cabinet Office, email: tff-legislation@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Marianne Ainsworth-Smith, Deputy Director for Parliamentary Engagement and Legislation within the Transition Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because the instrument ensures that the UK statute book accommodates “retained EU law” coherently and effectively after the UK’s withdrawal from the EU.
- 1.3 Although the instrument repeals some primary legislation, these are of a technical and consequential nature and simply remove provisions made redundant by EUWA and in particular, by the repeal of the ECA.

2. Good reasons

- 2.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In [my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are that without this instrument there would be a lack of clarity about how certain EU-related terms and references to EU legislation in domestic legislation should be interpreted when the UK leave the EU. Also, many provision of EU-derived domestic legislation would remain on the UK statute book, despite being redundant as a result of EUWA

3. Equalities

- 3.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The European Union Withdrawal (Consequential Modifications)
(EU Exit) Regulations 2020**

DATE **14 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

The Law which is being amended:

The European Union (Withdrawal) Act 2018
The Interpretation Act 1978
The Legislation (Wales) Act 2019
The Interpretation and Legislative Reform (Scotland) Act 2010
The Interpretation Act (Northern Ireland) 1954
The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019
The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.

The SI also makes a number of technical repeals to redundant provisions within primary legislation in consequence of repeals made by the European Union (Withdrawal) Act 2018.

The purpose of the amendments

The purpose of the amendments is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period. The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read

following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies. Finally, the SI makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 and technical repeals to redundant provisions within primary legislation arising from EUWA.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213102/contents>

Any impact the SI may have on the legislative competence of the Senedd and/or the executive competence of the Welsh Ministers

The SI has no impact on the legislative competence of the Senedd or the executive competence of the Welsh Ministers.

Consent requirements

This SI is to be made under section 23 of EUWA and section 41 of WAA, which are the consequential powers in each Act, exercisable by Ministers of the Crown. As such, the SI does not initiate a formal consent process with Ministers of the Devolved Governments.

It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. However, equivalent powers are not conferred on the Welsh Ministers. As the SI makes technical amendments, with no policy implications and, given that the amendments have to be in place by the end of the year, it is considered expedient for provision to be made by the UK Government on behalf of all of the nations of the UK to ensure that there is an operable statute book at the end of the transition period. The only alternative would require primary legislation to go through the Senedd and be enacted by the end of the year, which would not be a proportionate use of time and resources. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Officials of the Welsh Government contributed to the drafting of the SI and the Counsel General and Minister for European Transition has written to the Chancellor of the Duchy of Lancaster to say that formal consent should have been sought.

However, a Statutory Instrument Consent Memorandum is being laid and the Senedd will have the opportunity to consent to the technical changes to the Legislation (Wales) Act 2019.

UK MINISTERS ACTING IN DEVOLVED AREAS

176 - European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

Laid in the UK Parliament: 08 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 46
SICM under SO 30A (because amends primary legislation)	SICM(5)31

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20 October 2020

Background

These Regulations are proposed to be made by the UK Government under section 23 of the European Union (Withdrawal) Act 2018 and section 41 of the European Union (Withdrawal Agreement) Act 2020.

Summary

The objective of the SI is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.

The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing

references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.

The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (the 2019 Regulations) and technical repeals to redundant provisions within primary legislation arising from EUWA.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 14 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) in respect of these Regulations on 14 October 2020.

A motion to debate the SICM is scheduled for debate in Plenary on Tuesday 3 November 2020.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”) were laid before Parliament on 12 October 2020 and are now being laid before the Senedd. The 2020 Regulations can be found at:

[The Quality and Safety of Organs Intended for Transplantation
\(Amendment\) \(EU Exit\) Regulations 2020](#)

Summary of the Statutory Instrument and its objective

3. This SI amends the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) which was made last year, with the consent of the Welsh Ministers, to correct deficiencies in legislation arising from the UK leaving the European Union relating to organ safety and quality.
4. This SI will amend the 2019 Regulations so as to enable the provisions amended by those Regulations to continue to operate effectively in light of the Northern Ireland Protocol following Implementation Period completion day (11 pm 31 December 2020).

Relevant provision to be made by the SI

5. The SI amends the 2019 Regulations. The 2019 Regulations (regulation 2) amend provision in the Human Tissue Act 2004. The effect therefore is that provision in the Human Tissue Act 2004 is consequently amended.
6. Section 32 of the Human Tissue Act 2004 is amended to reflect the Northern Ireland Protocol, under which Northern Ireland will be treated both as if it were a Member State (subject to the modifications to EU law made by the Northern Ireland Protocol), and as a constituent part of the UK.
7. It is the view of the Welsh Government that the provisions described in paragraph 6 above fall within the legislative competence of the Senedd in so far as they relate to the organ safety and quality.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on organ safety and quality policy. The SI amends the 2019 Regulations that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Vaughan Gething MS
Minister for Health and Social Services

15 October 2020

DRAFT STATUTORY INSTRUMENTS

2020 No. 0000

EXITING THE EUROPEAN UNION

HUMAN TISSUE

**The Quality and Safety of Organs Intended for Transplantation
(Amendment) (EU Exit) Regulations 2020**

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C of the European Union (Withdrawal) Act 2018(a).

A draft of this instrument has been approved by a resolution of each House of Parliament, in accordance with paragraphs 1 and 8F(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

Citation and commencement

1. These Regulations may be cited as the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 and come into force immediately before IP completion day.

**Amendment of the Quality and Safety of Organs Intended for Transplantation
(Amendment) (EU Exit) Regulations 2019**

2. The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019(c) are amended as follows.

Substitution of regulation 2(2)

3. For regulation 2(2) (amendment of the Human Tissue Act 2004(d)) substitute—

“(2) For subsection (3A) substitute—

(a) 2018 c. 16. The European Union (Withdrawal) Act 2018 was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); section 8C was inserted by section 21 of that Act.
(b) Paragraph 8F was inserted by paragraph 51 of Schedule 5 to the 2020 Act.
(c) S.I. 2019/483.
(d) 2004 c. 30. Section 32 was amended by S.I. 2012/1501 and 2014/1459.

“(3A) The Authority may not designate a person under subsection (3) if doing so would be incompatible with the principles set out in—

- (a) Article 12 of Directive 2004/23/EC of the European Parliament and of the Council on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, or
- (b) Article 13 of Directive 2010/53/EU of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation,

and for the purposes of this subsection as it applies in relation to Great Britain, those Articles of those Directives are to be read subject to the modifications set out in subsections (3B) and (3C).”.

Amendment of regulation 3(2)

4. In regulation 3(2)—

- (a) for paragraph (b)(i) substitute—

“in the definition of “the Directive”, at the end insert “, as it applies in relation to Northern Ireland”;;
- (b) for paragraph (b)(ii) substitute—

“in the definition of “the Implementing Directive”, at the end insert “, as it applies in relation to Northern Ireland”;;
- (c) in the new paragraph (2) inserted by paragraph (c), after “In these Regulations,” insert “as they apply in relation to Great Britain,”.

Substitution of regulation 3(3)

5. For regulation 3(3) substitute—

“(3) For regulation 4 (designation of the competent authority) substitute—

“Designation of the competent authority in relation to Northern Ireland

4. In relation to Northern Ireland, the Authority is designated the competent authority for the purposes of the Directive.”.

Amendment of regulation 3(5)

6. In regulation 3(5), for “these Regulations” substitute “these Regulations, as they apply in relation to Great Britain, and with the Directive and the Implementing Directive, as they apply in relation to Northern Ireland”.

Amendment of regulation 3(6)

7. In regulation 3(6), for “these Regulations” substitute “these Regulations, as they apply in relation to Great Britain, and with the Directive and the Implementing Directive, as they apply in relation to Northern Ireland”.

Substitution of regulation 3(8)

8. For regulation 3(8) substitute—

“(8) For regulation 18 (organs sent to or received from another country), substitute—

“18.—(1) Where an organ is sent to a Member State from Northern Ireland, the Authority shall ensure that—

- (a) information on organ and donor characterisation that is specified in Part A of the Annex to the Directive;
 - (b) information that has been collected by a registered medical practitioner or a person acting under their supervision that is required by Part B of the Annex at the time when the organ is sent to a Member State; and
 - (c) information to ensure the traceability of the organ,
- is transmitted to that Member State in conformity with the requirements of Articles 4, 5, and 6(1) of the Implementing Directive.
- (2) Where an organ is received in Northern Ireland from a Member State, the Authority shall ensure that—
- (a) the requirements of Article 4 of the Implementing Directive in relation to information transmitted to the Authority in accordance with that Directive in respect of the organ have been complied with; and
 - (b) information to ensure the traceability of the organ is transmitted in accordance with Article 6(2) of that Directive.
- (3) Where an organ is sent from Northern Ireland to, or received in Northern Ireland from, a Member State, the Authority shall ensure the reporting of serious adverse events and reactions in conformity with the requirements of Articles 4 and 7 of the Implementing Directive.
- (4) The Authority shall ensure that any organs sent from Northern Ireland to, or received in Northern Ireland from, countries which are not in the European Union—
- (a) can be traced from the donor to the recipient; and
 - (b) meet quality and safety standards that are equivalent to those required by these Regulations.
- (5) The Authority shall ensure that any organs sent from Great Britain to, or received in Great Britain from, countries outside the United Kingdom—
- (a) can be traced from the donor to the recipient; and
 - (b) meet quality and safety standards that are equivalent to those required by these Regulations.
- (6) For the purposes of paragraphs (4) and (5), the Authority may conclude agreements with countries outside the United Kingdom.”.”.

Substitution of regulation 3(9)

9. For regulation 3(9) substitute—

“(9) In regulation 19 (European Union network of competent authorities), after “The Authority shall,” insert “in relation to Northern Ireland,”.

Amendment of regulation 3(11)

10. In regulation 3(11), in respect of Part 5A as inserted by that regulation—

- (a) in the title of the Part, after “Schedule 1A” insert “in relation to Great Britain”;
- (b) in the heading to regulation 24A, after “Schedule 1A” insert “in relation to Great Britain”;
- (c) in paragraph (1) of regulation 24A, for the words before sub-paragraph (a), substitute “An appropriate authority in Great Britain may by regulations amend—”;
- (d) in paragraph (2)—
 - (i) omit sub-paragraph (d);
 - (ii) for paragraph (e) substitute—

“(e) for the whole of Great Britain, the Secretary of State acting with the consent of the Welsh Ministers and the Scottish Ministers.”;

- (e) in regulation 24B, omit paragraph (3);
- (f) in regulation 24C, omit paragraph (4).

Substitution of regulation 3(14)(b)

11. For regulation 3(14)(b) substitute—

“(b) for paragraph 3 substitute—

“**3.** For the purpose of ensuring compliance with the requirements of Articles 4(1), 4(2), 4(3), 5(2) and 5(3) of the Implementing Directive in relation to Northern Ireland, the Authority shall specify in directions given under section 23(1) of the 2004 Act the requirements relating to the transmission of information that apply to a licence holder when an organ is sent to, or received from, a Member State.”.”.

Address
Date

Name
Parliamentary Under Secretary of State
Department for Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) and 8C of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (f) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union, and in order to give effect to the Protocol on Ireland/Northern Ireland in the withdrawal agreement, respectively.

They amend the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/483) so as to enable the provision amended by those Regulations to continue to operate effectively in light of the Ireland/Northern Ireland Protocol following IP completion day.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

© Crown copyright 2020

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.90

UK202010071012 10/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348213010>

Pack Page 404

ISBN 978-0-34-821301-0



9 780348 213010

EXPLANATORY MEMORANDUM TO
THE BLOOD SAFETY AND QUALITY (AMENDMENT) (EU EXIT)
REGULATIONS 2020

[2020] No. [XXXX]

THE QUALITY AND SAFETY OF ORGANS INTENDED FOR
TRANSPLANTATION (AMENDMENT) (EU EXIT) REGULATIONS 2020

[2020] No. [XXXX]

THE HUMAN TISSUE (QUALITY AND SAFETY FOR HUMAN APPLICATION)
(AMENDMENT) (EU EXIT) REGULATIONS 2020

[2020] No. [XXXX]

AND

THE HUMAN FERTILISATION AND EMBRYOLOGY (AMENDMENT) (EU EXIT)
REGULATIONS 2020

[2020] No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

- 2.1 On 31 January 2020, the United Kingdom (UK) left the European Union (EU). The Withdrawal Agreement agreed with the EU entered into force. These four instruments give effect to the Ireland/Northern Ireland Protocol ('the Protocol') in the Withdrawal Agreement, for the safety and quality of blood and blood components, organs, tissues and cells, and reproductive cells (gametes and embryos) for treating patients.
- 2.2 The Protocol sets out the EU law that will continue to apply to and in Northern Ireland (NI) after the end of the Implementation Period. This includes the EU Blood Directive (2002/98/EC), EU Tissues and Cells Directive (2004/23/EC), and EU Organs Directive (2010/53/EU) (including the Commission implementing directives), collectively referred to as 'the Directives' in this memorandum. This means that NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. These four instruments make the changes needed to allow NI to meet these requirements.
- 2.3 There are four separate instruments, collectively referred to in this memorandum as 'the 2020 SIs':
- The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020 - referred to here as the 'Blood SI';

- The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘Organs SI’;
- The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘Tissues and Cells SI’; and
- The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘HFE SI’.

2.4 The 2020 SIs have been drafted separately as each amends different underlying legislation but each one brings forward very similar provisions. It is proposed that these instruments are grouped and debated together.

Explanations

What did any relevant EU law do before exit day?

- 2.5 The UK law in this area transposes the EU Directives for the safety and quality of blood, organs, tissues and cells (including reproductive cells). They set a range of safety and quality standards, including:
- standards for all steps in the transfusion process for human blood and blood components, including collection, testing, processing and distribution;
 - the procurement, testing, processing, and storage of tissues and cells;
 - organ and donor characterisation, which sets out the information that must be collected so an organ is matched with a suitable recipient;
 - traceability requirements for blood, organs, tissues and cells; and
 - notification requirements in the event of a serious adverse event or reaction which may impact the safety and quality of blood, organs, tissue and cells.
- 2.6 Four instruments were made in 2019¹ (collectively referred to in this memorandum as ‘the 2019 SIs’) to ensure that, upon leaving the EU, the UK would maintain the current safety and quality standards for blood, organs, tissues and cells. The 2019 SIs also made amendments to reflect EU Member States becoming third countries to the UK.

Why is it being changed?

- 2.7 The 2019 SIs amended retained EU law across the UK as a whole and they are due to come into force at the end of the Implementation Period (11pm on 31 December 2020). Following the conclusion of the Withdrawal Agreement, NI must continue to meet the requirements of the Directives, for as long as the Protocol is in force. The 2020 SIs restrict the changes made by the 2019 SIs to Great Britain (GB) only, therefore the current law will remain in place for NI. The fact that NI will remain subject to EU law in this area, whereas GB will not, also requires some additional changes. The 2020 SIs will retain a single set of UK rules, but within them, a small number of provisions will apply to NI or GB only.

¹ The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019/4; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019/483; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019/481; The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019/482

What will it now do?

- 2.8 The 2020 SIs will ensure that NI continues to meet the provisions of the Directives after the end of the Implementation Period. A detailed breakdown of the changes these instruments make is included in section 7. The key changes in the 2020 SIs are to:

- allow the current regulators to continue to act as the competent authorities in relation to the EU for NI;
- make amendments to the import/export provisions;
- for tissues and cells (including reproductive cells), the Tissues and Cells SI and the HFE SI retain the requirement for NI tissue establishments to use the Single European Code for tissues and cells; and
- limit the regulation making powers introduced by the 2019 SIs to GB.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of these instruments is the UK.
- 3.3 Legislative competence for the donation, processing and use in treatment of human reproductive cells is reserved to Westminster (i.e. legislation is dealt with by the UK Parliament). Competence in respect of all other human tissues and cells, blood and organs is devolved.

4. Extent and Territorial Application

- 4.1 The territorial extent of these instruments is the UK.
- 4.2 The territorial application of these instruments is the UK.

5. European Convention on Human Rights

- 5.1 The Minister of State for Health, Edward Argar, has made the following statement regarding Human Rights:

“In my view the provisions of The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 and The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The amendments made by these instruments are needed to give effect to the Protocol for the safety and quality of blood, organs, tissues and cells, for treating patients.
- 6.2 The relevant UK legislation is:
- The Blood Safety and Quality Regulations 2005;

- The Quality and Safety of Organs Intended for Transplantation Regulations 2012;
 - The Human Tissue (Quality and Safety for Human Application) Regulations 2007;
 - The Human Fertilisation and Embryology (Quality and Safety) Regulations 2007; and
 - relevant amendments to the Human Tissue Act 2004 and the Human Fertilisation and Embryology Act 1990.
- 6.3 This legislation was made under powers conferred by section 2(2) of the European Communities Act 1972 in order to implement the Directives (see paragraph 2.2).
- 6.4 Section 2 of European Union (Withdrawal) Act 2018 (EUWA) saves EU-derived domestic legislation so that it continues to have effect in domestic law, on and after exit day. The legislation in paragraph 6.2 is retained EU law and the 2019 SIs will amend it from 1 January 2021 to ensure it functions effectively once the UK is no longer subject to EU law, in reliance on section 8 of EUWA (power to remedy deficiencies in retained EU law arising from EU exit). As NI will need to remain subject to the Directives after the end of the Implementation Period, the 2020 SIs re-exercise the power in section 8 of EUWA to restrict the changes being made by the 2019 SIs to GB. The SIs also rely on the power in section 8C of EUWA (power to implement the Protocol), for example by ensuring that movements of blood, organs, tissue and cells into NI from GB are treated the same as movements of blood, organs, tissues and cells into NI from non-EU Member States.

7. Policy background

What is being done and why?

- 7.1 The donation of blood and blood components (red cells, platelets, and plasma) facilitate a wide range of essential, and often life-saving treatments, including blood transfusions used to deal with major surgery or trauma, and the manufacture of medicinal products such as clotting factors and immunoglobulins.
- 7.2 An organ transplant can be life-saving or life-transforming and is often the only treatment option available for the patient concerned.
- 7.3 Human tissues and cells are used in what can be life-changing therapies, such as: stem cells to treat blood cancers; corneas to restore sight; heart valves to treat heart conditions; and eggs and sperm to treat infertility. Other forms of tissue are more generic in use, for example bone products used in operations and in dental fillings.
- 7.4 The retained EU law (as set out in paragraph 6.2) sets the policy and legal framework in relation to all steps in the transfusion process for human blood and blood components and the donation, retrieval, processing, storage, transport, import and export of organs, tissues and cells used for transplantation.
- 7.5 The 2019 SIs (see paragraph 2.6) were made to amend the retained EU law so that it continues to function after leaving the EU and will be in force from 1 January 2021.
- 7.6 The 2020 SIs are needed to give effect to the Protocol. They restrict the changes being made by the 2019 SIs to GB only and therefore the current law will remain in place for NI. The fact that NI will remain subject to EU law in this area, whereas GB does not, also requires some additional changes. The 2020 SIs will retain a single set

of UK rules, but within them, a small number of provisions will apply to NI or GB only. Details of the main amendments made by these instruments are set out below.

Quality and safety standards

- 7.7 Neither the 2019 SIs, nor the 2020 SIs make changes to the safety and quality standards, which will remain the same across the UK from 1 January 2021. For NI these standards may be expressed by reference to EU legislation, whereas for GB they are not, however, the substance is the same in both cases. For example, to apply for a licence to make one-off imports of tissues and cells from a third country, the applicant must provide the regulator with certain information to demonstrate traceability and the one-off nature of the import. The current regulations refer to the information requirements as set out in the Tissues and Cells Directive. The 2019 SIs removed this cross-reference to the Tissues and Cells Directive for the UK; however, the 2020 SIs will now retain that cross-reference for NI. The substance of the information to be provided remains the same across the UK.

Regulators as competent authorities in Northern Ireland

- 7.8 The following UK regulators for blood, organs, tissues and cells will continue to act on a UK-wide basis after the end of the Implementation Period:
- the Medicines and Healthcare products Regulatory Authority (MHRA) for blood and blood components;
 - the Human Tissue Authority (HTA) for organs, tissues and cells (excluding reproductive cells); and
 - the Human Fertilisation and Embryology Authority (HFEA) for reproductive tissues and cells.
- 7.9 The Directives require an authority to be designated as the ‘competent authority’ and the UK regulators will continue to act as the competent authorities for NI. The Blood Safety and Quality Regulations 2005 and the Blood SI refer to the Secretary of State as the relevant authority but the Secretary of State’s regulatory and competent authority functions will continue to be carried out in practice by the MHRA, an executive agency of the Department of Health and Social Care.
- 7.10 The 2020 SIs make amendments to allow the competent authorities to continue to meet the same EU obligations they do now. For example, the Blood SI retains the requirement to notify the EU Commission, in respect of NI, of an epidemiological situation, such as an outbreak of a disease, which may affect the safety of blood donations. As another example, in relation to NI, the Tissues and Cells and HFE SIs retain the requirement to notify the competent authorities in the European Economic Area (EEA) States of information relating to serious adverse events and reactions so that appropriate action can be taken. The competent authorities in relation to tissues and cells will also remain under an obligation to deal with requests from EEA States to carry out inspections of third country premises from which tissues and cells have been imported into NI and then moved into the EEA.

Movement of goods in and out of NI - GB establishments

- 7.11 The commitment to unfettered access means there should be no additional checks or processes imposed by GB when NI goods are placed on the market in GB. Therefore, there will be no change to the requirements for GB establishments to receive blood, organs, tissues and cells from establishments in NI. Similarly, GB

establishments will not treat blood, organs, tissues and cells sent to NI as exports. This is achieved as follows:

- in the Blood SI, for the purpose of the import and export of blood or blood components by a blood establishment in GB, a third country is defined as a country other than the UK – this means that for GB blood establishments the movement of blood or blood components between NI and GB has the same requirements as other intra-UK distribution;
- in the Organs SI, for GB there are no additional requirements when organs move from one part of the UK to another; and
- in the Tissues and Cells and HFE SIs, for the purpose of import and export of tissues and cells by GB establishments, a third country is defined as any country other than the UK – this means that for GB establishments the movement of tissues and cells between NI and GB has the same requirements as other intra-UK distribution.

Movement of goods in and out of NI - NI establishments

- 7.12 NI establishments will continue to send blood, organs, tissues and cells to GB as they do now. NI establishments will not treat movements to GB establishments any differently to movements within NI.
- 7.13 NI establishments will be able to continue receiving blood, organs, tissues and cells from GB establishments. However, NI establishments will now consider GB the same as a non-EU Member State for this purpose. NI establishments will be required to extend the existing non-EU import provisions to blood, organs, tissues and cells received from GB:
- for blood, blood establishments in NI must update their Blood Establishment Authorisation to include import, and ensure that the blood or blood components from GB have been prepared in accordance with equivalent standards;
 - for organs, organs moving from GB to NI must be traceable from donor to recipient and meet equivalent safety and quality standards; and
 - for tissues and cells, tissue establishments in NI must ensure they hold an import licence and import agreements to receive tissues and cells from GB.

Traceability

- 7.14 The current legislation, in relation to tissues and cells (including reproductive cells), requires tissue establishments to use the Single European Code to facilitate the traceability of tissues and cells within the EU.
- 7.15 From 1 January 2021, GB will be considered a third country under the Directives and will no longer be required to apply the Single European Code, instead using alternative existing traceability systems. However, the Tissues and Cells and HFE SIs retain this provision for NI, and NI establishments will be required to continue applying the Single European Code to tissues and cells.
- 7.16 The Blood and Organs SIs do not include such coding systems.

Transferred Commission tertiary powers

- 7.17 The 2019 SIs introduced some limited regulation-making powers into UK law, for each of the UK nations. These powers are similar to the EU Commission powers and ensure safety regulations can be updated in the future. The 2020 SIs limit the regulation-making powers in the 2019 SIs to GB, as EUWA now contains regulation making powers (section 8C and paragraph 11M of Schedule 2), enabling the Secretary of State and the devolved administrations to make regulations to implement the Protocol including in response to future changes in EU law.

Six-month transition period for tissues and cells

- 7.18 The 2019 SIs amended the retained EU law (paragraph 6.2) to account for the fact that the UK will consider EU Member States as third countries. This means that from 1 January 2021 establishments will be required to extend third country import and export provisions to EU Member States.
- 7.19 For tissues and cells, the 2019 SIs provide for a six-month transition period from exit day to allow tissue establishments time to put the necessary arrangements in place for importing and exporting tissues and cells with the EU. The 2020 SIs amend the start of this transition period so that it begins after the Implementation Period.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 These instruments are being made using the powers in section 8 and 8C of EUWA in order to give effect to the Protocol in the Withdrawal Agreement for the safety and quality of blood, organs, tissues and cells.
- 8.2 The Tissues and Cells and HFE SI also rely on the consequential power in section 41(1) of the European Union (Withdrawal Agreement) Act 2020 to revoke a spent provision in the legislation concerning the application of the Single European Code, and to limit the regulation-making powers introduced by the 2019 SIs to GB.
- 8.3 In accordance with the requirements of EUWA, the Minister has made the relevant statements, detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 These instruments do not involve consolidation and there are no plans to consolidate the legislation at this time.

10. Consultation outcome

- 10.1 The amendments introduced by these instruments are technical in nature and their purpose is to give effect to the Protocol by restricting the changes made by the 2019 SIs to GB. The current law will remain in place for NI. Therefore, there was no public consultation. The changes in these instruments were discussed with the UK regulators, along with issues of operational implementation.
- 10.2 The proposed amendments have been discussed with the Scottish, Welsh and Northern Ireland devolved administrations and their views have been considered in the drafting of these instruments. The Blood, Organs and Tissues and Cells SIs are being made on a UK-wide basis with the agreement of the devolved administrations.

11. Guidance

- 11.1 Guidance for establishments will be provided by the UK regulators. The regulators will work with licensed/authorised establishments in NI to support them as needed to prepare for 1 January 2021.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for these instruments because the direct cost impact has been assessed as lower than the £5m threshold in any one year and the policy is not considered novel or contentious.
- 12.4 In practice there will be no significant changes in how blood and transplant establishments operate. There will be some minor costs for tissue establishments and fertility clinics in NI to meet the new import provisions.

Blood

- 12.5 There is one blood establishment in NI. It will be able to continue receiving blood and blood components from GB establishments; however, NI establishments will treat GB as a non-EU Member State for this purpose. The provisions for importing blood or blood components from a non-EU Member State are set out in 7.13. The NI blood establishment already has the required import authorisations in place and GB blood establishments currently prepare blood and blood components to meet the EU and UK standards, so the NI blood establishment can continue to receive blood or blood components from GB.
- 12.6 There are 10 hospital blood banks in NI. They will not need to take any action as a result of the Blood SI.
- 12.7 It is estimated that there will be no cost to businesses or to the NHS as a result of the changes in the Blood SI, therefore no Impact Assessment is required.

Organs for transplant

- 12.8 NHS Blood and Transplant (NHSBT) will continue to be responsible for organ donation and retrieval in the UK. Between April 2019 and March 2020, 32 organs from deceased donors moved from GB to NI, and 126 organs moved from NI to GB (data provided by NHSBT).
- 12.9 Organs will be able to continue moving from GB to NI, however NI based establishments will now treat GB as a non-EU Member State for this purpose. The provisions for importing organs from a non-EU Member State are set out in 7.13. These are the same provisions that currently apply to organs moving within the UK so the changes made by the 2020 SI will make no difference to how NHSBT operates in practice.
- 12.10 It is estimated that there will be no cost to businesses or to the NHS as a result of the changes introduced by the Organs SI, therefore no Impact Assessment is required.

Tissues and cells and reproductive cells

- 12.11 There are two tissue establishments and four fertility clinics in NI. They will continue to be able to receive tissues and cells from GB, however they will now treat

GB as a non-EU Member State for this purpose. The provisions for importing tissues and cells from a non-EU Member State are set out in 7.13. The regulators for the sector are working with these NI establishments to ensure the necessary actions are taken for 1 January 2021.

12.12 There will be some minor costs for these NI establishments to meet the new provisions. It is estimated that one tissue establishment in NI will need to put additional licensing arrangements in place to receive tissues and cells from GB, and that it will need to put in place two import agreements with GB establishments. It is estimated that three fertility clinics in NI will need to put additional licensing arrangements in place to receive tissues and cells from GB at no cost, and that they will need to put in place 10-15 import agreements with GB establishments between them. This represents a small administrative one-off cost in the first year of the Tissues and Cells and HFE SIs coming into force.

12.13 Information on HTA licensing fees is available at <https://www.hta.gov.uk/policies/licence-fees-and-payments-202021>

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small business. These instruments relate to safety, quality and traceability standards for patients and no exceptions would be applied to small businesses.

14. Monitoring & review

14.1 These instruments give effect to the Protocol for the safety and quality of blood, organs, tissues and cells. NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. Changes to these instruments may be needed if there are changes to the Directives. It is for the elected institutions in NI to decide what happens to the Protocol alignment provisions in a consent vote that can take place every four years, with the first vote taking place in 2024.

14.2 As these instruments are made under the EUWA, no review clause is required.

15. Contact

15.1 Samantha Wheelhouse, Senior Policy Advisor at the Department of Health and Social Care, telephone: 0113 254 5200 or email samantha.wheelhouse@dhsc.gov.uk, can be contacted with any queries regarding these instruments.

15.2 Marina Pappa, Deputy Director for Health Ethics, at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Edward Argar, Minister of State for Health, at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC.
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equality Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.

Explanation s	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by SI.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanation s where amending regulations under s.2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny	Paragraph 16, Schedule	Anybody making an SI	Statement setting out:

statement where amending regulations under s.2(2) ECA 1972	8	after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA 1972	a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 and The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.
- 1.2 This is the case because they do no more than amend legislation on blood, organs, tissues and cells and reproductive cells to give effect to the Ireland/Northern Ireland Protocol in the Withdrawal Agreement. They restrict the provisions in the 2019 SIs to GB only so the current law will remain in place for NI. The SIs will retain a single set of UK rules, but within them there are a small number of provisions which are stated as applying to NI or GB only. Further details, including examples of the changes included in the instruments, are detailed in section 7 of the main body of this Explanatory Memorandum.

2. Good reasons

- 2.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view there are good reasons for the provisions in these instruments, and I have concluded they are a reasonable course of action”
- 2.2 The Protocol sets out the EU law that will continue to apply to and in the UK in respect of NI, which includes the Blood, Tissues and Cells, and Organs Directives (including the Commission implementing directives). NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. The instruments make the changes needed to allow NI to meet these requirements. Further details, including examples of the amendments made and reasons for making them, are set out in section 7 of the main body of this Explanatory Memorandum.

3. Equalities

- 3.1 The Minister of State for Health, Edward Argar, has made the following statement:
“The draft instruments do not amend, repeal or revoke a provision or provisions in the Equality Act 2006, or the Equality Act 2010 or subordinate legislation made under those Acts.”
- 3.2 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instruments, I, Edward Argar, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

3.3 These instruments will have no impact on equalities.

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref: MA-VG-3307-20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

15 October 2020

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the Senedd in respect of the following:

- **The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020**

as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU. The provisions of the SI relate to the implementation of the Northern Ireland Protocol or are otherwise technical or minor in nature, and there is no divergence in policy between the Welsh Government and the UK Government in any of these areas.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Senedd is considering, I will not myself be seeking to initiate such a debate.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Quality and Safety of Organs Intended for Transplantation
(Amendment) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – SI laid in Parliament which amends legislation in a devolved area

The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 – affirmative

Policy Overview of the SI

This SI amends the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019 which were made last year with the consent of the Welsh Ministers as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly. The SI applies to the whole of the UK and is due to come into force immediately before implementation completion date (11pm 31 December 2020).

The SI amends the 2019 Regulations so as to enable the provisions amended by those Regulations to continue to operate effectively in light of the Northern Ireland Protocol following the implementation period.

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Law which is being amended

- Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019

The purpose of the amendments

The relevant provisions of the SI are to implement the Northern Ireland Protocol, under which Northern Ireland will be treated as if it were a Member State (subject to the

modifications to EU law made by the Northern Ireland Protocol), and as a constituent part of the UK. The provisions restrict the changes being made by the 2019 Regulations to Great Britain (GB), meaning that the current law remains in place for Northern Ireland.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

[The Quality and Safety of Organs Intended for Transplantation \(Amendment\) \(EU Exit\) Regulations 2020](#)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The SI amends an EU Exit SI in relation to organ quality and safety. The SI has no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence. The SI does not involve the transfer of any functions to or from the Welsh Ministers nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on organ safety and quality policy. The SI amends the 2019 Regulations that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

180 - Quality & Safety of Organs Intended for Transplant (Amendment) (EU Exit) Regs 2020

Laid in the UK Parliament: 8 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 52
SICM under SO 30A (because amends primary legislation)	Human Tissue Act 2004 (section 32)- SICM(5)32

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21/10/2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20/10/2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of the European Union (Withdrawal) Act 2018.

Summary

These Regulations form part of a suite of four instruments (the '2020 Instruments'). The 2020 Instruments together give effect to the Ireland/Northern Ireland Protocol (the 'Protocol') in the Withdrawal Agreement, for the safety and quality of blood and blood components, organs, tissues and cells, and reproductive cells (gametes and embryos) for treating patients.

The Protocol sets out the EU law that will continue to apply to and in Northern Ireland ('NI') after the end of the Implementation Period. NI must continue to meet the requirements of such legislation for as long as the Protocol is in force. The suite of four instruments, including these

Regulations, make the changes needed to allow NI to meet those requirements.

Four previous instruments were made in 2019 (the ‘2019 Instruments’) to ensure that, upon leaving the EU, the UK would maintain the current safety and quality standards for blood, organs, tissues and cells. The 2019 Regulations were made with the consent of the Welsh Ministers as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly. The 2019 Instruments also made amendments to reflect EU Member States becoming third countries to the UK. The 2020 Instruments restrict the changes made by the 2019 Instruments to Great Britain only. Therefore the current law will remain in place for NI.

These Regulations amend the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019 so as to enable the provisions amended by those Regulations to continue to operate effectively in light of the Protocol.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 15 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) in respect of these Regulations on 15 October 2020, because the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, section 32 of the Human Tissue Act 2004).

However, the Welsh Government is not proposing to table a motion to debate the SICM in Plenary (as stated by the Minister for Health and Social Services, in a letter to the Chair dated 15 October 2020).

Agenda Item 10.3

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 which contain amendments to section 155 (2) and (3) of the Equality Act 2010

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before Senedd Cymru if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 were laid before UK Parliament on 07 October 2020. The SI and the Explanatory Memorandum can be found at:
<https://www.legislation.gov.uk/ukdsi/2020/9780348212952>

Summary of the Statutory Instrument and its objective

3. The objective of the SI, in the main, is to correct deficiencies in legislation arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018.
4. The SI makes amendments to a suite of procurement related legislation but the amendments to which this SICM relates are technical amendments to section 155 (2) and (3) of the Equality Act 2010. These amendments are required to ensure this provision of the Equality Act 2010 can continue to operate effectively at the end of the transition period.
5. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the draft affirmative procedure and the SI cannot be made unless a draft has been laid before and approved by both Houses of Parliament. The provisions in the SI that amend the primary legislation referenced in this Memorandum would come into force on the IP completion day, being 31 December 2020 at 11.00 p.m.

Provisions to be made by the Statutory Instrument for which consent is sought

6. The primary legislation that is within the legislative competence of the Senedd that is to be amended by the SI, is section 155(2) and (3) of the Equality Act 2010, which is amended by regulation 4 of the SI. The amendment provides for defining a term by reference to the Public Contracts Regulations 2015, rather than by reference to the Public Sector Directive (2014/24/EU). The Public Contract Regulations 2015 are domestic regulations which gave effect to the Public Sector Directive.
7. It is the view of the Welsh Government that the provisions described above fall within the legislative competence of Senedd Cymru and could be the subject of a Senedd Bill.

Why it is appropriate for the SI to make this provision

8. This amendment is relatively minor and is technical in nature given that it provides for certain terms to be defined by reference to a set of domestic regulations which gave effect to an EU Directive, rather than by reference to the EU Directive itself. There is no divergence between the Welsh Government and the UK Government in relation to the policy of the correction. Making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. In the exceptional circumstances presented by EU exit, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Financial implications

9. There are no anticipated financial implications for the Welsh Government associated with the SI.

Jane Hutt
Deputy Minister and Chief Whip

DRAFT STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION

PUBLIC PROCUREMENT

**The Public Procurement (Amendment etc.) (EU Exit)
Regulations 2020**

Made - - - -

Coming into force in accordance with regulation 1

CONTENTS

**PART 1
GENERAL**

1.	Citation, commencement and transitional etc. provision	3
2.	Revocation of superseded EU exit regulations	3

**PART 2
AMENDMENT OF PRIMARY LEGISLATION**

3.	The Greater London Authority Act 1999	3
4.	The Equality Act 2010	4
5.	The Public Services (Social Value) Act 2012	4

**PART 3
AMENDMENT OF SECONDARY LEGISLATION**

CHAPTER 1

THE PUBLIC CONTRACTS REGULATIONS 2015

6.	Amendments commenced on IP completion day	5
7.	Amendments commenced 12 months after IP completion day	18

CHAPTER 2

THE CONCESSION CONTRACTS REGULATIONS 2016

8.	Amendments commenced on IP completion day	18
9.	Amendment commenced 12 months after IP completion day	25

CHAPTER 3

THE UTILITIES CONTRACTS REGULATIONS 2016

10.	Amendments commenced on IP completion day	25
11.	Amendments commenced 12 months after IP completion day	37

CHAPTER 4

AMENDMENT OF OTHER SUBORDINATE LEGISLATION

12.	The Public Contracts Regulations 2006	38
13.	The Utilities Contracts Regulations 2006	38
14.	The Service Charges (Consultation Requirements) (England) Regulations 2003	39
15.	The Provision of Services Regulations 2009	39
16.	The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013	39

PART 4

AMENDMENT OF RETAINED DIRECT EU LEGISLATION

17.	Annex 16 to the EEA Agreement	40
18.	Regulation 2195/2002 of the European Parliament and of the Council	40
19.	Commission Decision 2006/211/EC	40
20.	Commission Decision 2007/141/EC	40
21.	Commission Decision 2010/192/EU	40
22.	Commission Implementing Regulation (EU) 2015/1986	41
23.	Commission Implementing Regulation (EU) 2016/7	41
24.	Commission Implementing Decision (EU) 2017/1870	41

PART 5

CESSATION OF RIGHTS ETC.

25.	Cessation of certain prohibitions on the grounds of nationality	42
26.	Cessation of rights etc. under certain international agreements	42

SCHEDULE — TRANSITIONAL ETC. PROVISION	44
PART 1 — INTERPRETATION	44
PART 2 — PROCUREMENTS PENDING ETC. ON IP COMPLETION DAY	45
PART 3 — PROVISIONS COMMENCED ON IP COMPLETION DAY	47
PART 4 — PROVISIONS COMMENCED 12 MONTHS AFTER IP COMPLETION DAY	48

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 8(1) and 8B(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

(a) 2018 c. 16; section 8 was amended, and section 8B was inserted, by the European Union (Withdrawal Agreement) Act 2020 (c. 1), sections 27 and 18 respectively.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

GENERAL

Citation, commencement and transitional etc. provision

1.—(1) These Regulations may be cited as the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.

(2) Except for regulations 2, 7, 9, 11 and 26, these Regulations come into force on IP completion day.

(3) Regulation 2 comes into force on the day after the day on which these Regulations are made.

(4) Regulations 7, 9, 11 and 26 come into force 12 months after the day on which IP completion day falls.

(5) The Schedule—

(a) makes provision in relation to procurements that are ongoing on IP completion day, including provision—

(i) disapplying in relation to such procurements certain amendments etc. made or to be made (whether by these Regulations or otherwise) in relation to public procurement;

(ii) modifying various references in certain regulations that apply to such procurements;

(b) makes other savings in relation to certain provisions of these Regulations.

Revocation of superseded EU exit regulations

2. The following are revoked—

(a) the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019(a);

(b) the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019(b).

PART 2

AMENDMENT OF PRIMARY LEGISLATION

The Greater London Authority Act 1999

3.—(1) The Greater London Authority Act 1999(c) is amended as follows.

(2) In section 355 (duties of waste collection authorities etc.), in subsection (8)—

(a) in paragraph (b)—

(i) for “sends” substitute “submits”;

(ii) for “Publications Office of the European Union” substitute “UK e-notification service”;

(a) S.I. 2019/560. Those Regulations, which are prospectively amended by the other Regulations that are also revoked by this paragraph, are not yet in force and, by virtue of this revocation, will never come into force. As modified by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 1(1), the provisions of those Regulations would have come into force on IP completion day (or in some cases after IP completion day) but are wholly superseded by the provision made by these Regulations.

(b) S.I. 2019/623, modified by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 1(1).

(c) 1999 c. 29; sections 355(8), 356(3A) and 358(1ZA) and (1BA) were inserted by S.I. 2015/102 and amended by S.I. 2016/275; section 358(1A) and (1C) were respectively substituted and inserted by the Greater London Authority Act 2007 (c. 24), section 39(1) to (3) and amended by S.I. 2015/102.

- (b) in paragraph (c), for “sends” substitute “submits”.
- (3) In section 356 (directions by the Mayor), in subsection (3A)(b)—
 - (a) for “sent” substitute “submitted”;
 - (b) for “Publications Office of the European Union” substitute “UK e-notification service”.
- (4) In section 358 (information about new waste contracts)—
 - (a) in subsection (1ZA)(a)—
 - (i) for “send” substitute “submit”;
 - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
 - (b) in subsection (1A), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”;
 - (c) in subsection (1BA)—
 - (i) in paragraph (a), for “send” substitute “submit”;
 - (ii) in paragraph (b)—
 - (aa) for “send” substitute “submit”;
 - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”;
 - (d) in subsection (1C), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”.
- (5) In section 360 (interpretation of sections 353 to 359), in subsection (2), after the definition of “treatment” insert—

““the UK e-notification service” has the same meaning as in the Public Procurement Regulations”.

The Equality Act 2010

- 4.—**(1) The Equality Act 2010(a) is amended as follows.
- (2) In section 155 (power to impose specific duties: supplementary)—
- (a) in subsection (2), for “Public Sector Directive” substitute “Public Contracts Regulations”;
 - (b) in subsection (3), for the definitions substitute—

““Public Contracts Regulations” means the Public Contracts Regulations 2015 (S.I. 2015/102) or, in Scotland, the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;

“public procurement functions” means functions the exercise of which is regulated by Part 2 of the Public Contracts Regulations 2015 (S.I. 2015/102) or by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time.””.

The Public Services (Social Value) Act 2012

- 5.—**(1) The Public Services (Social Value) Act 2012(b) is amended as follows.
- (2) In section 1 (contracts of relevant authorities)—
- (a) in subsection (2)(a), for “sending a notice to the Publications Office of the European Union” substitute “submitting a notice to the UK e-notification service”;
 - (b) in subsection (15), after the definition of “sub-central contracting authority” insert—

(a) 2010 c. 15; section 155(3) was amended by S.I. 2016/275.
 (b) 2012 c. 3; section 1(2)(a) was amended by S.I. 2015/102; in section 1(15), the definition of “sub-central contracting authority” was inserted by S.I. 2016/275.

““the UK e-notification service” has the same meaning as in the Regulations (whether or not the Regulations apply)”.

PART 3
AMENDMENT OF SECONDARY LEGISLATION
CHAPTER 1
THE PUBLIC CONTRACTS REGULATIONS 2015

Amendments commenced on IP completion day

- 6.—**(1) The Public Contracts Regulations 2015(a) are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “the Commission”;
 - (b) in the definition of “common technical specification”, after “Council” insert “as it has effect in EU law”;
 - (c) after the definition of “Contracts Finder” insert—

“covered by regulation 3(2)”, in relation to an element, a part of a contract, or procurement, means that regulation 3(2)—

 - (a) applies to that element, part or procurement; or
 - (b) would do so if this Part applied;”;
 - (d) after the definition of “design contests” insert—

“devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(b));

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006(c);”;
 - (e) omit the definitions of “ESPD” and “EU Publications Office”;
 - (f) in the definition of “GPA”, after “amended” insert “before IP completion day”;
 - (g) in the definition of “innovation”, omit “the Europe 2020 strategy for smart,”;
 - (h) omit the definition of “qualified certificate for electronic signature”;
 - (i) before the definition of “selection criteria” insert—

“the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;

“SPD” means the Single Procurement Document referred to in regulation 59(1);”;
 - (j) omit the definition of “the Treaties”;

(a) S.I. 2015/102, amended by S.I. 2016/275, 696, 2019/624; there are other amending instruments but none is relevant.

(b) 1998 c. 47; section 6 was amended by S.I. 2011/1053, by the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”), section 12(5), and by the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”), paragraphs 1 and 2; section 6A was inserted by the 2018 Act, section 12(6) and amended by the 2020 Act, Schedule 5, paragraphs 22 and 23; section 7 was amended by the Justice (Northern Ireland) Act 2002 (c. 26), section 84(1) and Schedule 13, by the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), Schedule 4, paragraph 10 by the 2018 Act, Schedule 3, paragraphs 50 and 51, and by the 2020 Act, Schedule 5, paragraphs 22 and 24; section 7A was inserted by the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), section 6(1) and (3).

(c) 2006 c. 32; section 157A was inserted by the Wales Act 2017 (c. 4), section 4(1).

(k) before the definition of “VAT” insert—

““the UK e-notification service” has the meaning given by regulation 51(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with regulation 51(7);”.

(3) In regulation 3 (subject-matter and scope of Part 2), for paragraph (2) substitute the following—

“(2) This Part—

- (a) does not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) does not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(3) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (5), those included in the 1958 List.

(4) Subject to the effect of any regulations made under paragraph (5), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).

(5) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of this Part as if it were changed in respects specified in the regulations.

(6) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(4) In regulation 4 (mixed procurement), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.

(5) In regulation 5 (threshold amounts)—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), for “the sum specified in Article 4(a) of the Public Contracts Directive” substitute “£4,733,252”;
- (ii) in sub-paragraph (b), for “the sum specified in Article 4(b) of the Public Contracts Directive” substitute “£122,976”;
- (iii) in sub-paragraph (c), for “the sum specified in Article 4(c) of the Public Contracts Directive” substitute “£189,330”;
- (iv) in sub-paragraph (d), for “the sum specified in Article 4(d) of the Public Contracts Directive” substitute “£663,540”;

(b) in paragraph (2), for “Article 4(c) of the Public Contracts Directive” substitute “paragraph (1)(c)”;

(c) omit paragraphs (3) and (4).

(6) After regulation 5 insert—

“Review and amendment of certain thresholds

5A.—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 5(1)(a), (b) and (c) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 5(1) in respect of that threshold, the Minister must make regulations amending regulation 5(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and

(b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”.

(7) In regulation 6 (methods for calculating the estimated value of procurement)—

(a) in paragraph (7), for “sent” substitute “submitted”;

(b) in paragraph (14)(a), for “80,000 euro” substitute “£70,778”;

(c) in paragraph (14)(b), for “1 million euro” substitute “£884,720”.

(8) In regulation 9 (public contracts awarded, and design contests organised, pursuant to international rules), in paragraph (1)(a)—

(a) before “Treaties” insert “Retained”;

(b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(9) In regulation 10 (specific exclusions for service contracts)—

(a) in paragraph (1)(d)—

(i) in paragraph (i)—

(aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time,”;

(bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;

(cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;

(ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time”;

(iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;

(b) in paragraph (2), after sub-paragraph (a) insert—

“(aa) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar.”.

(10) In regulation 11 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section”.

(11) In regulation 12 (public contracts between entities within the public sector), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(12) In regulation 13 (contracts subsidised by contracting authorities)—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), for “Article 13(a) of the Public Contracts Directive” substitute “regulation 5(1)(a)”;
 - (ii) in sub-paragraph (b), for “Article 13(b) of the Public Contracts Directive” substitute “regulation 5(1)(c)”;
- (b) omit paragraph (2).
- (13) In regulation 15 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (14) In regulation 16 (mixed procurement involving defence or security aspects)—
 - (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
 - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (15) In regulation 17 (public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
 - (a) in sub-paragraph (a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State” substitute “the United Kingdom”;
 - (iii) for “third” substitute “other”;
 - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (16) In regulation 19 (economic operators), omit paragraph (1).
- (17) In regulation 20 (reserved contracts), in paragraph (2), for “Article 20 of the Public Contracts Directive” substitute “this regulation”.
- (18) In regulation 22 (rules applicable to communication)—
 - (a) in paragraph (15)(a)(i)—
 - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
 - (ii) for “sent” substitute “submitted”;
 - (b) in paragraph (17)(c), for the words from “accept” to the end substitute “act in accordance with Article 27 of that Regulation(a) (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;
 - (c) in paragraph (20), for the words from “the Public” to the end substitute “this Part”;
 - (d) in paragraph (21)—
 - (i) in the words before sub-paragraph (a), for the words from “in accordance” to “Decision 2011/130/EU” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506(b) laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;
 - (ii) in sub-paragraph (b), for the words from “allow” to the end substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”.
- (19) After regulation 22 insert—

“Powers to amend regulation 22

Exceptions to obligation to require use of electronic means of communication

(a) Article 27 of EUR 2014/910 was amended (from IP completion day) by S.I. 2019/89.
 (b) EUDN 2015/1506, amended (from IP completion day) by S.I. 2019/89.

22A.—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 22 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
- (b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 22.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 22 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

Requirements relating to tools and devices for electronic receipt of documents

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 22(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(20) In regulation 25 (conditions relating to the GPA and other international agreements)—

- (a) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
 - (i) for “is bound” substitute “was, immediately before IP completion day, bound”;
 - (ii) for “of the EU” substitute “of the United Kingdom”;
- (b) after that paragraph (1) insert—

“(2) For the purposes of paragraph (1)—

- (a) each country that was a member State immediately before IP completion day is deemed to be a signatory to the GPA; and
- (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
 - (i) paragraph 2(a) of Annex 1;
 - (ii) Annex 6.”.

(21) In regulation 26 (choice of procedures), in paragraph (2), omit “and the Public Contracts Directive”.

(22) In regulation 27 (open procedure)—

- (a) in paragraph (2), for “sent” substitute “submitted”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), for “for the contract notice in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
- (c) in paragraph (5), for “sent” substitute “submitted”.

(23) In regulation 28 (restricted procedure)—

- (a) in paragraph (2)(a), for “sent” substitute “submitted”;
- (b) in paragraph (6)—

- (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
 - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (24) In regulation 29 (competitive procedure with negotiation)—
 - (a) in paragraph (4)(a), for “sent” substitute “submitted”;
 - (b) in paragraph (6)—
 - (i) in sub-paragraph (a), for “in section 1 of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
 - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (25) In regulation 30 (competitive dialogue), in paragraph (2), for “sent” substitute “submitted”.
- (26) In regulation 31 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (27) In regulation 32 (use of the negotiated procedure without prior publication), in paragraph (2)(a), for the words from “and that” to the end substitute—
 - “and that—
 - (i) a report is sent to the Cabinet Office if it so requests;
 - (ii) where the contracting authority is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under paragraph (i));
 - (iii) where the contracting authority is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under paragraph (i));”
- (28) In regulation 34 (dynamic purchasing systems)—
 - (a) in paragraph (9)(a), for “sent” substitute “submitted”;
 - (b) in paragraph (25), for “ESPD” substitute “SPD”;
 - (c) for paragraph (28) substitute the following—
 - “(28) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.
 - (28A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (27) or (28), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 50.”.
- (29) Omit regulation 39 (procurement involving contracting authorities from other member States).
- (30) In regulation 42 (technical specifications)—
 - (a) in paragraph (9), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
 - (b) in paragraph (11), in the words before sub-paragraph (a), after “compatible with” insert “retained”.
- (31) In regulation 48 (prior information notices)—
 - (a) in paragraph (2), after “Directive” insert—
 - “, but as if—

- (a) in paragraph 2, “the second and third subparagraph of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations; and
 - (b) in paragraph 9, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
;
 - (b) in paragraph (3)(a), for “send” substitute “submit”;
 - (c) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) after “Directive” insert “, but as if, in paragraph 6, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (d) in paragraph (5)—
 - (i) in sub-paragraph (c)—
 - (aa) for “set out in section 1 of part B of Annex V to the Public Contracts Directive” substitute “required by paragraph (2)”;
 - (bb) for “that part” substitute “part B of Annex 5 to the Public Contracts Directive, but as if paragraph 12 of that part (financing by EU funds) were omitted”;
 - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (32) For regulation 49 (contract notices) substitute—

“Contract notices

- 49. Contract notices—**
- (a) shall contain the information set out in part C of Annex 5 to the Public Contracts Directive, but as if—
 - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
 - (ii) paragraph 24 (financing by EU funds) were omitted;
 - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
 - (iv) in paragraph 28, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) shall be submitted for publication in accordance with regulation 51.”.
- (33) In regulation 50 (contract award notices)—
- (a) in paragraphs (1), (4) and (5)(a) and (b), for “send” substitute “submit”;
 - (b) for paragraph (2) substitute—

“(2) Such notices—

 - (a) shall contain the information set out in part D of Annex 5 to the Public Contracts Directive, but as if—
 - (i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations;
 - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted;
 - (iii) paragraph 15 (financing by EU funds) were omitted;
 - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;

- (v) in paragraph 18, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) shall be submitted for publication in accordance with regulation 51.”.
- (34) In regulation 51 (form and manner of sending notices for publication at EU level)—
 - (a) for the heading, substitute “Publication on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) in the words before sub-paragraph (a)—
 - (aa) after “regulations” insert “34,”;
 - (bb) for “sent” substitute “submitted”;
 - (cc) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
 - (ii) omit sub-paragraphs (a) and (b);
 - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (d) in paragraph (3)—
 - (i) for “EU Publications Office” substitute “provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
 - (iii) for “sent” substitute “submitted”;
 - (e) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) omit the words from “, provided” to the end;
 - (f) after paragraph (4) insert—

“(5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.
 - (6) The Minister for the Cabinet Office must make arrangements under which—
 - (a) notices that are submitted to the UK e-notification service for publication are published in an area of the portal that is freely accessible to the public; and
 - (b) confirmations are issued for the purposes of paragraph (3).
 - (7) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”.
- (35) In regulation 52 (publication at national level)—
 - (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “34,”;
 - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (c) in paragraph (3)—
 - (i) after “regulations” insert “34,”;
 - (ii) for the words from “at national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service”;

- (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
- (e) in paragraph (5)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
- (f) in paragraph (6)—
 - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

(36) In regulation 53 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal of a notice sent” substitute “on the UK e-notification service of a notice submitted”.

(37) In regulation 56 (general principles in awarding contracts etc)—

- (a) in paragraph (2)—
 - (i) omit “EU law,”;
 - (ii) after “agreements or” insert “, subject to paragraphs (2A) and (2B),”;
- (b) after paragraph (2) insert—

“(2A) Where—

- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (2), and
- (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were listed.

(2B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were not listed.

(2C) In paragraphs (2A) and (2B)—

- (a) “listed” means listed as described in paragraph (2); and
- (b) where paragraph (2) already has effect as if an agreement were listed, “already listed” includes that agreement.”.

(38) In regulation 57 (exclusion grounds), in paragraph (1)—

- (a) omit sub-paragraph (e);
- (b) in sub-paragraph (n), in the words before paragraph (i), for “Article 57(1)” substitute “Article 57(1)(a), (b), (d), (e) or (f)”.

(39) In regulation 58 (selection criteria), omit paragraph (5).

(40) In regulation 59 (European Single Procurement Document)—

- (a) in the heading, omit “European”;
- (b) in paragraph (1), omit “European”;
- (c) in each of paragraphs (2) to (7), for “ESPD” substitute “SPD”;
- (d) in paragraph (11)(a), for “any member State” substitute “the United Kingdom”.

(41) In regulation 60 (means of proof)—

- (a) in paragraph (4)(a) and (b), omit “member State or”;

- (b) in paragraph (5)—
 - (i) omit “member State or” in both places;
 - (ii) omit “member States or”.
- (42) Omit regulation 61 (recourse to e-Certis).
- (43) In regulation 62 (quality assurance standards and environmental management standards)—
 - (a) omit paragraph (2);
 - (b) in paragraph (4)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) in sub-paragraph (c), omit “other”;
 - (iii) omit the words after sub-paragraph (c).
- (44) Omit regulation 64 (recognition of official lists of approved economic operators and certification by certification bodies).
- (45) In regulation 68 (life-cycle costing)—
 - (a) in paragraph (3)(c)—
 - (i) omit ‘third’;
 - (ii) for “is bound” substitute “was, immediately before IP completion day, bound”;
 - (b) omit paragraphs (5) and (6).
- (46) In regulation 69 (abnormally low tenders)—
 - (a) in paragraph (2), omit sub-paragraph (f);
 - (b) omit paragraphs (6) and (7).
- (47) In regulation 71 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (48) In regulation 72 (modification of contracts during their term)—
 - (a) in paragraph (3), for “send” substitute “submit”;
 - (b) in paragraph (4), after “Directive” insert—
 - “, but as if—
 - (a) paragraph 9 (financing by EU funds) were omitted;
 - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
 - (c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (49) In regulation 73 (termination of contracts), in paragraph (1)—
 - (a) after paragraph (a), insert “or”;
 - (b) after paragraph (b), omit “; or”;
 - (c) omit paragraph (c).
- (50) In regulation 75 (publication of notices)—
 - (a) in paragraph (4), for “sending” substitute “submitting”;
 - (b) in paragraph (5), for “send” substitute “submit”.
- (51) In regulation 77 (reserved contracts for certain services), in paragraph (5), for “Article 77 of the Public Contracts Directive” substitute “this regulation”.
- (52) In regulation 79 (notices)—
 - (a) in paragraph (2)—
 - (i) in sub-paragraph (a), after “Directive” insert—
 - “, but as if—

- (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
 - (ii) in paragraph 16, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
 - (b) in paragraph (3)—
 - (i) for “send” substitute “submit”;
 - (ii) for “of dispatch” substitute “on which the notice was submitted to the UK e-notification service”;
 - (c) in paragraph (4), after “Directive” insert—
 - “, but as if—
 - (a) paragraph 12 (financing by EU funds) were omitted;
 - (b) in paragraph 13, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
 - (c) in paragraph 14, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (53) In regulation 80 (rules on the organisation of design contests and the selection of participants), omit paragraph (2).
- (54) In regulation 83 (retention of contract copies)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£884,720”;
 - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,847,200”;
 - (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.
- (55) In regulation 84 (reporting and documentation requirements)—
- (a) for paragraph (4) substitute—
 - “(4) A contracting authority shall communicate the report, or its main elements—
 - (a) to the Cabinet Office if it so requests;
 - (b) where the contracting authority is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under sub-paragraph (a));
 - (c) where the contracting authority is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under sub-paragraph (a)).”;
 - (b) omit paragraph (5);
 - (c) omit paragraph (6) and the italic heading preceding it.
- (56) After regulation 84 insert—

“CHAPTER 4A

REGULATIONS UNDER THIS PART

General provisions about regulations under this Part

84A.—(1) Regulations under this Part are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 3(5) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 22A or 56 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 22A or 56 without such consent, but in such cases the amending regulations must amend regulation 22 or, as the case may be, make provision under regulation 56, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 22A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 22 (so that, for example, different paragraphs apply to devolved Welsh authorities and other contracting authorities or utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 22A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

(57) In regulation 89 (duty owed to economic operators from EEA states)—

- (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;
- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
- (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

(58) In regulation 90 (duty owed to economic operators from certain other states)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) for “GPA state” substitute “country other than the United Kingdom”;
 - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
 - (ii) omit sub-paragraph (b) and the preceding “; and”;
- (b) for paragraph (2) substitute—

“(2) Condition 1 is that—

 - (a) at the relevant time the economic operator is from a GPA state;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

- (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
- (b) the procurement may result in the award of a contract of any description; and

- (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
- (c) in paragraph (3)—
 - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before IP completion day there was”;
 - (bb) for “is bound” substitute “was bound”;
- (d) after paragraph (3) insert—

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
- (e) in paragraph (4)—
 - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
 - (ii) in the definition of “relevant time”—
 - (aa) for “sent” substitute “submitted”;
 - (bb) for “EU Publications Office” substitute “UK e-notification service”.
- (59) In regulation 93 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.
- (60) In regulation 99 (grounds for ineffectiveness)—
 - (a) in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
 - (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.
- (61) In regulation 106 (publication of information on Contracts Finder where contract notices are used)—
 - (a) in paragraph (1)—
 - (i) for “sends” substitute “submits”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (b) in paragraph (4), for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (c) in paragraph (5)—
 - (i) for “sending” substitute “submitting”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”.
- (62) In regulation 108 (publication of information on Contracts Finder about contracts awarded)—
 - (a) in paragraph (1)(a)—
 - (i) for “sends” substitute “submits”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (b) in paragraph (5)—
 - (i) for “sends, or intends to send” substitute “submits, or intends to submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) for the words from “earlier than” to the end substitute “before the notice is published on the UK e-notification service”;
 - (c) in paragraph (7), for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (d) in paragraph (8)—
 - (i) for “sending” substitute “submitting”;

(ii) for “EU Publications Office” substitute “UK e-notification service”.

(63) In regulation 112 (publication of information on Contracts Finder about contracts awarded), in paragraph (4), in the definition of “SME”, for the words from “the Commission” to the end substitute “Annex 1 to Regulation (EU) No 651/2014”.

(64) Omit Schedule 5 (professional and trade registers etc.).

Amendments commenced 12 months after IP completion day

7.—(1) The Public Contracts Regulations 2015 (as amended by regulation 6) are further amended as follows.

(2) Omit regulation 25 (conditions relating to the GPA).

(3) In regulation 68 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.

(4) Omit regulation 90 (duty owed to economic operators from certain other states).

CHAPTER 2

THE CONCESSION CONTRACTS REGULATIONS 2016

Amendments commenced on IP completion day

8.—(1) The Concession Contracts Regulations 2016(a) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “the Commission”;

(b) after the definition of “contracting authorities” insert—

““covered by regulation 7(3)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 7(3)—

(a) applies to that activity, element, part or procurement, or

(b) would do so if these Regulations applied;”;

(c) after the definition of “CPV” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;

(d) in the definition of “exclusive right”, before “Treaties” insert “Retained”;

(e) after the definition of “execution of works” insert—

““GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day(b);”;

(f) after the definition of “prior information notice” insert—

““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;

(a) S.I. 2016/273, amended by S.I. 2019/624.

(b) All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council Decision 2014/115/EU (OJ No L 68, 7.3.2014, p 1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p 2).

(g) omit the definition of “the Treaties”;

(h) before the definition of “utilities” insert—

“the UK e-notification service” has the meaning mentioned in regulation 33(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 33(5);”

(3) In regulation 5 (meaning of “utilities”), in paragraph (4)(b), before “Treaties” insert “Retained”.

(4) In regulation 7 (subject-matter and scope of these Regulations), for paragraph (3) substitute—

“(3) These Regulations—

(a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(4) The arms, munitions and war material to which paragraph (3)(b) applies are, subject to paragraph (6), those included in the 1958 List.

(5) Subject to the effect of any regulations made under paragraph (6), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (3).

(6) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(7) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(5) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts)—

(a) in paragraph (1), for the words from “the sum” to the end substitute “£4,733,252”;

(b) omit paragraph (2);

(c) in paragraph (4), for “sent” substitute “submitted”.

(6) After regulation 9 insert—

“Review and amendment of the threshold in regulation 9(1)

9A.—(1) Every two years the Minister for the Cabinet Office must review the threshold mentioned in regulation 9(1) to verify whether it corresponds with the threshold established in the GPA for works concessions.

(2) The Minister must do so by calculating the sterling value of the threshold on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of the threshold so calculated differs from the sum for the time being mentioned in regulation 9(1) in respect of the threshold, the Minister must make regulations amending regulation 9(1) so as to substitute for that sum the sum equal to that value.

- (5) Such regulations—
 - (a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and
 - (b) must provide for the substitution to come into force on the following 1st January.
- (6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”.
- (7) In regulation 10 (general exclusions)—
 - (a) in paragraph (2), for the words from “in accordance” to “applicable to” substitute “for the exercise of one of the”;
 - (b) in paragraph (3), for the words from “EU” to “for” substitute “exclusive right was not granted following the application of”;
 - (c) in paragraph (4)(a), for “granting of an operating licence” substitute “economic operator’s status as a qualifying air carrier^(a)”;
 - (d) in paragraph (5)(a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State and one or more third” substitute “the United Kingdom and one or more other”;
 - (e) in paragraph (9)—
 - (i) in sub-paragraph (a)—
 - (aa) for “one or more member States” substitute “the United Kingdom”;
 - (bb) for “third” substitute “other”;
 - (ii) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”;
 - (iii) in sub-paragraph (c), for “a member State” substitute “the United Kingdom”;
 - (iv) in sub-paragraph (g)—
 - (aa) for “third country” substitute “country other than the United Kingdom or Gibraltar”;
 - (bb) for “territory of the EU” substitute “United Kingdom and Gibraltar”;
 - (f) in paragraph (10), omit “or another member State”;
 - (g) in paragraph (11)(d)—
 - (i) in paragraph (i)—
 - (aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time,”;
 - (bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
 - (cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
 - (ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time”;
 - (iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
 - (h) in paragraph (12), after sub-paragraph (a) insert—
 - “(aa) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar.”.

(a) See the definition in Article 2(11A) which is inserted into EUR 2008/1008, on IP completion day, by S.I. 2018/1392, Schedule 2, paragraph 4(6).

- (i) in paragraph (14)—
 - (i) for “third country” substitute “country other than the United Kingdom”;
 - (ii) for “EU” substitute “United Kingdom”.
- (8) In regulation 13 (concession contracts awarded to an affiliated undertaking), in paragraph (5)—
 - (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006(a)”;
 - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (9) Omit regulation 15 (notification of information by utilities).
- (10) In regulation 17 (concession contracts between entities within the public sector) in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (11) In regulation 20 (mixed contracts), in paragraph (5), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (12) In regulation 21 (mixed procurement contracts involving defence or security aspects)—
 - (a) in paragraphs (1), (2) and (in both places in) (6)(a), for “Article 346 of TFEU” substitute “regulation 7(3)”;
 - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 7(3)”.
- (13) In regulation 22 (contracts covering both activities listed in Schedule 2 and other activities), in paragraph (6), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (14) In regulation 23 (contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects), in paragraphs (1), (5)(a) and (7), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (15) In regulation 24 (reserved concession contracts), in paragraph (2), for “Article 24 of the Concessions Directive” substitute “this regulation”.
- (16) In regulation 26 (economic operators), omit paragraph (1).
- (17) In regulation 31 (concession notices)—
 - (a) in paragraph (2)(a), after “Directive,” insert—
 - “but as if—
 - (i) in paragraph 3, “Article 34(2)” were a reference to regulation 34(3) of these Regulations;
 - (ii) in paragraph 10, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (iii) paragraph 15 (financing by EU funds) were omitted,”;
 - (b) in paragraph (5), for “send” substitute “submit”;
 - (c) in paragraph (6)(a), for the words from “and that” to the end substitute—
 - “and that—
 - (i) a report is sent to the Minister for the Cabinet Office if the Minister so requests;
 - (ii) where the contracting authority or utility is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));
 - (iii) where the contracting authority or utility is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department

(a) 2006 c. 46.

so requests (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));”.

(18) In regulation 32 (concession award notices)—

- (a) in paragraphs (1) and (2), for “send” substitute “submit”;
- (b) in paragraph (3), for “A concession award” substitute “Subject to paragraph (4), a concession award”;
- (c) after paragraph (3) insert—
 - “(4) In paragraph (3), the reference to Annex VII is a reference to that Annex, but as if—
 - (i) in paragraph 7, “Article 41” were a reference to regulation 41 of these Regulations;
 - (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 9(6) and (7) of these Regulations;
 - (iii) paragraph 12 (financing by EU funds) were omitted;
 - (iv) in paragraph 14, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”; and
 - (v) in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.

(19) In regulation 33 (form and manner of publication of notices)—

- (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a)—
 - (aa) for “sent” substitute “submitted”;
 - (bb) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
 - (ii) omit sub-paragraphs (a) and (b);
- (b) in paragraph (2)—
 - (i) for “EU Publications Office” substitute “provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
- (c) in paragraph (3)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “by the EU Publications Office” substitute “on that service”;
 - (iii) for “by that Office” substitute “on that service”;
 - (iv) for the words from “it confirms” to the end substitute “the notice was submitted to that service”;
- (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to that Office” substitute “submission of the notice to that service”;
- (e) after paragraph (4) insert—

“(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (2) of this regulation.”.

(20) In regulation 34 (electronic availability of concession documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.

- (21) In regulation 38 (selection of and qualitative assessment of candidates)—
- (a) in paragraph (8)—
 - (i) omit sub-paragraph (e);
 - (ii) in sub-paragraph (o), in the words before paragraph (i), for “Article 38(4)” substitute “Article 38(4)(a), (b), (d), (e) or (f)”;
 - (b) in paragraph (16)(a)—
 - (i) omit “EU law,”;
 - (ii) after “agreements or” insert “, subject to paragraphs (26) and (27),”;
 - (c) after paragraph (25) insert—

“Power to modify effect of paragraph (16)(a)
- (26) Where—
- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (16)(a), and
 - (b) the agreement is not already listed,
- the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if the agreement were listed.
- (27) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if the agreement were not listed.
- (28) In paragraphs (26) and (27)—
- (a) “listed” means listed as described in paragraph (16)(a); and
 - (b) where paragraph (16)(a) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (22) In regulation 39 (time limits for receipt of applications and tenders for the concession contract), in paragraph (3), for “sent” substitute “submitted”.
- (23) In regulation 41 (award criteria), in paragraph (9), omit “the Europe 2020 strategy for smart,”.
- (24) In regulation 43 (modification of concession contracts during their term)—
- (a) in paragraph (3), for “send” substitute “submit”;
 - (b) in paragraph (4), after “Directive” insert—

“, but as if—

 - (a) paragraph 9 (financing by EU funds) were omitted;
 - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”;
 - (c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (25) In regulation 44 (termination of concession contracts), in paragraph (1)—
- (a) after paragraph (a), insert “or”;
 - (b) after paragraph (b), omit “; or”;
 - (c) omit paragraph (c).
- (26) In regulation 47 (notices of decisions to award a concession contract), in paragraph (5)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (27) In regulation 50 (duty owed to economic operators from EEA states)—
- (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;

- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
 - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (28) In regulation 51 (duty owed to economic operators from certain other states)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) for “GPA state” substitute “country other than the United Kingdom”;
 - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
 - (ii) omit sub-paragraph (b) and the preceding “; and”;
 - (b) for paragraph (2) substitute—

“(2) Condition 1 is that—

 - (a) at the relevant time the economic operator is from a GPA state;
 - (b) the procurement may result in the award of a concession contract of any description; and
 - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a concession contract of that description.

(2A) Condition 2 is that—

 - (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
 - (b) the procurement may result in the award of a concession contract of any description; and
 - (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a concession contract of that description.”;
 - (c) in paragraph (3)—
 - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before IP completion day there was”;
 - (bb) for “is bound” substitute “was bound”;
 - (d) after paragraph (3) insert—

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
 - (e) in paragraph (4)—
 - (i) omit sub-paragraph (a);
 - (ii) in sub-paragraph (b), for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
 - (iii) in sub-paragraph (c)—
 - (aa) for “sent” substitute “submitted”;
 - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”.

(29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a) and (b), for “in the Official Journal” substitute “on the UK e-notification service”.

(30) In regulation 60 (grounds for ineffectiveness)—

 - (a) in paragraphs (2) and (3)(a), (b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
 - (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.

(31) In Part 6, before regulation 65 insert—

“General provisions about regulations under these Regulations

65ZA.—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 7(6) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulation 38 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 38 without such consent, but in such cases the amending regulations must make provision in such a way as to avoid altering the effect of that regulation in so far as it applies to—

(a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;

(b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Regulations under these Regulations may make supplementary, incidental, transitional, transitory or saving provision.”.

Amendment commenced 12 months after IP completion day

9.—(1) The Concession Contracts Regulations 2016 (as amended by regulation 8) are further amended as follows.

(2) Omit regulation 51 (duty owed to economic operators from certain other states).

CHAPTER 3

THE UTILITIES CONTRACTS REGULATIONS 2016

Amendments commenced on IP completion day

10.—(1) The Utilities Contracts Regulations 2016^(a) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “the Commission”;

(b) after the definition of “contracting authorities” insert—

““covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—

(a) applies to that activity, element, part or procurement, or

(b) would do so if these Regulations applied;”;

(c) after the definition of “design contests” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;

(a) S.I. 2016/274, amended by S.I. 2016/696, 2019/624.

- (d) omit the definition of “EU Publications Office”;
 - (e) in the definition of “GPA”, after “amended” insert “before IP completion day”;
 - (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart.”;
 - (g) omit the definition of “qualified certificate for electronic signature”;
 - (h) before the definition of “selection criteria” insert—
 - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.”;
 - (i) omit the definition of “the Treaties”;
 - (j) before the definition of “Utilities Contracts Directive” insert—
 - ““the UK e-notification service” has the meaning mentioned in regulation 71(6), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 71(6);”
- (3) In regulation 3 (subject-matter and scope), for paragraph (2) substitute—
- “(2) Parts 1 to 4—
- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (2A) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (2C), those included in the 1958 List.
- (2B) Subject to the effect of any regulations made under paragraph (2C), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (2C) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of Parts 1 to 4 as if it were changed in respects specified in the regulations.
- (2D) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.
- (4) In regulation 6 (mixed procurement covering the same activity), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 7 (procurement covering several activities), in paragraph (4), for “Article 346 of TFEU” substitute “covered by regulation 3(2)”.
- (6) In regulation 16 (threshold amounts)—
- (a) in paragraph (1)(a), for “the sum specified in Article 15(a) of the Utilities Contracts Directive” substitute “£378,660”;
 - (b) in paragraph (1)(b), for “the sum specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,733,252”;
 - (c) in paragraph (1)(c), for “the sum specified in Article 15(c) of the Utilities Contracts Directive” substitute “£884,720”;
 - (d) omit paragraphs (3) and (4).
- (7) After regulation 16 insert—

“Review and amendment of certain thresholds

16A.—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 16(1)(a) and (b) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 16(1) in respect of that threshold, the Minister must make regulations amending regulation 16(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and

(b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”.

(8) In regulation 17 (methods for calculating the estimated value of the procurement)—

(a) in paragraph (7), for “sent” substitute “submitted”;

(b) in paragraph (14)—

(i) in sub-paragraph (a), for “EUR 80,000” substitute “£70,778”;

(ii) in sub-paragraph (b), for “EUR 1 million” substitute “£884,720”.

(9) In regulation 18 (contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).

(10) In regulation 19 (contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country)—

(a) in the heading, for “in a third country” substitute “outside the United Kingdom”;

(b) in paragraph (1)(b)—

(i) for “in a third country” substitute “outside the United Kingdom”;

(ii) for “EU” substitute “United Kingdom”;

(c) omit paragraph (2).

(11) In regulation 20 (contracts awarded and design contests organised pursuant to international rules), in paragraph (1)(a)—

(a) before “Treaties” insert “Retained”;

(b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(12) In regulation 21 (specific exclusions for service contracts)—

(a) in paragraph (1)(c)—

(i) in paragraph (i)—

(aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time,”;

(bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;

- (cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
- (ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time,”;
- (iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
- (b) in paragraph (2), before sub-paragraph (a) insert—
 - “(za) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar;”.
- (13) In regulation 22 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before IP completion day in giving rise to any of the powers, rights etc. mentioned in that section”.
- (14) In regulation 24 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (15) In regulation 25 (mixed procurement covering the same activity and involving defence or security aspects)—
 - (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
 - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (16) In regulation 26 (procurement covering several activities and involving defence or security aspects), in paragraphs (5)(b) and (7), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (17) In regulation 27 (contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
 - (a) in sub-paragraph (a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State” substitute “the United Kingdom”;
 - (iii) for “third” substitute “other”;
 - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (18) In regulation 28 (contracts between contracting authorities), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (19) In regulation 29 (contracts awarded to an affiliated undertaking), in paragraph (5)—
 - (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006”;
 - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (20) Omit regulation 31 (notification of information).
- (21) In regulation 33 (contracts subject to special arrangements)—
 - (a) in paragraph (b), for the words from “EUR” in the words before sub-paragraph (i) to the end of sub-paragraph (xiii) substitute “£4,423,600, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)”;
 - (b) in paragraph (c)—
 - (i) in the words before sub-paragraph (i)—
 - (aa) for “400,000 euro” substitute “£353,890”;
 - (bb) for “5,000,000 euro” substitute “£4,423,600”;
 - (ii) in sub-paragraph (i), for the words from “the information” to the end substitute “, for not less than 4 years from the date on which the contract is awarded, the information

that would have been required to be included in a contract award notice if paragraph (b) had applied”;

(iii) in sub-paragraph (ii)—

(aa) omit “, either”;

(bb) for the words from “Commission” to the end substitute “Minister for the Cabinet Office”.

(22) In regulation 34 (activities directly exposed to competition), in paragraph (2), omit sub-paragraph (b) and the preceding “; or”.

(23) Omit regulation 35 (procedure for establishing whether regulation 34(2)(b) is applicable).

(24) In regulation 37 (economic operators), omit paragraph (1).

(25) In regulation 38 (reserved contracts), in paragraph (2), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.

(26) In regulation 40 (rules applicable to communication)—

(a) in paragraph (15)(a)(i)—

(i) for “in the Official Journal” substitute “on the UK e-notification service”;

(ii) for “sent” substitute “submitted”;

(b) in paragraph (17)(c), for the words from “accept” to the end substitute “act in accordance with Article 27 of that Regulation (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;

(c) in paragraph (21)—

(i) in the words before sub-paragraph (a), for the words from “in accordance” to “Decision 2011/130/EU” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;

(ii) in sub-paragraph (b), for the words from “allow” to the end substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”;

(d) in paragraph (20), in the words after sub-paragraph (b), for the words from “Utilities” to the end substitute “these Regulations”.

(27) After regulation 40 insert—

“Powers to amend regulation 40

Exceptions to obligation to require use of electronic means of communication

40A.—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 40 by—

(a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or

(b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 40.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 40 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

Requirements relating to tools and devices for electronic receipt of documents

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 40(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(28) In regulation 43 (conditions relating to the GPA and other international agreements)—

(a) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—

(i) for “is bound” substitute “was, immediately before IP completion day, bound”;

(ii) for “of the EU” substitute “of the United Kingdom”;

(b) after that paragraph insert—

“(2) For the purposes of paragraph (1)—

(a) each country that was a member State immediately before IP completion day is deemed to be a signatory to the GPA; and

(b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—

(i) paragraph 2(a) of Annex 1;

(ii) Annex 6.”.

(29) In regulation 44 (choice of procedures), in paragraph (2), omit “and the Utilities Contracts Directive”.

(30) In regulation 45 (open procedure)—

(a) in paragraph (2), for “sent” substitute “submitted”;

(b) in paragraph (4)—

(i) in sub-paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” substitute “regulation 67(2) and (5)(c)”;

(ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;

(c) in paragraph (5), for “sent” substitute “submitted”.

(31) In regulation 46 (restricted procedure), in paragraph (2)(a), for “sent” substitute “submitted”.

(32) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2)(a), for “sent” substitute “submitted”.

(33) In regulation 48 (competitive dialogue), in paragraph (2)(a), for “sent” substitute “submitted”.

(34) In regulation 49 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.

(35) In regulation 52 (dynamic purchasing systems)—

(a) in paragraph (9)(a), for “sent” substitute “submitted”;

(b) for paragraph (29) substitute the following—

“(29) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(29A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (28) or (29), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 70.”.

(36) Omit regulation 57 (procurement involving utilities from other member States).

(37) In regulation 60 (technical specifications)—

- (a) in paragraph (8), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
- (b) in paragraph (10), after “compatible with” insert “retained”;
- (c) in paragraph (16), in the definition of “common technical specification”, after “Council” insert “as it has effect in EU law”.

(38) In regulation 67 (periodic indicative notices)—

- (a) in paragraph (2), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice to the UK e-notification service for the purposes of these Regulations”;

- (b) in paragraph (3)(a), for “send” substitute “submit”;

(c) in paragraph (4)—

- (i) for “send” substitute “submit”;

- (ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;

(d) in paragraph (5)—

- (i) in sub-paragraph (c)—

- (aa) for “set out section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”;

- (bb) after “II of Part A” insert—

“of Annex 6 to the Utilities Contracts Directive, but as if—

- (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations”; and

- (ii) in paragraph 21—

- (aa) “Article 82” were a reference to regulation 82 of these Regulations; and

- (bb) “point (b) of Article 67(2)” were a reference to regulation 67(5)(b) of these Regulations”;

- (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.

(39) In regulation 68 (notices on the existence of a qualification system)—

- (a) in paragraph (1), omit the words from “which” to “Directive,”;

(b) after paragraph (1) insert—

“(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 82 of these Regulations.”;

(c) in paragraph (3)—

- (i) in the words before sub-paragraph (a)—

- (aa) for “notify the EU Publications Office” substitute “give notice”;

- (bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;

- (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.

(40) For regulation 69 (contract notices) substitute—

“Contract notices

69.—(1) Contract notices shall contain the information set out in the relevant part of Annex 11 to the Utilities Contracts Directive, but as if—

- (a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations;
- (b) in—
 - (i) paragraph 19 of Part A,
 - (ii) paragraph 16 of Part B, and
 - (iii) paragraph 15 of Part C,“Article 82” were a reference to regulation 82 of these Regulations;
- (c) in—
 - (i) paragraph 20 of Part A,
 - (ii) paragraph 18 of Part B, and
 - (iii) paragraph 18 of Part C,“in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”; and
- (d) in—
 - (i) paragraph 22 of Part A,
 - (ii) paragraph 20 of Part B, and
 - (iii) paragraph 20 of Part C,“date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

(2) Such notices shall be submitted for publication in accordance with regulation 71.”.

(41) In regulation 70 (contract award notices)—

- (a) in paragraph (1), for “send” substitute “submit”;
- (b) for paragraph (2) substitute—

“(2) Such notices shall—

- (a) contain the information set out in Annex 12 to the Utilities Contracts Directive, but as if—
 - (i) in paragraph 5(b), “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
 - (ii) in paragraph 5(c), “Article 50” were a reference to regulation 50(1) of these Regulations;
 - (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 50(1)(h) of these Regulations;
 - (iv) in paragraph 17, the words in brackets were omitted;
 - (v) in paragraph 19, “Article 64(1)” were a reference to regulation 64(1) of these Regulations;
 - (vi) in paragraph 20, “Article 84” were a reference to regulation 84 of these Regulations; and
 - (vii) in paragraph 21, “date of transmission” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and

(b) be submitted for publication in accordance with regulation 71.”;

- (c) in paragraphs (4) and (5)(a) and (b), for “send” substitute “submit”.

- (42) In regulation 71 (form and manner of sending notices for publication at EU level)—
- (a) for the heading substitute “Publication on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “52,”;
 - (ii) for “sent” (in both places) substitute “submitted”;
 - (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;
 - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (d) in paragraph (3)—
 - (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
 - (e) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) omit the words from “, provided” to the end;
 - (f) omit paragraph (5);
 - (g) at the end insert—

“(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (3) of this regulation.”.
- (43) In regulation 72 (publication at national level)—
- (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “52,”;
 - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (c) in paragraph (3)—
 - (i) after “regulations” insert “52,”;
 - (ii) for the words from “at the national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service.”;
 - (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
 - (e) in paragraph (5)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
 - (f) in paragraph (6)—
 - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

(44) In regulation 73 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.

(45) In regulation 76 (general principles), in paragraph (6)—

- (a) omit “EU law,”;
- (b) after “agreements or” insert “, subject to paragraphs (6A) and (6B)”;
- (c) after paragraph (6) insert—

“(6A) Where—

- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
- (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were listed.

(6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were not listed.

(6C) In paragraphs (6A) and (6B)—

- (a) “listed” means listed as described in paragraph (6), and
- (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.”.

(46) In regulation 81 (quality assurance standards and environmental management standards)—

- (a) omit paragraph (2);
- (b) in paragraph (4)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) in sub-paragraph (c), omit “other”;
 - (iii) omit the words after sub-paragraph (c).

(47) In regulation 83 (life-cycle costing)—

- (a) in paragraph (3)(c)—
 - (i) omit “third”;
 - (ii) for “is bound” substitute “was, immediately before IP completion day, bound”;
- (b) omit paragraphs (5) and (6).

(48) In regulation 84 (abnormally low tenders)—

- (a) in paragraph (2), omit sub-paragraph (f);
- (b) omit paragraphs (6) and (7).

(49) In regulation 85 (tenders comprising products originating in third countries)—

- (a) in paragraph (1), after “has not” insert “, before IP completion day,”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), for the words from “in accordance” to “time to time” substitute “as it would be determined for the purposes of Part 1 of the Taxation (Cross-border Trade) Act 2018(a) if the products were chargeable goods within the meaning of that Part”;
 - (ii) in sub-paragraph (c), after “Directive has” insert “, before IP completion day,”.

(50) In regulation 87 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.

(51) In regulation 88 (modification of contracts during their term)—

(a) 2018 c. 22. See section 17 (place of origin of chargeable goods).

- (a) in paragraph (2), for “send” substitute “submit”;
 - (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.
- (52) In regulation 89 (termination of contracts), in paragraph (1), omit sub-paragraph (c).
- (53) In regulation 91 (publication of notices)—
- (a) in paragraph (4), for “send” substitute “submit”;
 - (b) in paragraph (5), after “Directive” insert “, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
 - (c) in paragraph (6), for “send” substitute “submit”.
- (54) In regulation 93 (reserved contracts for certain services), in paragraph (5), for “Article 94 of the Utilities Contracts Directive” substitute “this regulation”.
- (55) In regulation 95 (notices)—
- (a) in paragraph (2)—
 - (i) in sub-paragraph (a), after “Directive” insert “, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
 - (b) in paragraph (3), in the words before sub-paragraph (a), for “sent” substitute “submitted”;
 - (c) in paragraph (4), after “Directive” insert “, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”.
- (56) In regulation 96 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).
- (57) In regulation 98 (retention of contract copies)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£884,720”;
 - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,847,200”;
 - (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.
- (58) In regulation 99 (information and documentation requirements)—
- (a) in paragraph (3), after “regulation” insert “33(b),”;
 - (b) for paragraph (7) substitute—

“(7) A utility shall communicate the report, or its main elements—

 - (a) to the Minister for the Cabinet Office if the Minister so requests;
 - (b) where the utility is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a));
 - (c) where the utility is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a)).”;
 - (c) omit paragraph (8);
 - (d) omit paragraph (9) and the italic heading preceding it.
- (59) In regulation 104 (duty owed to economic operators from EEA States)—
- (a) in the heading, for “EEA States” substitute “the United Kingdom and Gibraltar”;

- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
 - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (60) In regulation 105 (duty owed to economic operators from certain other States)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) for “GPA state” substitute “country other than the United Kingdom”;
 - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
 - (ii) omit sub-paragraph (b) and the preceding “; and”;
 - (b) for paragraph (2) substitute—

“(2) Condition 1 is that—

 - (a) at the relevant time the economic operator is from a GPA state;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

 - (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
 - (c) in paragraph (3)—
 - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before IP completion day there was”;
 - (bb) for “is bound” substitute “was bound”;
 - (d) after paragraph (3) insert—

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
 - (e) in paragraph (4)—
 - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
 - (ii) in the definition of “relevant time”—
 - (aa) for “sent” (in both places) substitute “submitted”;
 - (bb) for “EU Publications Office” (in both places) substitute “UK e-notification service”;
 - (cc) for “sending” substitute “submitting”.

(61) In regulation 108 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a), for “in the Official Journal” substitute “on the UK e-notification service”.

(62) In regulation 114 (grounds for ineffectiveness)—

 - (a) in paragraphs (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
 - (b) in paragraph (4)—
 - (i) in the words before sub-paragraph (a), omit the words from “is in” to “and which”;
 - (ii) in sub-paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service”.

(63) After regulation 119 insert—

“PART 5A

AMENDING THESE REGULATIONS

General provisions about regulations under these Regulations

119A.—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 3(2C) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 40A or 76 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 40A or 76 without such consent, but in such cases the amending regulations must amend regulation 40 or, as the case may be, make provision under regulation 76, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 40A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 40 (so that, for example, different paragraphs apply to devolved Welsh authorities and other utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 40A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

Amendments commenced 12 months after IP completion day

11.—(1) The Utilities Contracts Regulations 2016 (as amended by regulation 10) are further amended as follows.

(2) Omit regulation 43 (conditions relating to the GPA).

(3) In regulation 83 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.

(4) Omit regulation 85 (tenders comprising products originating in third countries).

(5) Omit regulation 105 (duty owed to economic operators from certain other States).

CHAPTER 4
AMENDMENT OF OTHER SUBORDINATE LEGISLATION

The Public Contracts Regulations 2006

12.—(1) To the extent that the Public Contracts Regulations 2006(a) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if the following were omitted—

- (a) regulation 14(2) (which requires certain reports to be supplied to the European Commission on request);
- (b) regulation 32(16) (which provides for the provision of certain reports requested by the European Commission);
- (c) regulation 40(2) (which requires certain information to be provided for the European Commission).

(3) Where—

- (a) immediately before IP completion day, a procurement has been commenced,
- (b) on or after IP completion day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before IP completion day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after IP completion day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after IP completion day.

The Utilities Contracts Regulations 2006

13.—(1) To the extent that the Utilities Contracts Regulations 2006(b) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if—

- (a) regulation 7(7) (which relates to information requested by the European Commission) were omitted;
- (b) in regulation 8(3) (which provides for certain information to be sent to or for the European Commission)—
 - (i) in sub-paragraph (a), the words from “5,000,000 euro” in the words before sub-paragraph (i) to the end of paragraph (xiii) read “£4,101,850, submit, within 48 days of the award, a contract award notice to the UK e-notification service for publication, containing the information referred to in regulation 70(2)(a) of the Utilities Contracts Regulations 2016”;
 - (ii) in sub-paragraph (b)—
 - (aa) “400,000 euro” read “£328,150”;
 - (bb) “5,000,000 euro” read “£4,101,850”;
 - (cc) paragraph (ii) read as follows—

(a) S.I. 2006/5. The Regulations were revoked by S.I. 2015/102 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/3542, 2008/2256, 2683, 2848, 2009/1307, 2992, 2010/133, 976, 2011/1043, 1848, 2053, 2581, 3058, 2013/252, 1431, 2014/834 and by the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 20, paragraph 2.

(b) S.I. 2006/6. The Regulations were revoked by S.I. 2016/274 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/2157, 3542, 2008/2256, 2848, 2009/3100, 2011/1043, 1441, 2053, 1848, 2012/1659, 2013/610, 2015/102.

- “(ii) if the Minister requests that information in relation to any such contract, forthwith send it to the Minister;”;
- (c) regulation 38(2) (which provides for the provision of certain reports requested by the European Commission) were omitted.
- (3) Where—
 - (a) immediately before IP completion day, a procurement has been commenced,
 - (b) on or after IP completion day, a contract is awarded or any other act is done, pursuant to that procurement, and
 - (c) that award or other act would, if it had occurred before IP completion day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after IP completion day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after IP completion day.

The Service Charges (Consultation Requirements) (England) Regulations 2003

14.—(1) The Service Charges (Consultation Requirements) (England) Regulations 2003(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “public notice”, for the words from “published” to the end substitute “published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)”.

The Provision of Services Regulations 2009

15.—(1) The Provision of Services Regulations 2009(b) are amended as follows.

(2) In regulation 31 (certificates and other documents), in paragraph (5)(g), omit “(read with regulation 58(5))”.

The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013

16.—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(c) are amended as follows.

(2) In Schedule 2 (application of the Utilities Contracts Regulations 2016), in Part 1, in the entry relating to regulation 99 (information and documentation requirements), in the second column—

- (a) for ““the Commission”, in the first place it occurs,” substitute ““the Minister for the Cabinet Office” in sub-paragraph (a)”;
- (b) for ““, in the second place it occurs,” substitute “as if the subsequent reference to “the Minister” in sub-paragraph (a)”;
- (c) for “(3), (8) and (9)” substitute “(3) and (7)(b) and (c).”

(a) S.I. 2003/1987, amended by S.I. 2006/5, 2015/102; there are other amending instruments but none is relevant.

(b) S.I. 2009/2999, amended by S.I. 2015/102; there are other amending instruments but none is relevant.

(c) S.I. 2013/1582, amended by S.I. 2016/275; there are other amending instruments but none is relevant.

PART 4

AMENDMENT OF RETAINED DIRECT EU LEGISLATION

Annex 16 to the EEA Agreement

17. In Annex 16 to the EEA Agreement, omit point 6g (application of Commission Implementing Regulation (EU) 2015/1986).

Regulation 2195/2002 of the European Parliament and of the Council

18.—(1) Regulation 2195/2002 of the European Parliament and of the Council of 5th November 2002 on the Common Procurement Vocabulary (CPV) is amended as follows.

(2) For Articles 2 and 3 substitute the following—

“Article 2

1. The Minister for the Cabinet Office may make regulations amending the Annexes to this Regulation.
2. Regulations under this Article are to be made by statutory instrument.
3. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
4. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) In Article 4, omit the second paragraph.

Commission Decision 2006/211/EC

19.—(1) Commission Decision 2006/211/EC of 8th March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016(a)”.

(3) Omit Articles 2 and 3.

Commission Decision 2007/141/EC

20.—(1) Commission Decision 2007/141/EC of 26th February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Articles 2 and 3.

Commission Decision 2010/192/EU

21.—(1) Commission Decision 2010/192/EU of 29th March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive

(a) S.S.I. 2016/49.

2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Article 2.

Commission Implementing Regulation (EU) 2015/1986

22. Commission Implementing Regulation (EU) No 2015/1986 of 11th November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 is revoked.

Commission Implementing Regulation (EU) 2016/7

23.—(1) Commission Implementing Regulation (EU) No 2016/7 of 5th January 2016 establishing the standard form for the European Single Procurement Document is amended as follows.

(2) In Article 1—

- (a) for the words from the beginning to “2016, the” substitute “The”;
- (b) for “European single procurement document” substitute “Single Procurement Document”;
- (c) for “Article 59 of Directive 2014/24/EU” substitute “regulation 59 of the Public Contracts Regulations 2006 and regulation 60 of the Public Contracts (Scotland) Regulations 2015(a).”

Commission Implementing Decision (EU) 2017/1870

24.—(1) Commission Implementing Decision (EU) 2017/1870 of 16th October 2017 on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council is amended as follows.

(2) After Article 1 insert—

“Article 1A

- 1. The Minister for the Cabinet Office may make regulations—
 - (a) amending Article 1 so as to substitute—
 - (i) a reference to a different standard;
 - (ii) a different reference to the same standard;
 - (b) amending Article 1 and the Annex so as to substitute, add or remove references to syntaxes.
- 2. Regulations under this Article are to be made by statutory instrument.
- 3. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
- 4. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) Omit Article 2.

(4) In the Annex, for “3(2) of Directive 2014/55/EU” substitute “1”.

(a) S.S.I 2015/446, amended by S.S.I 2019/112; there are other amending instruments but none is relevant.

PART 5

CESSATION OF RIGHTS ETC.

Cessation of certain prohibitions on the grounds of nationality

25. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018^(a); and
- (b) are derived from—
 - (i) Article 18 of the Treaty on the Functioning of the European Union;
 - (ii) Article 4 of the EEA Agreement;
 - (iii) Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed in Ankara on 12th September 1963^(b),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force, to the extent that they do not so cease by virtue of regulation 4 of the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019^(c).

Cessation of rights etc. under certain international agreements

26.—(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from any of the agreements specified in paragraph (2),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force.

(2) The agreements are—

- (a) Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement signed in Washington and Brussels on 30th May 1995^(d);
- (b) Agreement between the European Community and the State of Israel on government procurement signed in Brussels on 10th July 1997^(e);
- (c) Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part signed in Brussels on 8th December 1997^(f);
- (d) Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement signed in Luxembourg on 21st June 1999^(g);
- (e) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part signed by exchange of letters in Luxembourg on 9th April 2001^(h);

(a) 2018 c. 16; section 4(1) is prospectively amended by section 25(3) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) This Agreement was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, and is a pre-accession treaty falling within paragraph 7 of Part 1 of Schedule 1 to the European Communities Act 1972 (c. 68).

(c) S.I. 2019/1401.

(d) OJ No L 134, 20.6.95, p 26.

(e) OJ No L 202, 30.7.97, p 85.

(f) OJ No L 226, 13.8.98, p 25.

(g) OJ No L 114, 30.4.2002, p 430.

(h) OJ No L 84, 20.3.2004, p 3 (the exchange of letters begins at p 3, the text of the Agreement begins at p 13).

- (f) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part signed in Brussels on 11th May 2002**(a)**;
- (g) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part signed in Luxembourg on 12th June 2006**(b)**;
- (h) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part signed in Luxembourg on 15th October 2007**(c)**;
- (i) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part signed in Luxembourg on 29th April 2008**(d)**;
- (j) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part signed in Luxembourg on 16th June 2008**(e)**;
- (k) Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part signed in Bridgetown, Barbados on 15th October 2008**(f)**;
- (l) Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed in Brussels on 6th October 2010**(g)**;
- (m) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed in Brussels on 11th May 2012**(h)**;
- (n) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part signed in Brussels on 21st March 2014**(i)**;
- (o) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part signed in Brussels on 27th June 2014**(j)**;
- (p) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed in Brussels on 27th June 2014**(k)**;
- (q) Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part signed in Strasbourg on 27th October 2015**(l)**;
- (r) Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part signed in Brussels on 24th November 2017**(m)**.

(3) Where applicable, the specification of an agreement by paragraph (2) includes that agreement as amended before IP completion day.

(a) OJ No L 352, 30.12.2002, p 3.
 (b) OJ No L 107, 28.4.2008, p 166.
 (c) OJ No L 108, 29.4.2010, p 3.
 (d) OJ No L 278, 18.10.2013, p 16.
 (e) OJ No L 164, 30.6.2015, p 2.
 (f) OJ No L 289/I, 30.10.2008, p 3.
 (g) OJ No L 127, 14.5.2011, p 6.
 (h) OJ No L 204, 31.7.2012, p 20.
 (i) OJ No L 161, 29.5.2014, p 3.
 (j) OJ No L 261, 30.8.2014, p 4.
 (k) OJ No L 260, 30.8.2014, p 4.
 (l) OJ No L 71, 16.3.2016, p 3.
 (m) OJ No L 23, 26.1.2018, p 4.

Date

Name
Minister for the Cabinet Office

SCHEDULE TRANSITIONAL ETC. PROVISION

Regulation 1(5)

PART 1 INTERPRETATION

Interpretation of Schedule

1.—(1) In this Schedule—

“amendment” includes modification and revocation;

“the Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—

- (a) the Public Contracts Regulations 2006;
- (b) the Utilities Contracts Regulations 2006;
- (c) the Public Contracts Regulations 2015;
- (d) the Concession Contracts Regulations 2016;
- (e) the Utilities Contracts Regulations 2016;

“the second commencement date” is defined by paragraph 10;

“steady state amendments” is defined by paragraph 2.

(2) In this Schedule, the following have the same meaning as in the Procurement Regulations—

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;
- (d) economic operator;
- (e) framework agreement;
- (f) notice on the existence of a qualification system;
- (g) periodic indicative notice;
- (h) prior information notice;
- (i) utility;
- (j) voluntary transparency notice.

(3) None of the savings in this Schedule implies any limitation of the scope of any of the other savings in this Schedule(a).

(a) For example, regulation 60(2) of the Concession Contracts Regulations 2016 is mentioned only in paragraph 8, which saves its previous wording in certain cases, but that does not prevent the more general saving in paragraph 3 from applying to save the previous wording of regulation 60(2) in other cases; nor does the slight overlap between those paragraphs (in cases in which a contract might, before IP completion day, have been awarded but not yet ‘finalised’ as defined in paragraph (3) affect the interpretation of either saving.

PART 2

PROCUREMENTS PENDING ETC. ON IP COMPLETION DAY

Meaning of “steady state amendments”

2. In this Part, “steady state amendments” means—

- (a) amendments made by these Regulations; and
- (b) any other amendments, including future amendments, to the Procurement Regulations that—
 - (i) come into force on, or begin to apply from, IP completion day or any time after IP completion day; and
 - (ii) are not made by or under any of sections 7A, 7B, 7C, 8B and 8C of the European Union (Withdrawal) Act 2018(a).

Saving for procedures launched, but not finalised, before IP completion day

3.—(1) Steady state amendments do not affect any procedure launched by a contracting authority or a utility under the Procurement Regulations if the procedure —

- (a) was launched before IP completion day, and
- (b) was not yet finalised by IP completion day.

(2) But regulation 61 (recourse to e-Certis) of the Public Contracts Regulations 2015 (which is omitted by regulation 6(42) of these Regulations) ceases to be saved at the beginning of the day that is 9 months after the day on which IP completion day falls.

Meaning of ‘procedure’

(3) In sub-paragraph (1), “procedure” includes—

- (a) a procedure using a dynamic purchasing system;
- (b) a procedure for which the call for competition takes the form of—
 - (i) a prior information notice;
 - (ii) a periodic indicative notice; or
 - (iii) a notice on the existence of a qualification system.

Meaning of ‘launched’

(4) For the purposes of sub-paragraph (1), a procedure is launched—

- (a) when a call for competition or any other invitation to submit applications has been made in accordance with the Procurement Regulations;
- (b) where the Procurement Regulations do not require such a call or invitation, when the contracting authority or utility contacted economic operators in relation to the specific procedure.

Meaning of ‘finalised’

(5) For the purposes of sub-paragraph (1), a procedure is finalised—

- (a) upon publication of a contract award notice in accordance with the Procurement Regulations;
- (b) where the Procurement Regulations do not require the publication of such a notice, upon conclusion of the relevant contract;

(a) 2018 c. 16; sections 7A, 7B, 7C, 8B and 8C were inserted by the European Union (Withdrawal Agreement) Act 2020 (c. 1), sections 5, 6, 26(2), 18 and 21 respectively.

- (c) where the contracting authority or utility decided not to award a contract, upon informing the tenderers, or persons otherwise entitled to submit applications, of the reasons why the contract was not awarded.

Saving for call-off procedures under certain framework agreements

4.—(1) If the condition in sub-paragraph (2) is met, steady state amendments do not affect any procedure relating to the performance of a framework agreement, including the award of contracts based on such an agreement, under—

- (a) regulation 33(4) to (11) of the Public Contracts Regulations 2015;
 - (b) regulation 51(4) to (6) of the Utilities Contracts Regulations 2016.
- (2) The condition is that the framework agreement—
- (a) was concluded before IP completion day and had neither expired nor been terminated before IP completion day; or
 - (b) was concluded after IP completion day in accordance with a procedure to which paragraph 3 applied.

Transitional modification of the Procurement Regulations

5.—(1) In relation to a procedure to which paragraph 3 or 4 applies, the Procurement Regulations are to be read, on and after IP completion day, and so far as the context permits or requires, as if—

- (a) any reference (however expressed) to a member State or EEA state included the United Kingdom;
 - (b) any reference (however expressed) to—
 - (i) EU law;
 - (ii) any particular EU Treaty or any part of it;
 - (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document;
 - (iv) any part of EU law not falling within sub-paragraph (ii) or (iii);
 - (v) any tax, duty, levy or interests of the EU, or
 - (vi) any arrangements involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),
 were a reference to any such thing (including any such thing as may have existed previously) so far as it is applicable to and in the United Kingdom by virtue of the relevant withdrawal provisions;
 - (c) any reference (however expressed) to the area of the EU or of the EEA included the United Kingdom;
 - (d) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement);
 - (e) any reference to an enforceable EU obligation were a reference to an obligation that is enforceable by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018; and
 - (f) such other modifications were made as are necessary for any purpose of the relevant withdrawal provisions and are capable of being ascertained from any such purpose or otherwise from those provisions.
- (2) In sub-paragraph (1), “relevant withdrawal provisions” means—
- (a) Title 8 of Part 3 of the withdrawal agreement (ongoing public procurement and similar procedures);

- (b) Title 5 of Part 3 of the EEA EFTA separation agreement (ongoing public procurement and similar procedures).

PART 3

PROVISIONS COMMENCED ON IP COMPLETION DAY

Procurement involving contracting authorities or utilities from other member States

- 6.—(1) This paragraph applies in relation to the omission, by these Regulations, of—
- (a) regulation 39 of the Public Contracts Regulations 2015 (procurement involving contracting authorities from other member States);
 - (b) regulation 57 of the Utilities Contracts Regulations 2016 (procurement involving utilities from other member States).
- (2) Those omissions do not imply—
- (a) any prohibition of the activities authorised by the omitted regulations (which activities might, accordingly, be carried on to any extent that would have been lawful if the omitted regulations had never existed); or
 - (b) that any matters provided for in those regulations are necessarily to have a different effect unless so required by applicable law (including rules for resolving any conflicts between the laws of different jurisdictions).

Saving of implied power to terminate contracts

- 7.—(1) This paragraph applies where—
- (a) a contract was awarded before IP completion day; and
 - (b) immediately before IP completion day, the contract contained a power—
 - (i) implied by regulation 73(3) of the Public Contracts Regulations 2015 to terminate the contract on the ground mentioned in regulation 73(1)(c) of those Regulations;
 - (ii) implied by regulation 44(3) of the Concession Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 44(1)(c) of those Regulations; or
 - (iii) implied by regulation 89(3) of the Utilities Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 89(1)(c) of those Regulations.
- (2) On and after IP completion day, that power continues despite the omission, by these Regulations, of regulation 73(1)(c), 44(1)(c) or 89(1)(c), as the case may be.

Saving of regulation 60(2) of the Concession Contracts Regulations 2016

8. The amendment made by these Regulations to regulation 60(2) of the Concession Contracts Regulations 2016 (application of the first ground of ineffectiveness) does not apply where the contract referred to in regulation 60(2) was awarded before IP completion day.

Saving in relation to voluntary transparency notices

- 9.—(1) This paragraph applies in relation to the amendments made by these Regulations to—
- (a) regulation 99(3) and (4) of the Public Contracts Regulations 2015;
 - (b) regulation 114(3) and (4) of the Utilities Contracts Regulations 2016;
 - (c) regulation 60(3) and (4) of the Concession Contracts Regulations 2016.

(2) Those amendments do not apply in relation to a voluntary transparency notice that was published in the Official Journal of the European Union if the notice was sent, before IP completion day, to be so published.

PART 4

PROVISIONS COMMENCED 12 MONTHS AFTER IP COMPLETION DAY

Saving in relation to procurements commenced before regulations 7, 9 and 11 come into force

10. The amendments made by regulations 7, 9 and 11 do not affect any procurement commenced before the date on which those amendments come into force (“the second commencement date”).

11. For the purposes of this Part, a procurement has been commenced before the second commencement date if, before that date—

- (a) a notice has been sent to the UK e-notification service in accordance with applicable Procurement Regulations in order to—
 - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (c) the contracting authority or utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

12. For the purposes of this Part, a procurement covers the whole of the procedures which stem from that commencement.

13. Accordingly, for example, if a contract notice in relation to a proposed framework agreement under the Public Contracts Regulations 2015 has, before the second commencement date, been sent as described in paragraph 11(a), paragraph 10 applies to the award of any contracts based on that framework agreement regardless of whether the relevant specific procedure for the award of any such contract under regulation 33(7) to (11) of the Public Contracts Regulations 2015 had itself been commenced before the second commencement date.

14. Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph 12, as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

15. A procedure commenced as described in paragraph 11(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph 11, as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/560 – “the first exit SI”) and the Public Procurement (Amendment

etc.) (EU Exit) (No. 2) Regulation 2019 (S.I. 2019/623 – “the second exit SI”) which amended the first exit SI. As a result, the revoked Regulations will not come into force.

These Regulations are made partly in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (d), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union. Many of the provisions in these Regulations are unchanged from the first exit SI (as amended by the second exit SI), but additional deficiencies are addressed and some of the original provisions are changed.

These Regulations make amendments in the field of public procurement. Part 2 amends primary legislation. Part 3 amends subordinate legislation. In particular, Chapters 1, 2 and 3 of Part 3 amend the Public Contracts Regulations 2015 (S.I. 2015/102), the Concession Contracts Regulations 2016 (S.I. 2016/273) and the Utilities Contracts Regulations 2016 (S.I. 2016/274), respectively, and Chapter 4 amends other subordinate legislation. Part 4 amends, and in one case revokes, retained direct EU legislation. Part 5 provides for certain rights etc. derived from certain international agreements to cease.

These Regulations are also made partly in exercise of the powers conferred by section 8B(1) of the 2018 Act in order to implement Title 8 (ongoing public procurement and similar procedures) of Part 3 of the withdrawal agreement and the corresponding Title 5 of Part 3 of the EEA EFTA separation agreement^(a). In particular, the Schedule to these Regulations differs markedly from the Schedule to the first exit SI in providing for procedures that are ongoing on IP completion day to continue without being subject to any substantive changes in the procurement rules applicable to them. The Schedule also contains various other savings that are unconnected with those agreements.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

(a) Section 8B was inserted by section 18 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). For the meaning of “withdrawal agreement”, “EEA EFTA separation agreement” and “IP completion day” see section 39(1) of the latter Act.

EXPLANATORY MEMORANDUM TO
THE PUBLIC PROCUREMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS
2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to public procurement arising from the withdrawal of the United Kingdom (UK) from the European Union (EU) and to give effect to Title 8 of Part 3 of the Withdrawal Agreement and Title 5 of Part 3 of the EEA EFTA Separation Agreement (together, the relevant withdrawal provisions), to ensure that retained EU law in the field of public procurement operates effectively after the Implementation Period ends on 31 December 2020.
- 2.2 This instrument revokes the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560) (the 2019 EU Exit Regulations) and the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (2019/623) (which amends the 2019 EU Exit Regulations) before they come into force. Those Regulations were made before the UK and EU had entered into the Withdrawal Agreement or the EEA EFTA Separation Agreement.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (the EU Procurement Directives) that govern procedures for the award of public contracts over specified financial thresholds to suppliers of works, goods and services. They are aimed at ensuring that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly.
- 2.4 The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations).
- 2.5 This instrument also relates to certain treaty provisions and directly applicable EU legislation in the field of public procurement, such as Regulation 2195/2002 on the Common Procurement Vocabulary that aims to standardise the references used by contracting authorities and entities to describe procurement contracts. Further information on this legislation can be found in paragraphs 7.19 to 7.22 and 7.36 to 7.42 below of this Memorandum

Why is it being changed?

- 2.6 This instrument implements the UK's obligations in respect of ongoing public procurement and procedures relating to the performance of ongoing framework agreements under Withdrawal Agreement and the EEA EFTA Separation Agreement.
- 2.7 It also fixes deficiencies under the power in section 8 of the European Union (Withdrawal) Act 2018. It addresses deficiencies in retained EU law that arise as a result of the withdrawal of the UK from the EU. It amends or removes provisions that are inoperable, inappropriate or would otherwise prevent the legislation from functioning effectively after exit day within the meaning of section 8 of European Union (Withdrawal) Act 2018. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU) and to the submission of reports to the European Commission (the Commission) would no longer be appropriate because they impose requirements and confer functions in respect of EU entities that no longer have such functions in relation to the UK after exit. These have been removed or replaced with provisions that relate to the functions of 'domestic' bodies and entities. Other examples are given in section 7 below.

What will it now do?

- 2.8 In most respects, the framework and principles underlying the procurement regime remain unchanged. Changes have been limited to those that are appropriate to reflect the UK's new status outside the EU, and to give effect to the Withdrawal Agreement. Changes are made only to the extent permitted to correct deficiencies.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments]

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Parts 2 and 3 of the instrument make amendments to primary and secondary legislation. Those amendments are of the same territorial application as the underlying provision being amended so that, for example, the amendments to the Greater London Authority Act 1999 made by regulation 3 apply only in respect of England and Wales; the amendments to the Equality Act 2010 made by regulation 4 apply to England, Wales and Scotland; and the amendments to the Public Contracts Regulations 2015 effected by regulations 6 and 7 apply principally in respect of England, Wales and Northern Ireland only (the exception being paragraphs (61) to (63) of regulation 6 which amend provisions which extend to Scotland and apply in respect of contracting whose functions are not wholly or mainly Scottish devolved functions). Part 4 of the instrument makes amendments to retained direct EU legislation for the whole of the United Kingdom and therefore applies to England, Wales, Northern Ireland and Scotland (the exception being regulation 23 which does not extend to Scotland). The same is the case in respect of Part 5.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.

- 4.2 The territorial application of this instrument is set out in section 3.3 under “Matters relevant to Standing Orders No. 83P of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the Public Procurement (Amendments etc.)(EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

Background

- 6.1 The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (utilities), Directive 2014/23/EU on the award of concession contracts and Directive 89/665/EEC and Directive 92/13/EEC, as amended, on remedies and review procedures for public procurement and on the procurement procedures of entities operating in the water, energy, transport and telecommunication sectors).
- 6.2 The EU Procurement Directives govern the procedures for the award of contracts over specified financial thresholds, subject to certain exclusions from their scope. The legal framework is based on the principles of transparency, non-discrimination, equal treatment and proportionality. Its intention is to create an open public procurement market that supports the free movement of supplies, services and works within the EU. The EU is a member of the WTO Agreement on Government Procurement (GPA), and is party to a number of international agreements with countries outside the EU that contain procurement provisions. The EU Procurement Directives reflect the obligations arising out of membership of these agreements as well as the EEA Agreement.
- 6.3 The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations).
- 6.4 The Regulations apply principally to England, Wales and Northern Ireland. The Scottish Ministers transposed the EU Procurement Directives separately, in parallel sets of regulations. The Defence and Security Public Contract Regulations 2011 (the 2011 Regulations), implements a related EU scheme for Defence procurement and are outside the scope of the present instrument. (A separate draft instrument making further amendments to the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019, to be made by the Secretary of State for Defence, is being laid on the same day as this instrument). The Public Contracts Regulations 2015 also include (in Part 4), a package of rules that are domestic in origin. Part 4 does not apply to contracting authorities with functions that are wholly or mainly devolved to Wales, Scotland and Northern Ireland.
- 6.5 In addition, Directive 2014/55/EU of the European Parliament and of the Council of 16th April 2014 on electronic invoicing in public procurement (the E-invoice Directive), requires member States to adopt the necessary provisions to ensure that

contracting authorities and other contracting entities are precluded from refusing electronic invoices issued as a result of the performance of contracts which fall within the scope of the EU Procurement Directives, where those electronic invoices comply with the European Standard on electronic invoicing. The Public Procurement (Electronic Invoices etc.) Regulations 2019 implements the E-invoicing Directive, including in respect of the Regulations.

The 2019 EU Exit Regulations and how the present instrument differs

- 6.6 The 2019 EU Exit Regulations were made to fix certain deficiencies in retained EU law relating to public procurement. Those Regulations were subsequently amended in intricate ways. Rather than making further amendments to the 2019 EU Exit Regulations, the present instrument revokes them and starts again. Section 7 below explains ‘what is being and done and why’ in relation to the whole instrument. Most of what is being done is unchanged from the 2019 EU Exit Regulations (as already amended). The main changes are as follows.
- 6.7 The relevant withdrawal provisions require major changes to the transitional approach (see section 7, paragraphs 7.62 to 7.65 below). This means that the Schedule to this instrument is very different from the Schedule to the 2019 EU Exit Regulations. For the same reason, the amendments made to the Public Contract Regulations 2006 and the Utilities Contract Regulations 2006 (the 2006 Regulations), most of the provisions of which apply only to transitional cases, are very different from those made by the 2019 EU Exit SI (see section 7, paragraphs 7.55 to 7.57 below).
- 6.8 Additional, or altered, fixes are made to various provisions of the Regulations concerning common technical specifications (see paragraph 7.51 below), the sterling amounts of various thresholds (see paragraph 7.35 below), exemptions for the procurement of legal services (see paragraph 7.33 below), advanced electronic signatures (see paragraph 7.52 below), exemptions relating to the award of concession contracts (on the basis of special or exclusive rights, or for air transport services (see paragraph 7.53 below)), tenders comprising products originating in third countries (see paragraph 7.54 below).
- 6.9 Certain amendments to the Regulations that would otherwise have come into force 18 months after the end of the Implementation Period will now do so 12 months after its end (see paragraphs 7.27 to 7.32 below).
- 6.10 Amendments are made to retained direct EU legislation concerning the European Single Procurement Document and electronic invoicing in the public procurement context (see paragraph 7.41 below in relation to electronic invoicing). A new technical amendment is also made to Article 16 of the EEA Agreement. Certain rights etc derived from treaty provisions that were not switched off by the 2019 EU Exit Regulations are now switched off (see paragraphs 7.19 to 7.22 below).
- 6.11 The opportunity has also been taken to make various minor drafting improvements.

7. Policy background

What is being done and why?

- 7.1 This instrument corrects deficiencies arising as a result of the UK’s withdrawal from the EU. Changes have been made where they are appropriate and within the scope of section 8 of the European Union (Withdrawal) Act 2018. The aim is for the Regulations to reflect the UK’s status as a non-Member State at the same time as

ensuring they continue to facilitate a functioning UK internal market and comply with the requirements of the GPA (which the UK intends to join in its own right). Where possible, amendments support a level playing field between economic operators established outside the UK, whether or not they are member States.

'Steady state' amendments and the relevant withdrawal provisions

- 7.2 The 'steady state' amendments apply to new procurement procedures commenced after the end of the Implementation Period to ensure the Regulations operate effectively. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU), and to the submission of reports to the European Commission (the Commission), have been removed or replaced with provisions that relate to the functions of 'domestic' bodies and entities; retained direct EU legislation that contains deficiencies arising out of the UK's withdrawal is amended or revoked; in respect of procurement procedures commenced under these which concluded before the end of the Implementation Period, the steady state amendments remove any ongoing obligations on contracting authorities and entities to report to the Commission. These and other examples are detailed further in paragraphs 7.5 to 7.61 below.
- 7.3 The relevant withdrawal provisions provide for the continued application of the general principles of Union law applicable to the award of public contracts, the EU Procurement Directives and certain direct EU legislation governing public procurement procedures. These procedures include those which, before the end of the Implementation Period, were launched but not yet finalised (normally when a contract has been awarded and the fact published or notified to those involved), and, in respect of live framework agreements (and the award of contracts based on such agreements), those concluded before the end of the Implementation Period.
- 7.4 The Schedule to the instrument provides certain savings and modifications to the Regulations to ensure that the Regulations are applied in accordance with the relevant withdrawal provisions (see paragraph 7.62 below).

The UK e-notification service

- 7.5 This instrument replaces the requirement to send notices to the EU Publications Office (for publication in OJEU via Tenders Electronic Daily (TED)), with a requirement to submit notices to a new UK e-notification service. This is intended to reflect the publication requirements in the GPA.
- 7.6 Contract opportunities that would have been published on OJEU/TED will be published on the new UK e-notification service. Publication will take place electronically and the service will be free for all users.
- 7.7 The instrument makes no substantive changes to the restriction on the publication of notices at a local level, for example, on Contracts Finder, Sell2Wales or e-TendersNI. Notices must not be published on such national portals before they are published on the UK e-notification service.

Transfer of functions

- 7.8 The EU Procurement Directives provide the Commission with a number of functions to fulfil its supervisory role over EU public procurement that are reflected in retained EU law and that it would not be appropriate to retain after the end of the Implementation Period. There are also a number of delegated powers to make tertiary

legislation whose effects it is appropriate to recreate in the Regulations by conferring those powers on UK public authorities.

- 7.9 This instrument transfers the Commission's function to revalue the main financial thresholds to the Minister for the Cabinet Office (Minister for the Cabinet Office). The EU Procurement Directives require the Commission to review these thresholds every two years to establish whether they continue to correspond to the relevant thresholds laid down by the GPA (see, for example, Article 6 of Directive 2014/24/EU). If they do not correspond, the Commission, by delegated act, makes the necessary amendment to the euro figures set out in the EU Directive to bring them back into line. At the same time, the Commission also determines the sterling value of these thresholds. The Regulations currently make ambulatory reference to the thresholds laid down in the relevant EU Directive (as determined in sterling by the Commission). This instrument replaces these ambulatory cross-references with the actual sterling figures (see paragraph 7.35 below), and confers on Minister the power to make regulations following a biennial review. The Minister for the Cabinet Office will be required to conduct the reviews on the same basis as the Commission, however, rather than adopting the Commission's two-stage process, the Minister for the Cabinet Office must value the GPA thresholds, which are expressed in special drawing rights, directly into the equivalent sterling values. The conversion rates to be used for this purpose are those published in the monthly International Financial Statistics published by the International Monetary Fund, which is the methodology applicable under the GPA.
- 7.10 The Commission has the power to update the exceptions to the circumstances in which contracting authorities are obliged to require the use of electronic means of communication in light of technological developments and to update the technical requirements relating to tools and devices for the electronic receipt of tenders and requests to participate to take account of technological developments. The instrument transfers these powers to the Minister for the Cabinet Office. The scope of the Minister for the Cabinet Office's powers to amend the Regulations has been closely based on the scope of the Commission's existing powers to amend the corresponding passages of the EU Procurement Directives (for example, new regulation 22A which this instrument inserts into the Public Contracts Regulations 2015, is based on the powers conferred by Article 22(7) of Directive 2014/24/EU). Regulations made pursuant to the Minister for the Cabinet Office's powers will be subject to the prior consent of Welsh Ministers or the relevant Northern Ireland Department in respect of devolved Welsh or Northern Ireland authorities.
- 7.11 Provision has been made to confer on the Minister for the Cabinet Office the power to treat the list of international agreements in the field of environmental, social and labour law set out in the annexes to the EU Directives as though certain international agreements were removed and others that are not covered were listed. An equivalent, delegated power to amend the list of international agreements in these annexes currently rests with the Commission.
- 7.12 This is relevant to the ability of a contracting authority to refuse to award a contract to the bidder submitting the most economically advantageous tender where the contracting authority has established that the bidder does not comply with certain applicable obligations in the field of social, environmental and labour law. The power can only be exercised by the Minister for the Cabinet Office in relation to devolved

authorities with the prior consent of Welsh Ministers or, as the case may be, the relevant Northern Ireland Department.

- 7.13 Requirements to provide the Commission with reports have been either removed or converted into an obligation to provide reports to the Minister for the Cabinet Office. Where the power to request reports has been transferred, a similar power has been created for the Welsh Ministers and the relevant Northern Ireland Department in respect of devolved Welsh and Northern Ireland authorities.

Article 346 of the Treaty on the Functioning of the European Union (TFEU)

- 7.14 The Regulations do not apply to contracts that fall within the scope of the 2011 Regulations. In addition, the Regulations are subject to the derogation set out in Article 346 of TFEU that has the effect of overriding the obligation to comply with the Regulations or particular requirements in them, where this would undermine EU member States' essential security interests.
- 7.15 To ensure that contracting authorities can continue to override particular requirements of the Regulations where necessary, this instrument inserts provisions (which correspond to amendments made to the 2011 Regulations by the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019), which replace the cross-reference to Article 346 TFEU with the text of Article 346 (with some minor adjustments to make it operable).
- 7.16 It is arguable that Article 346 TFEU has direct effect through section 2(1) of the European Communities Act 1972, and so is retained through section 4 of the European Union (Withdrawal) Act 2018 in some circumstances. However, given the Regulations are made under the alternative implementing powers in section 2(2) of the European Communities Act 1972, inserting the text of Article 346 is considered to provide the most legal certainty in ensuring the continued effect of Article 346 after exit.
- 7.17 Consideration was also given to whether Article 346(1)(a) should be replicated in the instrument. Regulation 15(2)(b) of the Public Contracts Regulations 2015 and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the parallel provisions), (which permit procurements to be excluded from the application of the Regulations where they would oblige a contracting authority to supply information which would be contrary to the UK's essential security interests), arguably already replicate its effect. However, the courts have not clarified the interaction between Article 346(1)(a) TFEU and regulation 15(2)(b) (or the parallel provisions) and a strict application of regulation 15(2)(b) (or the parallel provisions), disapplying the entirety of the Regulations in all circumstances could be considered disproportionate, so it was considered prudent to make the position entirely clear by replicating Article 346(1)(a) in the Regulations.
- 7.18 Article 346(1)(b) provides that a member State may take such measures as it considers necessary for the protection of the essential interests of its security that are connected with the production of, or trade in, arms, munitions and war material. The scope of products referred to is determined by a list that was drawn up by the Council of Ministers of the EEC (as it then was), in 1958 (the 1958 List). The amendments made by this instrument reproduce the significance of the 1958 List (for example, the new paragraphs (2) to (6) that this instrument substitutes for regulation 3(2) of the Public Contracts Regulations 2015). Article 346(2) empowers the Council to make changes to the 1958 List. This instrument confers an equivalent regulation-making power on

the Secretary of State for the purposes of the Regulations (as the new paragraph (5) in the example quoted above). Given the nature of this power, and its potential to affect the scope of the Regulations, its exercise is made subject to the affirmative procedure (see, for example, the new regulation 84A(2) which this instrument inserts into the Public Contracts Regulations 2015).

Directly Effective Treaty Rights

- 7.19 Article 18 TFEU prohibits any discrimination on grounds of nationality within the scope of the application of EU Treaties and without prejudice to any special provisions contained therein. It comes into play where a national of one member State suffers discriminatory treatment in relation to nationals of another member State solely on the basis of nationality in connection with a right in the TFEU or another EU Treaty.
- 7.20 The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019, disapplying Article 18 TFEU so far as it relates to the cessation of directly effective rights arising out of the provisions in TFEU relating the freedom of establishment and free movement of services.
- 7.21 Since the policy intent is to treat non-UK economic operators equally, this instrument disapplies for the whole of the UK, rights derived from Article 18 of TFEU and parallel provisions in Article 4 of the EEA Agreement and Article 9 of the Ankara Agreement in the field of public procurement to the extent that these are not disapplied by the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.
- 7.22 Retaining these rights would leave a lack of clarity as to whether EU parties within the scope of the Article 18 TFEU would have additional rights in the UK compared to other non-EU countries. Economic operators from, for example, the EU, may be provided with additional rights compared to third country economic operators.

Scope of duty owed by contracting authorities

- 7.23 The instrument includes amendments to Regulation 89 of the Public Contracts Regulations 2015 (and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016). It would no longer make sense to provide remedies for breaches of ‘enforceable EU obligations’, so the amendment refers instead to any retained EU obligation that is saved under section 4 of the European Union (Withdrawal) Act 2018. This would include directly effective rights and obligations that previously flowed through section 2(1) of the European Communities Act 1972 and which continue to be recognised in domestic law after the end of the Implementation Period (see however, paragraphs 7.19 to 7.22 above).
- 7.24 It would also be inappropriate to retain the obligations under Part 2 and 3 of the Public Contracts Regulations 2015 in respect of economic operators from EEA States in circumstances where the UK is likely to be treated as a third country by contracting authorities in member States. After the end of the Implementation Period, and save in respect of procurements within the scope of the relevant withdrawal provisions and subject to the extension of existing duties towards economic operators from GPA parties and parties from states which have relevant international agreements (see paragraphs 7.27 to 7.32 below), this duty is owed only to economic operators from the UK.

- 7.25 For the avoidance of doubt, Cabinet Office have added Gibraltar as an express reference to make clear that the duty owed to economic operators in the UK extends to those in Gibraltar. Prior to the end of the Implementation Period, Gibraltar came within the territorial scope of the EU Treaties in accordance with Article 355(3) of TFEU that applies the Treaties to European territories for whose external relations, a member State is responsible, subject to some exceptions that are material to public procurement (such as in relation to the Channel Islands), set out elsewhere in Article 355 but which are not relevant to Gibraltar. Since the UK is responsible for Gibraltar's external relations, the UK and Gibraltar are effectively treated as one member State under EU law. Contracting authorities in other member States owe the same duties to economic operators from Gibraltar as economic operators from the UK.
- 7.26 After the end of the Implementation Period, Gibraltar will no longer come within the scope of the EU Treaties. It may therefore, be treated by member States as having the same third country status as the UK. In order to preserve continuity and to reflect the UK's special relationship with Gibraltar, it is appropriate to continue to include Gibraltarian economic operators in the duties owed by contracting authorities.

The GPA and other international agreements

- 7.27 It is the intention of the UK to join the GPA in its own right rather than in the capacity as an EU member State. If the UK does not accede to the GPA by the end of the Implementation Period, as a matter of international law economic operators established in territories and states which are GPA parties would no longer have the guaranteed access (and associated remedies) that they currently have in relation to UK public procurements. It has been decided that for procurements within the scope of the Regulations, economic operators established in territories and states which are party to the GPA (including EEA states), as at the end of the Implementation Period should continue to be afforded the same rights and remedies as the UK currently gives to economic operators established in territories and states which are party the GPA, on the basis of the EU's coverage schedules.
- 7.28 In addition, as a member State, the UK was party to a number of international agreements with non-EU countries containing provisions relating to public procurement. After the end of the Implementation Period, these agreements will cease to apply to the UK. The Government's intention is that the UK should continue to reap the economic benefits of these agreements. The UK has, therefore, sought to replicate, or 'transition', these bilateral trade agreements so that they will apply to the UK after the end of the Implementation Period.
- 7.29 In order to ratify, and give full effect to, these transitioned international agreements, the UK needs to ensure that its domestic legislation, in particular the Regulations, reflects the obligations by which the UK will be bound.
- 7.30 The Trade Bill which is currently before Parliament, once it comes into force, will provide the necessary powers to enable UK Ministers and devolved authorities to implement both the obligations in the GPA and the transitioned international agreements on behalf of the UK as an independent party, specifically, clauses 1 and 2 respectively. Due to delays to the Bill's passage through Parliament, secondary legislation under these powers is highly unlikely to have completed its parliamentary passage and have been made in time to come into force before the end of the Implementation Period.

- 7.31 The Minister considers it appropriate, via this instrument, to preserve in Regulations, the duties owed, and remedies currently afforded, to economic operators from GPA parties and countries with which the EU has entered into an international agreement which contain provisions relating to public procurement and by which the EU is, before the end of the Implementation Period, bound. This preservation of existing obligations, for a period of twelve months, will enable the UK to demonstrate compliance with the GPA and the procurement provisions contained in the newly transitioned international agreements, pending appropriate secondary legislation being brought forward to implement them. That is because the Government has sought to replicate the EU's coverage schedules under the GPA and its international agreements in a form that is as close to the form of the EU's agreements as possible.
- 7.32 Once the powers under the Trade Bill are available, it is likely that the extension of existing duties towards economic operators from GPA parties and parties from states which have relevant international agreements will be revoked and replaced. In the meantime, these contingency provisions will expire twelve months from the end of the Implementation Period (but will continue to apply to procurements commenced before the expiry, by virtue of Part 4 of the Schedule to the instrument).

Specific exclusions for service contracts

- 7.33 The Regulations exclude certain legal services by a 'lawyer' within the meaning of the Lawyers' Services Directive. To maintain the exclusion of lawyers from member States practising under their domestic designation would be to provide preferential treatment to EU lawyers compared to lawyers from third countries. Accordingly, the instrument amends the definition of 'lawyer' to mean a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar. This includes those Swiss lawyers entitled to practice under their domestic designation in accordance with the Swiss Citizens' Rights Separation Agreement.

Exclusion grounds

- 7.34 In respect of procurement procedures commenced after the end of the Implementation Period, contracting authorities and other entities, will not be bound by the mandatory requirement to exclude an economic operator established as having a conviction where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities.

Thresholds

- 7.35 The financial thresholds which govern the award of public contracts in the Regulations were updated in October 2019 and came into effect in the UK on 1 January 2020. In amending the Regulations to substitute sterling figures (see paragraph [7.9] above) this instrument (unlike the 2019 EU Exit Regulations) takes account of the new figures.

Retained direct EU legislation

- 7.36 Section 3 of the European Union (Withdrawal) Act 2018 provides that, so far as it is operative immediately before the end of the Implementation Period, direct EU legislation, with certain exemptions, forms part of domestic law on and after the end of the Implementation Period. It incorporates legislation into domestic law that had legal effect through s. 2(1) of the European Communities Act 1972.

- 7.37 This instrument modifies and in one case, revokes, for the whole of the UK, direct EU legislation in respect of which the Cabinet Office is the lead department.
- 7.38 The instrument modifies Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV), to transfer the powers of the Commission to amend the annexes to the Regulation to the Minister for the Cabinet Office.
- 7.39 The instrument also modifies Commission Decision 2006/211/EC (electricity generation in England, Scotland and Wales), Commission Decision 2007/141/EC (supply of electricity and gas in England, Scotland and Wales), and Commission Decision 2010/192/EC (exploration for and exploitation of oil and gas in England, Scotland and Wales). It replaces references to the application of Directive 2004/17/EC with references to the relevant provisions of domestic law and omits redundant Articles.
- 7.40 The instrument revokes Commission Implementing Regulation (EU) No 2015/1986 establishing standard forms for the publication of notices in the field of public procurement. That Regulation sets out the forms required for the publication of notices in OJEU. The forms will not be required for the purposes of the new UK e-notification service. The service itself will be designed to elicit the information in the form and manner in which it is to be submitted. Accordingly, the instrument also modifies Annex 16 to the EEA Agreement by removing the reference to the regulation in point 6g.
- 7.41 The instrument amends Commission Implementing Regulation (EU) (EU) No 2016/7 establishing the standard form for the European Single Procurement Document to replace this reference with the domestic Single Procurement Document. Article 1 is also amended so that rather than reference to Article 59 of Directive 2014/24/EU, it refers to regulation 59 of the Public Contracts Regulations 2015. The amendment of (EU) No 2016/7 does not extend to Scotland. The Scottish Government plans to undertake their own amendments of (EU) No 2016/7 in a separate instrument.
- 7.42 The instrument amends Commission Implementing Decision (EU) 2017/1870 on the publication of the reference of the European standard on electronic invoicing and the *list of its syntaxes pursuant to Directive 2014/55/EU*. It confers on the Minister for the Cabinet Office, the power to make regulations to substitute a reference to a different standard, a different reference to the same standard or to amend Article 1 and the Annex so as to substitute, add or remove references to syntaxes. This is to ensure technological developments and full and ongoing interoperability in electronic invoicing in public procurement.
- Consequential amendments to primary and secondary legislation*
- 7.43 The instrument makes a number of amendments to primary and secondary legislation that arise as a consequence of the amendments to the Regulations.
- 7.44 The Greater London Authority Act 1999 is amended to replace references to the sending of notices to the Publications Office of the EU with references to the submission of notices to the new UK e-notification service. Section 355(8) now provides that where the Mayor revises the provisions of the London Environment Strategy dealing with municipal waste management after an authority has submitted a contract notice relating to the award of that contract to the UK e-notification service, then, in discharging their obligations under section 355, authorities are to disregard the amendments made to the London Environment Strategy. However, under the

general principles of the transitional provisions in the Schedule to this instrument, the amendment will not apply to the extent that section 355 of that Act relates to the sending of a notice before Implementation Period completion. Similar considerations apply in respect of the power in section 356 for the Mayor to give directions to a waste collection or waste disposal authority.

- 7.45 The instrument amends the definition in the Equality Act 2010 of ‘public procurement functions’, reflecting the fact that after the Implementation Period, public procurement functions exercised by UK contracting authorities will not be regulated by the EU Directive to which the Act currently refers. Instead, ‘public procurement functions’ will be defined by reference to the domestic legislation that implements the Directive in the different parts of the UK. The statement in Part 2 Annex A confirms that these amendments have no wider policy impact on the Equality Act 2010.
- 7.46 The instrument amends the Social Value (Public Services) Act 2012 to replace a reference to a notice being sent to the Publications Office of the EU with a reference to a notice being submitted to the UK e-notification service.
- 7.47 This instrument amends the definition of ‘public notice’ in regulation 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to refer to the UK e-notification service.
- 7.48 The amendment to the Provision of Services Regulations 2009 reflects the omission of regulation 58(5) of, and Schedule 5 to, the Public Contracts Regulations 2015 relating to requirements on economic operators to be enrolled in one of the professional or trade registers kept in their member State of establishment, as described in Schedule 5 or to comply with any other request set out in that Schedule.
- 7.49 The instrument amends Schedule 2 to the Water Industry (Specified Infrastructure Projects)(English Undertakers) Regulations 2013. The 2013 Regulations modify specific provisions of the Utilities Contracts Regulations 2016 in their extended application for the purposes of the 2013 Regulations. The amendments that this instrument makes to Schedule 2 take account of the amendments that this Instrument makes to some of those specific provisions.

Specific amendments

- 7.50 The definition of affiliated undertaking in both the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 by reference to the requirements in Directive 2013/34/EU has been replaced with a reference to the domestic legislation which implements the Directive, namely, Part 15 of the Companies Act 2006.
- 7.51 In respect of procurements with an information and communication technology (ICT) component, the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, permit contracting authorities and utilities to define their technical specifications by reference to common technical specifications. These are defined as technical specifications in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 on European standardisation. The instrument makes clear by express reference that this is a reference to the EU law version of Regulation (EU) No 1025/2012. Common technical specifications recognised by the Commission via Commission Implementing Decisions after the end of the Implementation Period may be referred to by contracting authorities and utilities.

- 7.52 The instrument amends the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016 in respect of advanced electronic signatures. This is to reflect the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019, in particular in respect of amendments to Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation), in connection with the use of advanced electronic signatures. Where contracting authorities or utilities consider that the security risks associated with electronic communications may make it appropriate to use advanced electronic signatures, they are to continue to be required to accept advanced electronic signatures supported by a qualified certificate for electronic signature (including a certificate which would have qualified status for the purpose of EU law); and are required to establish the required advanced electronic signature format on the basis of the formats referred to in Commission Implementing Decision 2015/1506 (which is to be retained as direct EU legislation). In case a different format of electronic signature is used, it must be a signature which complies with Commission Implementing Decision 2015/1506.
- 7.53 Regulation 10(2) and (3) of the Concession Contracts Regulations 2016 is amended to exclude references to TFEU and EU legal acts laying down common rules on access to the market. Services concession contracts awarded to an economic operator on the basis of an exclusive right are excluded in relation to an activity listed in Schedule 2. Regulation 10(4) is amended so that the exclusion for air transport services will now be based on the economic operator's status as a qualifying air carrier within the meaning of Regulation (EC) No 1008/2008 (as amended, as retained direct EU legislation, by the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018).
- 7.54 Regulation 85 of the Utilities Contracts Regulations 2016 applies to tenders relating to products originating in third countries with which the EU has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries. Utilities are entitled to reject any tender submitted for the award of a supply contract where the proportion of the products originating in third countries exceeds 50% of the total value of the products constituting the tender. The instrument retains this provision for a time-limited period to reflect the obligations owed by UK contracting authorities and other entities towards economic operators established in territories and states which are party to the GPA and non-UK suppliers under international agreements signed by the EU immediately before the end of the Implementation Period. However, the instrument replaces the applicable rules for determining the origin of the products. Rather than in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992, these are amended to be in accordance with Part 1 of the Taxation (Cross-border Trade) Act 2018.

The 2006 Regulations

- 7.55 The effect of the original transitional provisions in the Regulations means that the 2006 Regulations continue to apply to contract award procedures commenced in accordance with the Public Contracts Regulations 2006 before 26th February 2015; to contract award procedures or design procedures commenced in accordance with the Utilities Contracts Regulations 2006 before 18 April 2016; and to concession contract award procedures commenced in accordance with the Public Contract Regulations 2006 before 18 April 2016.

- 7.56 The Schedule to the instrument provides that the steady state amendments do not affect those procurement procedures launched and finalised before the end of the Implementation Period, including under the 2006 Regulations. In respect of such procurements, effectively, concluded contracts, the instrument amends the 2006 Regulations to remove, or transfer to the Minister for the Cabinet Office, ongoing reporting obligations to the Commission. Technical provision is also made to preserve the effect of existing exemptions from the 2006 Regulations.
- 7.57 In respect of procurement procedures which launched before the end of the Implementation Period but are not yet finalised, these come within the scope of the relevant withdrawal provisions and are subject to the transitional provisions in the Schedule to the instrument, notably the modifications made by paragraph 5 of the Schedule.

Abnormally low tenders and State aid

- 7.58 In respect of abnormally low tenders submitted by bidders who may have been in receipt of State aid, the intention is to treat non-UK economic operators on a level playing field. Under regulation 69 of the Public Contracts Regulations 2015, and of regulation 84 of the Utilities Contracts Regulations, a contracting authority or utility can investigate an abnormally low tender and ask further questions of the economic operator. Where the contracting authority or utility establishes that the tender is abnormally low because the economic operator has obtained State aid, it may (not must), following consultation with the tenderer and only if the tenderer is unable to meaning of Article 107 TFEU, reject the tender on that ground alone. Any such rejections have to be reported to the EU Commission. From the end of the IP there is not a policy justification to either continue to effectively use the procurement regulations to treat EU economic operators differently to those from other third countries, or 'police' state aid given by other member States. Accordingly, the provisions in the Regulations relating to State aid have been removed (for example, regulation 69(2)(f), (6) and (7) of the Public Contracts Regulations 2015).
- 7.59 Guidance is to be provided in respect of the Commission's ongoing jurisdiction in respect of State aid granted before the end of the Implementation Period and aid granted in breach of Article 10 of the Northern Ireland Protocol under the Withdrawal Agreement.

E-Certis

- 7.60 E-Certis is the EU's free, online database that lists the eligibility criteria and documentary evidence needed in each EEA country to take part in public procurement. It helps companies and contracting authorities cope with the different forms of documentary evidence required for cross-border tenders for EU public contracts. It provides links to the bodies providing certificates and evidence that a supplier has not breached an exclusion ground such as for non-payment of taxes. After the end of the Implementation Period, it would be inappropriate to continue to require UK contracting authorities to have recourse to e-Certis.

Joint procurement

- 7.61 The provisions in the Regulations relating to procurement involving contracting authorities or other contracting entities from other member States (for example, regulation 39 of the Public Contracts Regulations 2015), reflect rules introduced by the Commission to encourage cross-border joint procurements between member States. The omission of these provisions is not intended to imply that joint procedures

should not be undertaken or that there should be any disruption to existing arrangements. However, these provisions are premised on recognition by all the member States of the contracting authorities concerned that the contracting authorities' mutual rights and obligations will be as laid down by, or in accordance with, the arrangements referred to in these provisions (for example, that all the member States will respect the choice of national law made by contracting authorities who procure jointly under these provisions). After the end of the Implementation Period, this common recognition will not necessarily apply. The corresponding provisions of the Directives (for example, Article 39 of Directive 2004/18/EC), which will continue to apply to member States, refers only to "contracting authorities from member States", a category that will no longer include contracting authorities from the UK. It is therefore appropriate to omit these provisions. Cross-border joint procedures may continue to be undertaken (as, in practice, they were to some extent before the Regulations were made, as the previous Procurement Directives and their transposing regulations did not contain such provisions), but on the same basis as cross-border joint procedures with contracting authorities from non-member States, without the legal clarity provided by these provisions which would be impossible to enforce after the end of the Implementation Period.

The relevant withdrawal provisions

- 7.62 The relevant withdrawal provisions seek to ensure a level of continuity for procurement procedures which began before the end of the Implementation Period. The Schedule to this instrument contains transitional and saving provisions to ensure that the steady state amendments made to the Regulations by this instrument do not affect any ongoing procedure which straddles the end of the Implementation Period launched by a contracting authority or a utility under the Regulations or under the 2006 Regulations. In addition, framework agreements launched before the end of the Implementation Period which have not expired or been terminated, and call-off procedures under these, are not affected by the steady state amendments. So, for example, notices must continue to be sent to the EU Publications Office and such procedures will continue to be subject to the obligations to provide the Commission with reports.
- 7.63 As an exception, regulation 61 of the Public Contracts Regulations 2015 relating to e-Certis (which is revoked for new procedures launched after the end of the Implementation Period) will cease to apply 9 months after the end of the Implementation Period, even in relation to procedures that remain unfinalised at that point. This 9-month cut-off for e-Certis is specifically provided for in the relevant withdrawal provisions.
- 7.64 The Schedule provides certain modifications to the Regulations and savings to ensure that, in respect of such procedures, the Regulations operate effectively. For example modifications are made to the Regulations so that any reference to member state or EEA state is to be read to include the UK and any reference to a citizen of the EU or EEA includes a UK national.
- 7.65 The definition of 'steady state amendments' in paragraph 2 of the Schedule has been designed to minimise the risk that any future amendments that may be made to the Regulations do not inadvertently bite on transitional procurements in a way that would infringe relevant withdrawal provisions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under section 8B(1) of that Act in order to implement the public procurement provisions of Part 3 of the withdrawal agreement. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 There has been no consultation on how to rectify the deficiencies arising from withdrawal. The changes made are intended to maintain the current legislative and policy framework, in so far as this is possible after the end of the Implementation Period and are within the extent permitted by the European Union (Withdrawal) Act 2018 to correct deficiencies.
- 10.2 Regular discussions on the content of this instrument have been held with the devolved administrations throughout the drafting process in accordance with the Intergovernmental Agreement. In so far as this instrument makes provision that could be made by the Welsh Ministers, Scottish Ministers and a Northern Ireland Department, there has been regular engagement with the Welsh Government, Scottish Government and Northern Ireland Civil Service throughout the drafting process and in accordance with the terms of the Intergovernmental Agreement on the EUWA.

11. Guidance

- 11.1 Guidance will be available for stakeholders by the time this instrument comes into force.

12. Impact

- 12.1 There is no impact, or significant impact on business, charities or voluntary bodies.
- 12.2 The impact, or significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the Regulations have not been substantially amended. Modifications contained in this instrument have been made to ensure the Regulations function effectively, after the end of the Implementation Period. Contracting authorities and other contracting entities as well as private sector businesses will have to familiarise themselves with the amended provisions and the new UK e-notification service. UK economic operators will have to monitor opportunities on the new UK e-notification service on which above-threshold UK procurement opportunities will be advertised. These impacts are, however, expected to be low and are below the threshold required to carry out a full impact assessment. It will be open to UK economic operators to continue to respond to contract notices published on OJEU by member states. The most significant cost to the public sector

that arises directly from this instrument relates to the development of the IT system for the UK e-notification service.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We propose no specific action to minimise regulatory burdens on small businesses. The impact on small businesses arising from this instrument is expected to be low. Further guidance on the introduction of the UK e-notification service and in respect of on-going procurement procedures will be published.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Lois Devey at the Cabinet Office Telephone: 07834172021 or email: lois.devey@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Edward Green at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Lopez at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020**

DATE **12 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

The Law which is being amended:

- Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560)
- Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/623)
- The Greater London Authority Act 1999
- The Equality Act 2010
- The Public Services (Social Value) Act 2012
- The Public Contracts Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016
- The Public Contracts Regulations 2006
- The Utilities Contracts Regulations 2006
- The Service Charges (Consultation Requirements) (England) Regulations 2003
- The Provision of Services Regulations 2009
- The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013
- Annex 16 to the EEA Agreement
- Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary
- Commission Decision 2006/211/EC
- Commission Decision 2007/141/EC
- Commission Decision 2010/192/EU

- Commission Implementing Regulation (EU) No 2015/1986
- Commission Implementing Regulation (EU) 2016/7
- Commission Implementing Decision (EU) 2017/1870

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

This SI contains provisions that enable functions to be exercised by the Minister for the Cabinet Office, some of which require the prior consent of the Welsh Ministers in relation to Devolved Welsh Authorities. The SI also contains provisions that enable functions to be exercised by either the Cabinet Office or the Minister for the Cabinet Office, and the Welsh Ministers concurrently in relation to Devolved Welsh Authorities.

These functions (Minister for the Cabinet Office/Cabinet Office) would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B of the Government of Wales 2006, and this therefore will be a relevant consideration in the context of the Senedd's competence to legislate in these areas in the future.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The purpose of the amendments is twofold. Firstly, it corrects deficiencies in legislation relating to public procurement (including consequential amendments to non-procurement legislation) arising from the withdrawal of the United Kingdom from the European Union. Secondly, the Regulations give effect to Title 8 of Part 3 of the Withdrawal Agreement (which includes the NI Protocol) and Title 5 of Part 3 of the EEA EFTA Separation Agreement (together, the relevant withdrawal provisions), to ensure that retained EU law in the field of public procurement operates effectively after the Transition Period ends on 31 December 2020.

The Regulations also amend section 155(2) and (3) of the Equality Act 2010 to define a term by reference to the Public Contract Regulations 2015, rather than by reference to the Public Sector Directive (2014/24/EU). This amendment is technical in nature and is required in order for this provision to operate effectively after the end of the transition period.

The previous Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560) and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/623) have been revoked and replaced with these Regulations.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348212952>

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

None identified.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to an England and Wales and Northern Ireland wide SI ensures that there is a single legislative framework across those parts of the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance. Those directives have been separately, and to some degree differently, transposed into the law of Scotland, and so the Scottish Ministers will be bringing forward a separate amending instrument in respect of the equivalent Scottish regulations.

A Statutory Instrument Consent Memorandum has also been laid in the Senedd in respect of the amendments to the Equality Act 2010.

UK MINISTERS ACTING IN DEVOLVED AREAS

173 - The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 7 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 57
SICM under SO 30A (because amends primary legislation)	SICM(5)33

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21 October 2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8 and 8B(1) of, paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

This instrument is being made in order to address deficiencies in retained EU law in relation to public procurement, arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), and to give effect to Title 8 of Part 3 of the Withdrawal Agreement and Title 5 of Part 3 of the EEA EFTA Separation Agreement, to ensure that retained EU law in the field of public procurement operates effectively after the Implementation Period ends on 31 December 2020.

This instrument revokes the following legislation, before the instruments come into force:

- The Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560); and
- The Public Procurement (Amendment) EU Exit) (No 2) Regulations 2019 (2019//623).

Both of those Regulations were made before the UK and the EU had entered into the Withdrawal Agreement or the EEA EFTA Separation Agreement.

Regulation 4 of the Regulations also amends section 155(2) and (3) of the Equality Act 2010. The amendment provides for the defining of a term by reference to the Public Contracts Regulations 2015, rather than by reference to the Public Sector Directive (2014/24/EU). This amendment is required in order for this provision to operate effectively after the end of the transition period.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 12 October 2020 regarding the effect of these Regulations.

In particular, we agree that the Regulations contains provisions that enable functions to be exercised by either the Cabinet Office or the Minister for the Cabinet Office, and the Welsh Ministers concurrently in relation to Devolved Welsh Authorities. These functions would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B to the Government of Wales 2006, and that this would be a relevant consideration in the context of the Senedd's competence to legislate in these areas in future.

The effect of the concurrent functions contained in these Regulations have the potential to engage the consent requirements in Schedule 7B, and therefore represent a potential restriction on the Senedd's future competence.

The Welsh Government's statement notes that negotiations are ongoing with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum in respect of these Regulations on 21 October 2020.

Agenda Item 10.4

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Common Fisheries Policy (Amendments ETC.) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Common Fisheries Policy (Amendments ETC.) (EU Exit) Regulations 2020 were laid before Parliament on 14 October 2020. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213379>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also corrects out-of-date references to EU legislation.
4. The SI makes amendments to the following legislation:
 - The Marine & Coastal Access Act 2009

Relevant provision to be made by the SI

5. The changes made by these Regulations were required as the relevant EU legislation had been changed and new EU legislation had been adopted since the existing EU Exit SIs were made. Powers need to be repatriated to the UK, and some amendments were necessary as a consequence of the Northern Ireland Protocol.
6. The Regulations ensure existing CFP legislation will convert into retained EU law on IP completion day. The 2020 Regulations ensure that the relevant rules contained within the legislation continue to apply to UK fishing vessels wherever they are, subject to different rules stemming from international agreements, and that those same rules continue to apply to all fishing vessels operating within UK waters.
7. The Fisheries (Amendment) (EU Exit) Regulations 2019 amended sections 30,, 238 and 278 of the Marine & Coastal Access Act 2009 to add a definition of “retained EU restriction”; as a restriction that was created or

arose by or under the EU Treaties before exit day, and forms part of retained EU law, as modified from time to time. This was subject to a SICM at the time of laying.

8. The 2020 Regulations amend this definition in the three sections so that “exit day” is substituted with “IP completion day”. “IP completion day” is defined in section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020 to mean 31st December 2020 at 11pm,
9. Amendments to sections 238 and 278 of the Marine and Coastal Access Act 2009 concern the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence. Welsh Ministers have the function of appointing Marine Enforcement Officers in Wales.
10. Section 108A of the Government of Wales Act 2006 enables the Senedd to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to GOWA 2006. In relation to fisheries management, the Senedd has legislative competence in relation to Wales.
11. The subject matter of the amendments under paragraphs 7 and 8 relate to areas that are within the legislative competence of the Senedd, which could be the subject of a Senedd Bill.

Why it is appropriate for the SI to make this provision

12. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

October 2020

This Statutory Instrument has been made in part to correct errors in [S.I. 2019/739](#) and [2019/1312](#) and is being issued free of charge to all known recipients of those Statutory Instruments.

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. 0000

EXITING THE EUROPEAN UNION SEA FISHERIES

The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾ and section 41(1) of the European Union (Withdrawal Agreement) Act 2020⁽²⁾, makes the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force immediately before IP completion day.

(3) Regulations 2, 5, 6, 7, 9 and 10 and the Schedule come into force on IP completion day.

⁽¹⁾ [2018 c. 16](#). Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act [2020 \(c. 1\)](#) (“the 2020 Act”) and paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the 2020 Act.

⁽²⁾ [2020 c. 1](#).

Revocations

2. The legislation listed in the Schedule to these Regulations is revoked so far as specified in the Schedule.

PART 2**UPDATED ANNUAL EU FISHERIES LEGISLATION****CHAPTER 1****UPDATING EU EXIT REGULATIONS IN CONSEQUENCE OF THE REVOCATION OF THE 2019 DISCARD PLANS AND THE 2019 TAC AND QUOTA REGULATION****The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019**

3. In the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019⁽³⁾, omit regulations 2 and 3 and Part 4.

The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

4. In the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019⁽⁴⁾, omit regulation 10.

CHAPTER 2**AMENDMENT OF THE 2020 DISCARD PLANS****Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021**

5.—(1) Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021 is amended as follows.

(2) In Article 1—

- (a) for “Union” substitute “United Kingdom”;
- (b) for “divisions 2a, 3a” substitute “division 2a”; and
- (c) for “for the period 2020-2021” substitute “until the end of 2021”.

(3) In Article 3(1)—

- (a) for “Union” substitute “United Kingdom”; and
- (b) for “divisions 2a, 3a” substitute “division 2a”.

(4) In Article 4(1), for “Union” substitute “United Kingdom”.

(5) In Article 5(1)—

- (a) for “Union” substitute “United Kingdom”; and
- (b) omit “ICES division 3a and”.

(6) In Article 6—

⁽³⁾ [S.I. 2019/848](#), amended by [S.I. 2019/1312](#).

⁽⁴⁾ [S.I. 2019/1312](#).

- (a) for “Union” in each place it occurs, substitute “United Kingdom”;
 - (b) in paragraph 1, omit “division 3a and”; and
 - (c) in paragraph 2, omit point (a).
- (7) In Article 7—
- (a) in paragraph 1—
 - (i) for “Union” substitute “United Kingdom”,
 - (ii) in point (a), omit “or” in the second place it occurs, and
 - (iii) omit point (b); and
 - (b) omit paragraph 3.
- (8) In Article 8(1), for “Union” substitute “United Kingdom”.
- (9) In Article 9—
- (a) in paragraph 1—
 - (i) for “Union” substitute “United Kingdom”, and
 - (ii) for “divisions 2a, 3a” substitute “division 2a”; and
 - (b) omit paragraph 2.
- (10) In Article 10—
- (a) for “Union” in each place it occurs, substitute “United Kingdom”;
 - (b) in point (a), for “divisions 2a and 3a” substitute “division 2a”;
 - (c) omit points (c), (d) and (g); and
 - (d) in point (m)—
 - (i) omit “ICES division 3a and” in the first place it occurs, and
 - (ii) for “mesh sizes above 35 mm in ICES division 3a and” substitute “a mesh size above”.
- (11) Omit Articles 11 and 13.
- (12) For Article 14 substitute—
“Article 14

Application

This Regulation applies until the end of 31 December 2021.”.

Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021

6.—(1) Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021 is amended as follows.

- (2) In Article 1—
 - (a) for “ICES Subareas 5 (excluding 5a and including only Union waters of 5b),” substitute “United Kingdom waters of ICES Subarea 5b and in United Kingdom and International waters of ICES Subareas”; and
 - (b) for “for the period 2020-2021” substitute “until the end of 2021”.
- (3) In Article 5, omit paragraph 2.
- (4) In Article 6(1)—

- (a) in point (c) for “7a to 7k” substitute “7a and 7d to 7j”; and
 - (b) in point (d) for “7a to 7k” substitute “7a and 7d to 7j”.
- (5) In Article 7(1), for “ICES Subareas 5 (excluding 5a and including only Union waters of 5b),” substitute “United Kingdom waters of ICES Subarea 5b and in United Kingdom and International waters of ICES Subareas”.
- (6) In Article 8(1)—
- (a) in point (a), for “7b to 7k” substitute “7d to 7j”;
 - (b) in point (d), for “7b, 7c and 7e to 7k” substitute “7e to 7j”;
 - (c) in point (e), for “7b to 7k” substitute “7d to 7j”;
 - (d) in point (f), for “7b to 7k” substitute “7d to 7j”;
 - (e) in point (g), for “7a, 7j and 7k” substitute “7a and 7j”;
 - (f) in point (i), for “7b, 7c and 7f to 7k” substitute “7f to 7j”; and
 - (g) in point (j) for “EU” substitute “United Kingdom”.
- (7) In Article 9(5), for “the STECF” substitute “a fisheries administration”.
- (8) In Article 10(5), for “the STECF” substitute “a fisheries administration”.
- (9) In Article 11—
- (a) in paragraph 1, for “Union” substitute “United Kingdom”; and
 - (b) in paragraph 2, for “the STECF” substitute “a fisheries administration”.
- (10) In Article 12, omit the first sentence.
- (11) For Article 13 substitute—
“Article 13

Application

This Regulation applies until the end of 31 December 2021.”.

CHAPTER 3

AMENDMENT OF THE 2020 TAC AND QUOTA REGULATION

Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters

7.—(1) Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters is amended as follows.

- (2) Omit Article 1.
- (3) In Article 2(1), for “Union” in both places it occurs, substitute “United Kingdom”.
- (4) In Article 3—
 - (a) omit points (d) to (f); and
 - (b) omit points (h) and (i).
- (5) In Article 4—
 - (a) omit points (b) to (m); and
 - (b) omit points (o) to (v).

- (6) In the heading to Title 2, for “Union” substitute “United Kingdom”.
- (7) Omit Articles 5 to 9.
- (8) In Article 10—
 - (a) in paragraph 1—
 - (i) for “It shall be” in the first place it occurs, substitute “Until the end of 2021 it is”,
 - (ii) for “Union” substitute “United Kingdom”, and
 - (iii) for “It shall be” in the second place it occurs, substitute “During that period it is”;
 - (b) in paragraph 2—
 - (i) in the words before point (a)—
 - (aa) for “in January 2020” substitute “until the end of January 2021”, and
 - (bb) for “1 April to 31 December 2020” substitute “1st April to the end of December 2021”,
 - (ii) for “Union” in each place it occurs, substitute “United Kingdom”, and
 - (iii) in the final subparagraph—
 - (aa) omit “shall”, and
 - (bb) for “Member States” substitute “a fisheries administration”;
 - (c) in paragraph 3—
 - (i) for “shall not be” substitute “are not”,
 - (ii) for “Union” substitute “United Kingdom”, and
 - (iii) omit the words from “Member States” to the end;
 - (d) omit paragraph 4;
 - (e) in paragraph 5—
 - (i) in the words before point (a), for “7a to 7k” substitute “7a and 7d to 7j”,
 - (ii) in point (a)—
 - (aa) for “from 1 January to 29 February” substitute “until the end of February 2021”,
 - (bb) for “from 1 to 31 December 2020” substitute “for the whole of December 2021”,
 - (cc) for “shall be allowed” substitute “is permitted”, and
 - (dd) for “shall be” in the second place it occurs, substitute “is”,
 - (iii) in point (b)—
 - (aa) for “1 March to 30 November 2020” substitute “1st March to the end of November 2021”, and
 - (bb) for “retained shall be” substitute “which may be retained is”, and
 - (iv) in the final subparagraph, for “shall” substitute “does”; and
 - (f) omit paragraphs 6 and 7.
- (9) For Article 11 substitute—
“Article 11

Measures on European eel fisheries in United Kingdom waters

Any targeted, incidental and recreational fishery of European eel is prohibited in United Kingdom waters and brackish waters such as estuaries, coastal lagoons and transitional waters until the end of February 2021.”.

- (10) Omit Article 12.
- (11) In Article 12a—
 - (a) for “shall be” substitute “is”;
 - (b) for “divisions 2a, 3a” substitute “division 2a”;
 - (c) omit “from 1 August to 31 December 2020 and”; and
 - (d) for “31 March” substitute “the end of March”.
- (12) In Article 13—
 - (a) for “Union” in each place it occurs, substitute “United Kingdom fishing”;
 - (b) in point (b) of paragraph 1, for “the STECF” substitute “a similar independent scientific body recognised at international level”;
 - (c) in paragraph 2—
 - (i) for “2018/2034” substitute “2019/2239”;
 - (ii) for “7k” substitute “7j”, and
 - (iii) for “the STECF” substitute “an independent scientific body recognised at international level”; and
 - (d) in paragraph 4, for “the STECF” substitute “an independent scientific body recognised at international level”.
- (13) In Article 14—
 - (a) in paragraph 2—
 - (i) omit “and 4b or at least 90mm in 3a.”;
 - (ii) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (iii) omit the words from “and in Union waters of ICES divisions 3a.20” to the end;
 - (b) in paragraph 3—
 - (i) in point (b), for “STECF; in the case of a negative evaluation by STECF” substitute “an independent scientific body recognised at international level; where such evaluation concludes that the gears in question do not result in the 30% or greater reduction claimed”;
 - (ii) in point (d), omit “and 90mm in 3a”, and
 - (iii) in point (e)—
 - (aa) for the words from “STECF” to “third countries” substitute “an independent scientific body recognised at international level”, and
 - (bb) for “assessments consider” substitute “assessment considers”; and
 - (c) in paragraph 4, for “Member States shall” substitute “A fisheries administration must”.
- (14) Omit Article 15.
- (15) In Article 16(1)—
 - (a) in the words before point (a), for “Union” substitute “United Kingdom”;
 - (b) in point (a), for “Union” substitute “United Kingdom”;
 - (c) in point (b)—

- (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (ii) omit “Union and”;
- (d) in point (c)—
 - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (ii) omit “Union and”;
- (e) in point (d)—
 - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (ii) omit “Union and”;
- (f) in point (e)—
 - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (ii) omit “Union and”;
- (g) in point (f)—
 - (i) for “Union” substitute “United Kingdom”, and
 - (ii) for “3, 4, 6, 7, 8, 9 and 10” substitute “4, 6, 7 and 8”;
- (h) in point (g)—
 - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
 - (ii) omit “Union and”;
- (i) in point (h), for “Union” in both places it occurs, substitute “United Kingdom”;
- (j) omit point (j);
- (k) in point (k)—
 - (i) for “Union” substitute “United Kingdom”, and
 - (ii) for “subareas 6 and 10” substitute “subarea 6”;
- (l) omit point (m); and
- (m) in point (n)—
 - (i) for “Union” substitute “United Kingdom”, and
 - (ii) for the words from “subareas” to the end, substitute “subareas 2, 4, 5, 6, 7 and 8”.
- (16) Omit Article 17.
- (17) Omit Chapter 2 of Title 2.
- (18) Omit Section 1 of Chapter 3 of Title 2.
- (19) Omit Articles 20 and 21.
- (20) Omit Section 3 of Chapter 3 of Title 2.
- (21) Omit Article 26.
- (22) In Article 27—
 - (a) in paragraph 4—
 - (i) omit “, all flying the flag of a Member State”, and
 - (ii) for “to Member States using only one supply vessel” substitute “where only one supply vessel is used”;
 - (b) in paragraph 5, omit “flying the flag of a Member State”; and
 - (c) in paragraph 6, for “The Union shall” substitute “A fisheries administration must”.
- (23) In Article 28(2)—

- (a) after “except for” insert “United Kingdom fishing”;
- (b) for “the exclusive economic zone (EEZ) of Member State whose flag they fly” substitute “United Kingdom waters”; and
- (c) for “local” substitute “United Kingdom”.
- (24) In Article 28a, for “Union” substitute “United Kingdom”.
- (25) Omit Sections 5 to 10 of Chapter 3 of Title 2.
- (26) Omit Titles 3 and 4.
- (27) Omit the List of Annexes.
- (28) Omit Annexes 1 to 3.
- (29) In the Table for time-limited closures in Annex 4—
 - (a) in row 1 (the entry for the area named “Stanhope ground”), in the “Period” column, for “30” substitute “the end of”;
 - (b) in row 2 (the entry for the area named “Long Hole”), in the “Period” column, for “31” substitute “the end of”;
 - (c) omit row 3 (the entry for the area named “Coral edge”);
 - (d) in row 4 (the entry for the area named “Papa Bank”), in the “Period” column, after “to” insert “the end of”;
 - (e) in row 5 (the entry for the area named “Foula Deeps”), in the “Period” column, for “31” substitute “the end of”;
 - (f) omit row 6 (the entry for the area named “Egersund Bank”);
 - (g) in row 7 (the entry for the area named “East of Fair Isle”), in the “Period” column, after “to” insert “the end of”;
 - (h) omit row 8 (the entry for the area named “West Bank”);
 - (i) omit row 9 (the entry for the area named “Revet”); and
 - (j) omit row 10 (the entry for the area named “Rabarberen”).
- (30) Omit Annexes 5 to 9.

PART 3

AMENDMENT OF THE DATA COLLECTION FRAMEWORK MEASURES

CHAPTER 1

UPDATING AND AMENDING EU EXIT REGULATIONS

The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019

8.—(1) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019⁽⁵⁾ are amended as follows.

- (2) In regulation 16—
 - (a) in paragraph (6)—
 - (i) in sub-paragraph (b), for paragraph (ii) substitute—

(5) [S.I. 2019/739](#), amended by [S.I. 2019/1312](#).

- “(ii) in point (b), for “a list of mandatory” substitute “requirements in relation to”, and
- (iii) in point (c), for the words from “for Member States” to the end, substitute “to collect data based on fishing and aquaculture activities”,” and
- (ii) in sub-paragraph (f), before paragraph (i) insert—
 - “(zi) in the words before point (a), for “list of mandatory” substitute “requirements in relation to”, and”;
- (b) in paragraph (8)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) in paragraph 1—
 - (i) for “their current data collection obligations under Union law, Member States shall” substitute “other legal obligations to collect data, a fisheries administration must”,
 - (ii) omit “an operational programme, as referred to in Article 18 of Regulation (EU) No 508/2014, and”,
 - (iii) omit “Union” in the second place it occurs, and
 - (iv) omit “and pursuant to Article 21 of Regulation (EU) No 508/2014”,”;
 - (ii) omit “and” at the end of sub-paragraph (c),
 - (iii) for the full stop at the end of sub-paragraph (d) substitute “; and”, and
 - (iv) after sub-paragraph (d) insert—
 - “(e) after the omitted paragraph 4 insert—

“5. The work plan for data collection of the United Kingdom approved under Commission Implementing Decision C(2019) 9493 of 19th December 2019 on approving the work plan of the United Kingdom for data collection in the fisheries and aquaculture sector for the period 2020-2021 is, until such time as it is replaced or amended under paragraph 6, the national work plan referred to in paragraph 1.

6. Subject to paragraph 7, the Secretary of State may amend or replace the national work plan provided that the plan continues to comply with the requirements of this Article.

7. Where, in the circumstances described in paragraph 8, the exercise of the power to amend or replace the national work plan under paragraph 6 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) 1380/2013, before amending or replacing the work plan the Secretary of State must obtain the consent of—

 - (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8;
 - (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8;

- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8.

8. The circumstances referred to in paragraph 7 are circumstances where the power in paragraph 6 is treated as a power to amend or replace the national work plan by “a fisheries administration” instead of a power exercisable by the Secretary of State.

9. The Secretary of State must publish any amended or replacement versions of the national work plan together with a notice of the date on which any amendments or replacement versions take effect.”.”.

- (3) Omit regulation 17.

CHAPTER 2

AMENDMENT OF THE 2020 DATA COLLECTION MULTIANNUAL PROGRAMME

Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors

9.—(1) Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors is amended as follows.

- (2) In Article 1—

- (a) omit “Union” in the first place it occurs;
- (b) for “list of mandatory” substitute “requirements in relation to”;
- (c) omit “for Member States”;
- (d) omit “their”; and
- (e) for the words from “or carry out surveys” to the end, substitute “are those set out in the national work plan referred to in Article 6 of Regulation (EU) 2017/1004”.

- (3) Omit Articles 2 and 3 and the Annex.

Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors

10.—(1) Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors is amended as follows.

- (2) In Article 1, omit “Union”.

- (3) Omit Article 2.

- (4) In the Annex—

- (a) in Chapter 1—

- (i) in point (6), for “Union and its Member States” substitute “United Kingdom”, and

- (ii) in point (10), for “21 of Regulation (EU) No 508/2014” substitute “6 of Regulation (EU) 2017/1004”;
- (b) in Chapter 2, for “the common fisheries policy” substitute “fishing activity”;
- (c) in Chapter 3—
 - (i) in point 1.1—
 - (aa) in the words before point (a), for the words from “Under the workplans” to “establish” substitute “The national work plan referred to in Article 6 of Regulation (EU) 2017/1004 establishes”, and
 - (bb) for points (a) to (c) substitute—
 - “(a) biological data, by catch fraction, on stocks caught by United Kingdom commercial fisheries within and outside United Kingdom waters and by recreational fisheries within United Kingdom waters;
 - (b) data to assess the impact of fisheries in United Kingdom waters on the marine ecosystem within and outside United Kingdom waters;
 - (c) detailed data on the activity of United Kingdom fishing vessels within and outside United Kingdom waters as reported under Regulation (EC) No 1224/2009”;
 - (ii) in point 1.2, omit the words from “taking into account” to the end,
 - (iii) in point 2—
 - (aa) for the heading substitute—

“Biological data on stocks caught by United Kingdom fishing vessels in commercial fisheries within and outside United Kingdom waters and in recreational fisheries within United Kingdom waters”, and
 - (bb) omit “, 1B” in each place it occurs,
 - (iv) in point 3, for the heading substitute—

“Data to assess the impact of United Kingdom fisheries on marine ecosystems within and outside United Kingdom waters”,
 - (v) in point 3(a)—
 - (aa) for “Union” substitute “relevant”, and
 - (bb) for “Member States” substitute “a fisheries administration”,
 - (vi) in point 3(b), for “in Union waters and outside Union waters” substitute “within and outside United Kingdom waters”,
 - (vii) in point 3(c), for “Member States shall” substitute “a fisheries administration must”,
 - (viii) in point 4—
 - (aa) for the heading substitute—

“Detailed data on the activity of United Kingdom fishing vessels within and outside United Kingdom waters as recorded under Regulation (EC) No 1224/2009”,

- (bb) for the first sentence substitute “Data to assess the activity of United Kingdom fishing vessels within and outside United Kingdom waters consist of the variables as indicated in Table 4.”, and
- (cc) for “workplans” substitute “work plan”,
- (ix) in point 5—
 - (aa) in the heading, for “Union” substitute “United Kingdom”, and
 - (bb) in point (a), for the second subparagraph substitute—

“The population must be all active and inactive vessels registered in the United Kingdom Fishing Fleet Register, as defined in Commission Implementing Regulation (EU) 2017/218, on 31 December of the reporting year and vessels that do not appear on the Register at that date but have fished at least one day during the reporting year.”, and
- (x) in point 6—
 - (aa) in the heading, for “Union” substitute “United Kingdom”, and
 - (bb) in point (c), for “Member State” substitute “United Kingdom”;
- (d) in the heading for Table 1A, for “Union” substitute “United Kingdom”;
- (e) omit Table 1B;
- (f) in Table 1D—
 - (i) in the entry for “Cetaceans — all species” in the final column, before “Council [Directive 92/43/EEC](#)” insert “Legislation implementing”,
 - (ii) before “[Directive 92/43/EEC](#)” in each place it occurs, except the entry referred to in paragraph (i) and in table note (8), insert “Legislation implementing”,
 - (iii) before “[Directive 2009/147/EEC](#)” in each place it occurs, except table note (10), insert “Legislation implementing”, and
 - (iv) in table note (5) for “Council Regulation ([EC](#)) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002, P. 6)” substitute “Regulation (EU) 2016/2336 of the European Parliament and of the Council establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic”;
- (g) in Table 4, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (h) in Table 5A, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (i) in Table 7, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (j) in Table 8, in table note (3), before “Council [Directive 2006/88/EC](#)” insert “legislation implementing”; and
- (k) in Table 10, for “Euro” in each place it occurs, substitute “Pounds sterling”.

PART 4

OTHER AMENDMENTS TO EU EXIT REGULATIONS

The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019

11.—(1) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019⁽⁶⁾ are amended as follows.

(2) In regulation 3—

- (a) in paragraph (2), in the new Article 1 to be substituted by that paragraph, for “exit day” in each place it occurs, substitute “IP completion day”; and
- (b) in paragraph (4)(l), in the new point (40) to be inserted by that paragraph, for “has the same meaning as “British Fishery Limits” as contained in section 1 of the Fishery Limits Act 1976” substitute “means the sea within British fishery limits⁽⁷⁾ but excluding the territorial sea adjacent to the Isle of Man”.

(3) In regulation 4—

(a) in paragraph (8)—

(i) in sub-paragraph (c)—

(aa) at the end of paragraph (i) omit “and”,

(bb) for the semicolon at the end of paragraph (ii) substitute “, and”, and

(cc) after paragraph (ii) insert—

“(iii) omit “in accordance with Article 45(4) of Regulation (EC) No 1005/2008”,”; and

(ii) in sub-paragraph (d)—

(aa) at the end of paragraph (i) omit “and”, and

(bb) after paragraph (ii) insert—

“(iii) omit “in accordance with Article 45(4) of Regulation (EC) No 1005/2008”; and”; and

(b) in paragraph (82), for sub-paragraph (b) substitute—

“(b) in paragraph 2—

(i) for “Member States shall” substitute “A fisheries administration must”, and

(ii) omit “the range of sanctions and measures provided for in”,”.

(4) In regulation 19—

(a) in paragraph (7), for sub-paragraph (b) substitute—

“(b) in paragraph (2)—

(i) in point (a), for “Member States” substitute “a fisheries administration”, and

(ii) omit point (c).”;

(b) in paragraph (31)—

⁽⁶⁾ [S.I. 2019/739](#), amended by [S.I. 2019/1312](#).

⁽⁷⁾ By virtue of section 1(1) of the Fishery Limits Act 1976 ([c. 86](#)), “British fishery limits” are designated by [S.I. 2013/3161](#); section 1 of the Fishery Limits Act 1976 was amended (in relation to England and Wales) by paragraph 2(2) and (3) of Schedule 4, and Part 1 of Schedule 22, to the Marine and Coastal Access Act 2009 ([c. 23](#)).

- (i) in sub-paragraph (b)(ii), for “exit day” substitute “IP completion day”, and
- (ii) in sub-paragraph (c)(ii), for “exit day” substitute “IP completion day”; and
- (c) after paragraph (33) insert—
 - “(34) Omit Annex 2.”.
- (5) Omit Part 9.
- (6) In the Schedule, omit paragraphs (n) to (q) and (s) to (z).

The Fisheries (Amendment) (EU Exit) Regulations 2019

- 12.**—(1) The Fisheries (Amendment) (EU Exit) Regulations 2019⁽⁸⁾ are amended as follows.
- (2) In regulation 4—
- (a) in paragraph 2(b), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”;
 - (b) in paragraph 4(b)(ii), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”; and
 - (c) in paragraph 5(b), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”.
- (3) For regulation 13 substitute—

“The Grants for Fishing and Aquaculture Industries Regulations 2015

13. In regulation 2 of the Grants for Fishing and Aquaculture Industries Regulations 2015⁽⁹⁾, in paragraph (a), for “as amended from time to time” substitute “as it had effect in EU law immediately before IP completion day”.

The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019

13.—(1) The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019⁽¹⁰⁾ are amended as follows.

- (2) In regulation 4—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), in the new first paragraph to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
 - (ii) omit sub-paragraph (c),
 - (iii) in sub-paragraph (d), omit paragraph (iii), and
 - (iv) for sub-paragraph (e) substitute—
 - “(e) for the fifth paragraph substitute—

“Part Two of this Regulation applies to support for rural development except when it explicitly allows for derogations. The Fund-specific Regulations may establish complementary rules to Part Two of this Regulation. The complementary rules in the Fund-specific Regulations must be read consistently with Part Two of

⁽⁸⁾ [S.I. 2019/746](#).

⁽⁹⁾ [S.I. 2015/1711](#).

⁽¹⁰⁾ [S.I. 2019/785](#), amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

this Regulation. In case of doubt about the application between provisions, Part Two of this Regulation prevails over the Fund-specific Regulations.”; and

(b) in paragraph (2)—

(i) in sub-paragraph (b), in the new point (4) to be substituted by that sub-paragraph, omit—

(aa) “Part Four of this Regulation or”, and

(bb) “or Regulation (EU) No 508/2014”,

(ii) in sub-paragraph (d), in the new point (6) to be substituted by that sub-paragraph, for “an ‘operational programme’ as referred to in Part Four of this Regulation and in Regulation (EU) No 508/2014, and” substitute “a”,

(iii) in sub-paragraph (e), in the new point (8) to be substituted by that sub-paragraph—

(aa) for “Parts Two and Four” substitute “Part Two”, and

(bb) omit “or a priority for support under Regulation (EU) No 508/2014”,

(iv) in sub-paragraph (g), in the new point (15) to be substituted by that sub-paragraph, omit “or the European Maritime and Sustainable Fisheries Fund”,

(v) in sub-paragraph (o), omit “or priority for support under Regulation (EU) No 508/2014”,

(vi) in sub-paragraph (q), in the new point (36) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”,

(vii) in sub-paragraph (r), in the new point (37) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”,

(viii) omit sub-paragraph (s),

(ix) in sub-paragraph (t)—

(aa) in the new point (43) to be inserted by that sub-paragraph, omit the words from “and, in the context of support under Regulation 508/2014” to the end,

(bb) in the new point (44) to be inserted by that sub-paragraph, omit paragraph (b), and

(cc) omit the new point (46) to be inserted by that sub-paragraph.

(3) In regulation 5—

(a) in paragraph (1) omit “and support under Regulation (EU) No 508/2014”;

(b) in paragraph (2) omit “and support under Regulation (EU) No 508/2014”;

(c) in paragraph (3)—

(i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,

(ii) in sub-paragraph (b), in the new paragraph 2 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,

(iii) in sub-paragraph (e), omit “and support under Regulation (EU) No 508/2014”, and

(iv) in sub-paragraph (g)(ii), omit “and support under Regulation (EU) No 508/2014”;

(d) in paragraph (5), in the new Article 6 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”; and

(e) in paragraph (7)—

(i) in sub-paragraph (a)(i), omit “and support under Regulation (EU) No 508/2014”, and

- (ii) in sub-paragraph (b), in the new second paragraph to be substituted by that sub-paragraph, omit—
 - (aa) “and support under Regulation (EU) No 508/2014”, and
 - (bb) “and in the case of support under Regulation (EU) No 508/2014 to measures set out in that Regulation”.
- (4) In regulation 6—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (a), in the new first paragraph to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
 - (ii) in sub-paragraph (b), omit the words from “and for “(for the EMFF)”” to the end,
 - (iii) in sub-paragraph (c), omit “and support under Regulation (EU) No 508/2014”, and
 - (iv) in sub-paragraph (d), omit “and support under Regulation (EU) No 508/2014”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014,”, and
 - (ii) in sub-paragraph (b), in the new paragraph 2 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014,”; and
 - (c) in paragraph (3)(b), omit “and support under Regulation (EU) No 508/2014”.
- (5) In regulation 7—
 - (a) in paragraph (1), in the new Article 26 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (b), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (c)(i), omit “and support under Regulation (EU) No 508/2014”;
 - (c) in paragraph (6)—
 - (i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit the words from “The relevant authority may provide support” to the end,
 - (ii) in sub-paragraph (b), for “the support concerned” substitute “support for rural development”, and
 - (iii) in sub-paragraph (d), for “the support concerned” substitute “support for rural development”;
 - (d) in paragraph (7), in sub-paragraph (a)(ii), for “the support concerned” substitute “support for rural development”; and
 - (e) in paragraph (10), for “The support concerned” substitute “for rural development”.
- (6) In regulation 8—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (b), omit “and support under Regulation (EU) No 508/2014”,
 - (ii) in sub-paragraph (c), omit “and support under Regulation (EU) No 508/2014”, and
 - (iii) in sub-paragraph (e), omit “and support under Regulation (EU) No 508/2014”;
 - (b) in paragraph (2)(d)—
 - (i) in paragraph (i), in the new point (a) to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014,”, and

- (ii) in paragraph (ii)(dd), omit “and support under Regulation (EU) No 508/2014”;
 - (c) in paragraph (5), omit “and support under Regulation (EU) No 508/2014”;
 - (d) in paragraph (6)(a), omit “and support under Regulation (EU) No 508/2014”;
 - (e) in paragraph (7)(a)(i), omit “and support under Regulation (EU) No 508/2014”;
 - (f) in paragraph (8)—
 - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (b), omit “or support under Regulation (EU) No 508/2014”;
 - (g) in paragraph (9)(b), omit “and support under Regulation (EU) No 508/2014”; and
 - (h) in paragraph (10)(b), omit “and support under Regulation (EU) No 508/2014”.
- (7) In regulation 9—
- (a) in paragraph (3)(b), omit “and support under Regulation (EU) No 508/2014”;
 - (b) in paragraph (4)(d), omit “and support under Regulation (EU) No 508/2014”;
 - (c) in paragraph (6)(a)(i), omit “and support under Regulation (EU) No 508/2014”; and
 - (d) in paragraph (8)(c)(i), omit “and support under Regulation (EU) No 508/2014”.
- (8) In regulation 10(2)(a)—
- (a) in paragraph (ii), omit “and support under Regulation (EU) No 508/2014”; and
 - (b) in paragraph (iii), omit “and support under Regulation (EU) No 508/2014”.
- (9) In regulation 11—
- (a) in paragraph (2)—
 - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (f)(ii), omit sub-paragraph (bb);
 - (b) in paragraph (3), omit “or support under Regulation (EU) No 508/2014”;
 - (c) in paragraph (4)(b), omit “or support under Regulation (EU) No 508/2014”;
 - (d) in paragraph (5)(a)(i), omit “and support under Regulation (EU) No 508/2014”;
 - (e) in paragraph (6)—
 - (i) omit sub-paragraph (a),
 - (ii) in sub-paragraph (b)(i), omit “or support under Regulation (EU) No 508/2014”,
 - (iii) in sub-paragraph (c), for “3, 5 and 7” substitute “3 and 5”,
 - (iv) after sub-paragraph (c) insert—
 - “(ca) in paragraph 6, for “the ESI funds” substitute “support for rural development”;
 - (cb) omit paragraph 7;”,
 - (v) in sub-paragraph (d)—
 - (aa) in paragraph (i), omit “or support under Regulation (EU) No 508/2014”,
 - (bb) in paragraph (ii), omit sub-paragraph (bb),
 - (vi) in sub-paragraph (e), omit paragraph (iii), and
 - (vii) in sub-paragraph (g), in the new paragraph 11 to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014 or both of them”;
 - (f) in paragraph (7)(a), omit “and support under Regulation (EU) No 508/2014”;
 - (g) in paragraph (8), omit sub-paragraph (a);

- (h) in paragraph (12)—
 - (i) in sub-paragraph (a)(i)(aa), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (b)(i), omit “and support under Regulation (EU) No 508/2014”;
- (i) in paragraph (13)—
 - (i) in sub-paragraph (a)(i), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (b)(ii), in the new point (b) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”; and
- (j) in paragraph (14)—
 - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
 - (ii) in sub-paragraph (d), in the new paragraph 3 to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”.
- (10) Omit regulations 15 and 16.
- (11) In regulation 18—
 - (a) in paragraph (2), omit “and support under Regulation (EU) No 508/2014”;
 - (b) in paragraph (3), omit “and support under Regulation (EU) No 508/2014”;
 - (c) in paragraph (4), in the new paragraph 1 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”;
 - (d) in paragraph (6)(c)(iv), in the new point 4 to be substituted by that paragraph, omit “and, where appropriate, in its programme for support under Regulation (EU) No 508/2014”; and
 - (e) in paragraph (9)(b)(i), omit “and priorities for sustainable fisheries”.
- (12) In regulation 20—
 - (a) in paragraph (2)(d), omit “and support under Regulation (EU) No 508/2014”; and
 - (b) in paragraph (3), omit “and support under Regulation (EU) No 508/2014”.
- (13) In regulation 22(3)—
 - (a) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”; and
 - (b) in sub-paragraph (c), omit “or support under Regulation (EU) No 508/2014”.

The Agriculture (Legislative Functions) (EU Exit) Regulations 2019

- 14.** In regulation 74 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019⁽¹¹⁾—
 - (a) in the new point (47) to be inserted by that regulation, omit paragraph (a); and
 - (b) omit the new point (48) to be inserted by that regulation.

The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

- 15.**—(1) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019⁽¹²⁾ are amended as follows.
 - (2) In regulation 26, for paragraph (2) substitute—
 - “(2) In Article 15 for paragraph 6 substitute—

⁽¹¹⁾ [S.I. 2019/748](#), to which there are amendments not relevant to these Regulations.

⁽¹²⁾ [S.I. 2019/753](#), amended by [S.I. 2019/1312](#).

“6. A fisheries administration may make regulations laying down a specific discard plan for a particular fishery containing the specifications referred to in points (a) to (e) of paragraph 5 of this Article.

6A. Subject to paragraph 6B, the Secretary of State may make regulations laying down a specific discard plan for a particular fishery containing the specifications referred to in points (a) to (e) of paragraph 5 of this Article.

6B. Where the exercise of the power to make regulations under paragraph 6 would be outside the jurisdiction of the Secretary of State under Article 1(7), before making such regulations under the power in paragraph 6A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3);
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4);
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5).”.

(3) Omit Chapter 8 of Part 5.

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

16. In regulation 5 of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019⁽¹³⁾—

- (a) in paragraph (3)(a), for paragraph (ii) substitute—
“(ii) omit point (b),”;
- (b) in paragraph (4), for “5” substitute “6”; and
- (c) omit paragraph (5).

The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

17.—(1) The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019⁽¹⁴⁾ are amended as follows.

(2) In regulation 5(34)(b), for paragraph (i) substitute—

“(i) in point 1.1, omit “or at least 90mm in Skagerrak and Kattegat”,”.

(3) In regulation 6(13)—

- (a) omit “and” at the end of sub-paragraph (b); and
- (b) after sub-paragraph (b) insert—

“(ba) after paragraph 1 insert—

“**1A.** Subject to paragraph 1B, for all stocks of species in the Western Waters to which the landing obligation applies under Article 15(1) of Regulation (EU) No. 1380/2013, the Secretary of State may make regulations in order to supplement this Regulation by specifying details of that obligation as provided for in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

⁽¹³⁾ [S.I. 2019/848](#), amended by [S.I. 2019/1312](#).

⁽¹⁴⁾ [S.I. 2019/1312](#).

1B. Where the exercise of the power to make regulations under paragraph 1 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 1A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of that Regulation;
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of that Regulation;
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of that Regulation.”; and”.

(4) In regulation 7(5)—

- (a) omit “and” at the end of sub-paragraph (b); and
- (b) after sub-paragraph (b) insert—

“(ba) after paragraph 1 insert—

“**1A.** Subject to paragraph 1B, for all stocks of species in the North Sea to which the landing obligation applies under Article 15(1) of Regulation (EU) No. 1380/2013, the Secretary of State may make regulations in order to supplement this Regulation by specifying details of that obligation as provided for in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

1B. Where the exercise of the power to make regulations under paragraph 1 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 1A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of that Regulation;
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of that Regulation;
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of that Regulation.”; and”.

(5) In regulation 8, omit paragraph (7).

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

SCHEDULE

Regulation 2

Revocations

PART 1

Revocations

The following legislation is revoked—

- (a) Commission Delegated Regulation (EU) 2020/3 establishing a discard plan for Venus shells (*Venus spp.*) in certain Italian territorial waters.
- (b) Commission Delegated Regulation (EU) 2019/2201 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak.
- (c) Council Regulation (EU) 2019/124 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.
- (d) Commission Implementing Decision (EU) 2018/1283 laying down rules on the format and timetables for the submission of annual data collection reports in the fisheries and aquaculture sectors.
- (e) Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.
- (f) Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.

PART 2

Revocation of legislation so far as it forms part of retained EU law

The following legislation, so far as it forms part of domestic law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018⁽¹⁵⁾, is revoked—

- (a) so far as relating to the European Maritime and Fisheries Fund, Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.
- (b) Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.

(15) 2018 c. 16 (“the 2018 Act”). Section 3 was amended by section 25(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); section 7A was inserted by section 5 of the 2020 Act. By virtue of Article 138 of the EU withdrawal agreement and section 7A of the 2018 Act, EU law in the field of the European Maritime and Fisheries Fund continues to apply to the United Kingdom in respect of the 2014-2020 EU multiannual financial framework. So far as provisions of that EU law fall outside of the purposes of Article 138 of the EU withdrawal agreement they are revoked by this instrument.

- (c) Commission Implementing [Decision 2014/464/EU](#) identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.
- (d) Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund.
- (e) Commission Implementing Regulation (EU) 763/2014 laying down rules for applying Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the technical characteristics of information and publicity measures and instructions for creating the Union emblem.
- (f) Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.
- (g) Commission Delegated Regulation (EU) No 1014/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the content and construction of a common monitoring and evaluation system for the operations funded under the European Maritime and Fisheries Fund.
- (h) Commission Delegated Regulation (EU) No 1046/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.
- (i) Commission Implementing Regulation (EU) No 1242/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations.
- (j) Commission Implementing Regulation (EU) No 1243/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.
- (k) Commission Implementing Regulation (EU) No 1362/2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.
- (l) Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications.
- (m) Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.

- (n) Commission Delegated Regulation (EU) 2015/852 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.
- (o) Commission Delegated Regulation (EU) 2015/1930 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections.
- (p) Commission Delegated Regulation (EU) 2015/2252 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund.
- (q) Commission Implementing Decision C(2015) 8628 on approving the operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, under section 8(2)(b), (c), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are also made in exercise of the power conferred by section 41(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1), in particular, in order to update references to “exit day” in EU Exit Statutory Instruments to “IP Completion day” as a result of the creation of the implementation period by that Act.

These Regulations make amendments to EU Exit Statutory Instruments in order to update provisions in consequence of new EU legislation. They also make amendments to the new retained direct EU legislation that this new EU legislation will give rise to. The new EU legislation all applies in the field of the common fisheries policy of the European Union.

Other amendments made by these Regulations to EU Exit Statutory Instruments include the following: amendments to take account of the implementation period (for example, by changing references to “exit day” into references to “IP completion day” as mentioned above); amendments to make necessary changes which result from the EU withdrawal agreement (for example, where previously the European Union (Withdrawal) Act 2018 would have created retained direct EU legislation in a particular area but the EU withdrawal agreement now provides for the EU legislation in question to apply in the UK directly); and amendments to correct minor errors.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

EXPLANATORY MEMORANDUM TO
THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Common Fisheries Policy (“CFP”) imposes a common approach to the sustainable management of fisheries across the EU and its waters. A number of statutory instruments made in 2019 under powers in the European Union (Withdrawal) Act 2018 made amendments to EU CFP legislation that was scheduled to become ‘retained EU law’ on exit day. The amendments were intended to ensure the retained CFP legislation would operate effectively upon the UK’s withdrawal from the EU. Following ratification of the EU withdrawal agreement, EU CFP legislation will now become retained EU law at the end of the Transition Period and this instrument is required to ensure retained EU law operates effectively from that point.
- 2.2 This instrument is required in relation to three categories of amendments:
 - a) Amendments required to account for new EU CFP legislation which has come into force since the previous amending statutory instruments were drafted in preparation for exit day.
 - b) Amendments required in consequence of the EU withdrawal agreement.
 - c) Amendments to previous amending statutory instruments, including amendments to correct minor errors.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The CFP regulates fishing activities and the enforcement of those activities in EU waters, as well as implementing the requirements of international agreements that the European Union has entered into on behalf of Member States. This instrument will amend the following aspects of retained EU law:
 - a) Demersal discard plans – Regulations (EU) 2019/2238 and 2019/2239. These Regulations (also known as ‘discard plans’) set out exemptions from the landing obligation (as set out in the Common Fisheries Policy Regulation (1380/2013)), as recommended by the North-Western Waters (NWW) or North Sea (NS) Regional Groups, in order to facilitate full implementation of the landing obligation from 1st January 2019.

- b) 2020 TAC and quota regulation - Regulation (EU) 2020/123. This Regulation sets fishing opportunities (the total allowable catch (TAC) and each Member State's allocated quota for certain fish stocks) in EU waters and certain non-EU waters.
- c) 2020-21 data collection multiannual programme – Decisions (EU) 2019/909 and (EU) 2019/910. These Decisions set out detailed requirements for the collection, management and use of fisheries data, in particular, scientific data relating to fish stocks.

2.4 Additionally, this instrument will revoke a number of items of EU legislation from retained EU law and amend the following EU Exit statutory instruments, with the detail describing the revocations and amendments found in the table at Annex B:

- a) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
- b) The Fisheries (Amendment) (EU Exit) Regulations 2019
- c) The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019
- d) The Agriculture (Legislative Functions) (EU Exit) Regulations 2019
- e) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019
- f) The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
- g) The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

Why is it being changed?

- 2.5 The technical changes made by this instrument are necessary to ensure that the rules contained in the CFP continue to operate effectively, so that fishing within UK waters continues to be regulated in a sustainable manner.
- 2.6 The functions transferred by this instrument will ensure that fisheries management in the UK can continue to operate efficiently. UK fisheries administrations require this ability to ensure they can keep abreast of the latest scientific evidence and make changes where necessary.
- 2.7 Annex B to this explanatory memorandum contains further detail on the amendments made by this instrument.

What will it now do?

- 2.8 This instrument ensures there is immediate continuity in the regulation of UK waters at the end of the Transition Period. Although some changes are required where provisions would no longer operate effectively or make sense outside of the EU structure, no policy changes are made to the effect of the legislation amended by this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument includes amendments which correct minor errors in earlier EU exit statutory instruments (in S.I. 2019/739 and 2019/1312) and this instrument is being published under the free issue procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to that Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.
- 6.3 Section 41(1) of the European Union (Withdrawal Agreement) Act 2020 provides that a Minister of the Crown may make such provision as the Minister considers appropriate in consequence of the Act. In this instrument, this power is exercised to make amendments which relate to the implementation of the Transition Period (for example, updating references from ‘exit day’ to ‘IP completion day’).
- 6.4 This instrument operates together with five other instruments, which work together to amend the suite of fisheries management legislation that applies to the UK. These are:
- a) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
 - b) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019
 - c) The Common Fisheries Policy (Amendment etc.) (EU Exit) (No.2) Regulations 2019

- d) The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019
- e) The Fisheries (Amendment) (EU Exit) Regulations 2019, which provided technical corrections to deficiencies in domestic legislation.

7. Policy background

What is being done and why?

- 7.1 The Government remains committed to maintaining existing standards of effective fisheries management. This instrument is required to ensure that after the end of the Transition Period there is immediate continuity in regulation, and the same environmental standards are met. In accordance with the provisions of section 8 of the European Union (Withdrawal) Act 2018, all amendments to the CFP have arisen as a result of the UK's departure from the EU and therefore the amendments do not represent any changes in policy regarding fisheries management. Over time, the fisheries administrations will amend retained EU law in order to implement their own policies.
- 7.2 Fisheries management is largely devolved to Scotland, Wales and Northern Ireland in relation to their vessels and their waters. Therefore, where provisions place obligations on EU member States to do something, these references are mostly changed to "a fisheries administration", which is a term defined in amendments made by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 that applies to all of the retained CFP Regulations.
- 7.3 The definition ensures that "a fisheries administration" means the Secretary of State, a devolved fisheries administration or the Marine Management Organisation, and "a devolved fisheries administration" means the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs. This definition has the effect of preserving the status quo, so that the administration which currently carries out the function in question, or which exercises the power in question, continues to do so. New functions which have not previously been exercisable at member State level have been transferred in accordance with the joint decision-making framework agreed with the Devolved Administrations to complement the current position.
- 7.4 Further examples of the technical changes that are made by this instrument include amending references from the "European Union" to the "United Kingdom"; and "Union" or "Member State vessels and waters" to "UK vessels and waters".
- 7.5 In addition to amending retained EU law, this instrument also amends previous EU exit statutory instruments in consequence of the ratification of the EU withdrawal agreement. In particular, the EU withdrawal agreement contains provisions which apply elements of EU legislation directly in the UK after the end of the Transition Period. EU exit statutory instruments made prior to the EU withdrawal agreement were drafted on the basis that such EU legislation would form part of retained EU law. However, the European Union (Withdrawal Agreement) Act 2020 ensures that there will not be duplication of retained EU law and EU law which applies directly by virtue of the EU withdrawal agreement. As such, the amendments made in this instrument in consequence of the EU withdrawal agreement revoke previous deficiency corrections to retained EU law in this area as the retained EU law will no longer be created by operation of the European Union (Withdrawal) Act 2018.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex A to this explanatory memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

- 10.1 The Devolved Administrations (the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Welsh Government) were involved in the drafting of the proposed amendments.
- 10.2 A targeted engagement was carried out on the approach, involving key stakeholders from the fisheries sector, food industry and environment non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

11. Guidance

- 11.1 As these are technical changes to existing legislation there is no associated guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant changes to what the public sector, or business, will have to do under the regulations are envisaged. The amendments made by the instrument will ensure UK vessels are subject to largely the same rules they are now. The impact of each set of regulations made using the powers transferred by this instrument will be assessed separately, as and when the powers are exercised.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As the legislation will continue to operate substantially as it did before EU Exit, it will not disproportionately affect small business.
- 13.3 The effect on small businesses of each set of regulations made using the powers transferred in this instrument will be assessed separately, as and when the powers are exercised.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Jack Mitchell at the Department for Environment, Food and Rural Affairs, telephone: 020 8720 2848 or email: Jack.Mitchell@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because: this instrument corrects deficiencies in legislation that arise from the withdrawal of the UK from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU Exit and provisions for the powers to make changes to regulations to enable a sustainable approach to fisheries management.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Victoria Prentis MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020.”

- 5.2 This is appropriate because: the power to amend the data collection work plan which sits under the data collection framework regulation should be exercisable administratively rather than by statutory instrument (as set out in Annex B to this explanatory memorandum). The data collection work plan itself is not a statutory instrument and the amendment power contains a safeguard to ensure that the document cannot be amended in a manner which is inconsistent with the legislation it sits under, as well as an obligation to publish any amendments.

Annex B to the Explanatory Memorandum

Summary of amendments made in the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020

Discard Plans	
Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021	References to the 'Union' have been amended to the 'United Kingdom', and ICES area references have been amended so that they generally apply to UK waters but, in particular, exclude areas which exclusively fall within EU waters. As the UK is now an independent coastal state, the amendments remove legal requirements for all EU member states to provide data annually to STECF for review, on the impact of a number of the discarding exemptions (flexibilities), which are in force until the end of 2021. Despite the removal of these requirements, the UK still plans to ensure the relevant data is collated and reviewed, but will no longer submit the data to STECF for review. The EU Regulation is due to expire at the end of 2021. The amendments made by this instrument do not change the expiry date and therefore the Regulation in UK retained EU law (and all of the discarding exemptions outlined) will also expire at the end of 2021.
Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021	References to the 'Union' have been amended to the 'United Kingdom', and ICES area references have been amended so that they generally apply to UK waters but, in particular, exclude areas which exclusively fall within EU waters. As the UK is now an independent coastal state, the amendments remove legal requirements for all EU member states to provide data annually to STECF for review, on the impact of a number of the discarding exemptions (flexibilities), which are in force until the end of 2021. Despite the

	removal of these requirements, the UK still plans to ensure the relevant data is collated and reviewed, but will no longer submit the data to STECF for review. Additionally, some of the discarding exemptions are only available when fishers are using particular selective gear types. STECF (an EU body) may assess other gear types, not specified in this regulation, as being as equally selective as those specified in the regulation, and therefore equivalent. We have replaced this reference to STECF with 'a fisheries administration' who in the future will be responsible for determining equivalence in gear types, and other fishing equipment. The EU Regulation is due to expire at the end of 2021. The amendments made by this instrument do not change the expiry date and therefore the Regulation in UK retained EU law (and all of the discarding exemptions outlined) will also expire at the end of 2021.
The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulation 2019	Amendments to these two statutory instruments in Chapter 1 of Part 2 to this instrument revoke previous deficiency corrections which related to previous discard plans which have since been repealed at EU level.

TAC and Quota Regulations	
Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for	This instrument removes all of the provisions relating to quota (total allowable catch or TAC) as UK quota will in future be set by the Secretary of State.

certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters	References to ‘Union’ in remaining provisions are amended to ‘United Kingdom’, ensuring that UK boats are required to fish under the same management measures as EU boats, for instance prohibiting UK boats fishing for European seabass in ICES divisions 4b and 4c, and in ICES subarea 7. In relation to the seabass fishing management measures in Article 10, this instrument amends the time periods for the fishing restrictions and derogations as these are written into the EU text specifically for 2020 with a transitional provision in Article 54 which states that the provisions continue into 2021 until replaced by next year’s quota regulation. As the UK will not be subject to next year’s quota regulation, the relevant provisions will instead be extended by this instrument to apply in 2021 in the same way they applied in 2020. The provisions will then be reviewed after the end of the Transition Period and amended or replaced as necessary. We have replaced references to STECF, an EU body, with references to ‘an independent body recognised at international level’, ensuring flexibility in seeking the best scientific advice. References to areas of the sea which fall solely within EU waters have also been removed.
The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019	Amendments to these two statutory instruments in Chapter 1 of Part 2 to this instrument revoke previous deficiency corrections which related to the previous EU TAC and quota regulation which has now been superseded by the 2020 version.
Data Collection Framework	

Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors	The Commission Implementing Decision sets out the list of mandatory research surveys for the purposes of the data collection framework regulation and the thresholds below which it is not mandatory to collect data. This list is an EU-wide list whereby the specific surveys are split across the various member States (often including individually split surveys and cost-sharing arrangements). The Decision, however, makes it clear that it is each member State's individual data collection work plan which sets out the surveys that a member State will be responsible for. As such, this instrument amends the Decision to remove the EU-wide list of mandatory research surveys and the thresholds and instead confirm that the relevant surveys are those specified in the UK's data collection work plan.
Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors	The amendments made to this Commission Implementing Decision are technical deficiency correction. For example, they will remove a reference to examining the methods and result of studies to verify that they are appropriate for the management of the common fisheries policy and replaced it so that examination must ensure that they are appropriate for the management of fishing activity. The amendments replace references to 'Union waters' and 'fisheries' with 'UK waters' etc. These ensures that surveys are required to be carried out within UK waters, and on UK fishing boats fishing within and outside of UK waters where appropriate. They also change references to Euro to Pounds Sterling. This instrument also makes amendments to the Commission Implementing Decision to complement the amendments made elsewhere by this instrument – for example, amendment to an outdated reference to Article 21 of Regulation (EU) 508/2014 (see immediately below).
The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019	This instrument makes a number of amendments to a previous EU Exit SI (2019/739) as follows: It deletes previous deficiency corrections to the 2017/2019 data collection multiannual programme as this Commission Implementing Decision was revoked by the EU and replaced with the 2020-2021 multiannual programme amended above.

	It updates previous amendments to the data collection framework regulation (2017/1004) to complement the amendments made to the new data collection multiannual programme – the amendments which provide for the relevant research surveys and thresholds to be those set out in the data collection work plan. It also adds new provisions to the data collection framework regulation which were previously added to regulation (EU) 508/2014 (the European Maritime and Fisheries Fund “EMFF” Regulation). The provisions in question are provisions which provide the Secretary of State with the power to amend the data collection work plan (with the consent of the devolved administrations where necessary). These were previously amendments to Article 21 of the EMFF Regulation but following the EU withdrawal agreement there will no longer be a retained EU law version of the EMFF Regulation to amend. As the data collection work plan will continue to be used outside the framework of the 2014-2020 EMFF, the most appropriate place to put these amendment powers is in the data collection framework regulation itself. As the data collection work plan is not a statutory instrument, the power to amend it will be an administrative rather than a legislative power.

Amendments to existing EU Exit Regulations	
The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019	This instrument makes a number of amendments to a previous EU exit statutory instrument (2019/739) as follows: An amendment is made to change references to ‘exit day’ to ‘IP completion day’ which has the legal meaning of 11pm 31st December 2020 as found in section 39(1) of the European Union (Withdrawal Agreement) Act 2020. It amends the original deficiency corrections to the Common Fisheries Policy Regulation (1380/2013) to correct an error in the original definition of ‘British fishery limits’ which was

	inserted into the Regulation. This is required because the previous definition only set an outer limit and not an area of the sea; and, secondly, on the assumption that it would be interpreted as the sea within BFL, it does not exclude Isle of Man territorial waters from scope. The replacement definition made by this amendment resolves both of these issues. Amendments are made to the original deficiency corrections to the Control Regulation (1224/2009) to account for the fact that Article 45 of the IUU regulation (2008/1005) was revoked but, in error, corresponding references to it in the control regulation were not. Similarly, an amendment is made to the original deficiency corrections to the CMO Regulation (1379/2013) to account for the fact that Articles 30 and 31 have been revoked but, in error, a reference to these Articles was not. Part 9 of the previous EU exit statutory instrument is revoked by this instrument in its entirety. Part 9 contained the original deficiency corrections to the European Maritime and Fisheries Fund “EMFF” Regulation. Following the ratification of the EU withdrawal agreement, the EMFF Regulation and associated provisions will no longer form part of retained EU law. This is due to Article 138 of the EU withdrawal agreement which provides that the relevant EMFF legislation will continue to apply directly in the United Kingdom to govern the wind down of the 2014-2020 EMFF programme. As such, this instrument revokes all previous deficiency corrections to the EMFF suite of legislation as there will no longer be retained EU law in this area to amend. For the same reason, this instrument also revokes a number of entries in the Schedule to the previous EU exit SI. The entries deleted are all items of EMFF legislation that will no longer form part of retained EU law.
The Fisheries (Amendment) (EU Exit) Regulations 2019	Amendments are made to previous amendments made to domestic legislation in consequence of EU exit to change references to ‘exit day’ to ‘IP completion day’ which has the legal meaning of 11pm 31st December 2020 as found in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

	Previous amendments to the Grants for Fishing and Aquaculture Industries Regulations 2015 are also replaced with a new amendment in consequence of the changes to the approach to the EMFF suite of legislation mentioned above. Whereas previously the amendments made changes to the 2015 Regulations in consequence of deficiency corrections made to the retained EU law, now those deficiency corrections will be revoked so those consequential changes should also be undone. Furthermore, as the EMFF Regulation is being repealed and replaced at the EU level on 1st January, the cross reference in the 2015 Regulations for the purposes of the MMO grant making power is amended to ensure there is no ambiguity and that the purposes for which grants can continue to be made are those set out in the EMFF Regulation as it has effect immediately before IP completion day.
The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019	These previous EU exit amendment Regulations made amendments to the ‘common provisions regulation’ (1303/2013) which governs the operation of EU structural and investment funds. In particular, they made amendments in relation to the aspects of the common provisions regulation which govern the EMFF. This instrument amends the previous EU exit amendment Regulations to remove deficiency corrections which relate to the EMFF now that the EMFF aspects of the common provisions regulation will not form part of retained EU law. This instrument does not remove the other previous deficiency corrections made to the common provisions regulation in relation to funding for rural development because those provisions will be treated differently due to other provisions contained in relevant rural development legislation.
The Agriculture (Legislative Functions) (EU Exit) Regulations 2019	These amendments are as above – removing references to the EMFF from previous deficiency corrections to the common provisions Regulation (1303/2013) because of the effect of Article 138 of the EU Withdrawal Agreement combined with the European Union (Withdrawal) Act 2018 providing for the EMFF legislation to no longer form part of retained EU law.
The Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019	This previous EU exit amendment SI is amended to alter the powers available to create, or amend existing, discard exemptions from the landing obligation (‘discard plans’). The original approach to these powers was for each of the fisheries administrations to be able to exercise them independently within their area of competence. However, following further consultation with the devolved administrations, it was agreed that there would be benefits if the Secretary of State also

	had the ability to exercise this power for the whole of the UK (provided the devolved administrations consent where the exercise of the power would fall within devolved competence). As such, this instrument amends the previous deficiency corrections to maintain the previous powers but also add in this additional UK-wide power for the Secretary of State. Omitting Chapter 8 of Part 5 also removes previous deficiency corrections which relate to the EMFF for the reasons set out above.
The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019	This previous EU exit amendment SI made deficiency corrections to Regulation 2018/2025. This instrument makes minor amendments to those deficiency corrections to revoke Article 6 and the associated definitions in Article 2 for consistency with the new approach taken to similar measures in the TAC and Quota Regulation.
The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019	This previous EU exit amendment SI is amended as follows: The first amendment corrects an error, where an entire provision was deleted when only the part which specifies a minimum mesh size for the Skagerrak and Kattegat should have been deleted. A further amendment takes the same approach as above with the discard plan powers. The powers in question here also relate to discard exemptions from the landing obligation. As above, whereas these powers were originally created in the deficiency corrections to be exercisable by the fisheries administrations individually, they are amended to allow the Secretary of State to exercise them (to make amendments to the (or create a new) North Sea discard plan (currently 2019/2238)) for the whole of the UK with the consent of the DAs where necessary. This mirrors the change made to the Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019. Additionally, an identical amendment will allow the Secretary of State to make amendments to the (or create a new) North Western Waters discard plan (currently 2019/2239) for the whole of the UK with the consent of the DAs where necessary, again as per the similar changes made elsewhere.

	Finally, a correction to the EMFF amendments is revoked in line with the above.

Retained EU law revoked by the instrument: Part 1

Regulation	Reason for Revocation
(a) Commission Delegated Regulation (EU) 2020/3 establishing a discard plan for Venus shells (<i>Venus spp.</i>) in certain Italian territorial waters.	Revoking as this Regulation applies to Italian waters.
(b) Commission Delegated Regulation (EU) 2019/2201 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak.	Revoking as this Regulation applies to the Skagerrak.

(c) Council Regulation (EU) 2019/124 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.	This Regulation is revoked because it has been superseded by the 2020 TAC and Quota Regulation.
(d) Commission Implementing Decision (EU) 2018/1283 laying down rules on the format and timetables for the submission of annual data collection reports in the fisheries and aquaculture sectors.	This Decision is being revoked because Article 11 of the Data Collection Framework Regulation has already been revoked (see regulation 16(9) of SI 2019/739). There will no longer be a requirement to produce an annual report and this Decision sets out the requirements for annual reports so it should also be revoked.
(e) Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.	A replacement regime will be put in place under domestic powers in the Antarctic Act 1994.
(f) Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.	A replacement regime will be put in place under domestic powers in the Antarctic Act 1994.

Legislation revoked by the instrument

so far as it forms part of retained EU law: Part 2

Regulation	Reason for Revocation
(a) so far as relating to the European Maritime and Fisheries Fund, Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.	As above, following the ratification of the EU withdrawal agreement, the EMFF Regulation and associated provisions will no longer form part of retained EU law. By virtue of Article 138 of the EU withdrawal agreement and section 7A of the European Union (Withdrawal) Act 2018, the EMFF Regulation and associated provisions will apply directly in their EU law form in the United Kingdom in respect of 2014-2020 EU multiannual financial framework. However, whilst each legislative instrument will not be carried across into retained EU law in its full form, an individual provision of such an instrument could form part of retained EU law to the extent that the purpose of the provision falls outside the purposes of Article 138 of the EU withdrawal agreement. As such, the revocations contained in Part 2 of the Schedule to this instrument provide legal certainty by revoking any individual provisions of the listed legislation which exist in retained EU law. This approach not only provides legal certainty but also clarity on the statute book. In the case of Regulation (EU) No 1303/2013, the revocation of the regulation so far as it forms part of retained EU law is limited to just the EMFF aspects of the Regulation and not the provisions which apply to other funds.

(b) Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(c) Commission Implementing Decision 2014/464/EU identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(d) Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(e) Commission Implementing Regulation (EU) 763/2014 laying down rules for applying Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the technical characteristics of information and publicity measures and instructions for creating the Union emblem.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.

(f) Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(g) Commission Delegated Regulation (EU) No 1014/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the content and construction of a common monitoring and evaluation system for the operations funded under the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.

(h) Commission Delegated Regulation (EU) No 1046/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(i) Commission Implementing Regulation (EU) No 1242/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(j) Commission Implementing Regulation (EU) No 1243/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.

(k) Commission Implementing Regulation (EU) No 1362/2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(l) Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(m) Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.

(n) Commission Delegated Regulation (EU) 2015/852 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(o) Commission Delegated Regulation (EU) 2015/1930 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(p) Commission Delegated Regulation (EU) 2015/2252 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund.	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.
(q) Commission Implementing Decision C(2015) 8628 on approving the	As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall

operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom.	outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.



Ein cyf/Our ref MA-L/LG/3410/20

Mick Antoniw MS
Chair Legislation Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

22 October 2020

Dear Mick

I am writing to inform you that I have laid a statutory instrument consent memorandum ("the memorandum") in relation to The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 ("the Regulations") which were made by the Parliamentary Under Secretary of State for the Environment, on 14 October. The Regulations contain amendments to the Marine & Coastal Access Act 2009 which include provision for Wales.

The purpose of the Regulations is to ensure existing CFP legislation is converted into retained EU law on IP completion day. The 2020 Regulations ensure that the relevant rules contained within the legislation continue to apply to UK fishing vessels wherever they are, subject to different rules stemming from international agreements, and that those same rules continue to apply to all fishing vessels operating within UK waters.

I have laid the memorandum in accordance with the requirement under Standing Order (SO) 30A. I consider the Regulations to be a relevant statutory instrument because they make provision in relation to Wales amending primary legislation within the legislative competence of the Senedd, which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters that are not within the legislative competence of the Senedd.

Regards

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2020**

DATE **16 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2020

The law which is being amended

European Directly Applicable Instruments

- Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021
- Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021
- Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters
- Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors
- Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors

Domestic legislation (EU EXIT SIs)

- The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019;
- The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019;
- The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
- The Fisheries (Amendment) (EU Exit) Regulations 2019;
- The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019;
- The Agriculture (Legislative Functions) (EU Exit) Regulations 2019, and
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

Other subordinate legislation

- The Grants for Fishing and Aquaculture Industries Regulations 2015

European legislation to be revoked

Commission Delegated Regulation (EU) 2020/3 establishing a discard plan for Venus shells (Venus spp.) in certain Italian territorial waters.

Commission Delegated Regulation (EU) 2019/2201 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak.

Council Regulation (EU) 2019/124 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.

Commission Implementing Decision (EU) 2018/1283 laying down rules on the format and timetables for the submission of annual data collection reports in the fisheries and aquaculture sectors.

Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.

Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Fisheries is a devolved subject area, and the Senedd Cymru (the "Senedd") has broad legislative competence in this area in relation to Wales

This instrument confers both administrative and legislative functions on the Welsh Ministers without encumbrance. This instrument also confers a function on the Secretary of State to exercise functions in relation to Wales with the consent of Welsh Ministers. In addition, this instrument confers functions on the Secretary of State to be exercised concurrently with the Welsh Ministers.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, Welsh Government are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

Functions transferred so that they are exercisable by the Secretary of State alone or with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. A future Senedd Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

This instrument makes operability changes under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020 to the instruments referred to above, in order to address deficiencies within Common Fisheries Policy (CFP) legislation, as a result of the UK's exit from the European Union. These changes will ensure that fishing in UK waters continues to be regulated in a sustainable manner post EU exit, but makes no substantive changes to the effect of the CFP or the manner in which fishers conduct their activities.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213379>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

185 - The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2020

Laid in the UK Parliament: 14 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 63
SICM under SO 30A (because amends primary legislation)	SICM(5)34

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

Summary

These Regulations address deficiencies within Common Fisheries Policy (CFP) legislation, as a result of the UK's exit from the European Union. These changes will ensure that fishing in UK waters continues to be regulated in a sustainable manner post EU exit.

The CFP imposes a common approach to the sustainable management of fisheries across the EU and its waters. A number of statutory instruments made in 2019 under powers in the European Union (Withdrawal) Act 2018

made amendments to EU CFP legislation that was scheduled to become 'retained EU law' on exit day. The amendments were intended to ensure the retained CFP legislation would operate effectively upon the UK's withdrawal from the EU. Following ratification of the EU withdrawal agreement, EU CFP legislation will now become retained EU law at the end of the Transition Period and these Regulations are required to ensure retained EU law operates effectively from that point.

The Regulations are required in relation to three categories of amendments:

1. Amendments required to account for new EU CFP legislation which has come into force since the previous amending statutory instruments were drafted in preparation for exit day.
2. Amendments required in consequence of the EU withdrawal agreement.
3. Amendments to previous amending statutory instruments, including amendments to correct minor errors.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 16 October 2020 regarding the effect of these Regulations:

These Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 (the 2006 Act), the Senedd cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent. The Welsh Government's written statement says that the Welsh Government are in negotiations with the UK Government in relation to a section 109 Order to amend Schedule 7B of the 2006 Act so as to negate the potential restriction on the future competence of the Senedd.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 22 October 2020, on the basis that the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, sections 30, 238 and 278 of the Marine and Coastal Access Act 2009).

In a [letter](#) to the Committee dated 22 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM.

Agenda Item 10.5

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Plant Health (Amendment etc.) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (“the Regulations”) were laid before Parliament on 14 October 2020. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213775/introduction>

Summary of the Statutory Instrument and its objective

3. The objective of the Regulations is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.

Relevant provision to be made by the SI

4. Part 2 of the Regulations amend sections 2(1) and 3(1) of the Plant Health Act 1967 to omit the words “or called for by any EU obligation” (“the relevant provision”).

Why it is appropriate for the SI to make this provision

5. There is no divergence between the Welsh Government and the UK Government on the policy of the relevant provision, which is a minor amendment that is consequential to the withdrawal from the EU. As such, making separate SIs in Wales and England to correct the sections in question would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government

considers it appropriate that the UK Government legislates on our behalf in this instance and that the relevant provision is made by the Regulations.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

October 2020

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. 000

EXITING THE EUROPEAN UNION PLANT HEALTH

The Plant Health (Amendment etc.) (EU Exit) Regulations 2020

Made - - - -

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to that Act.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Plant Health (Amendment etc.) (EU Exit) Regulations 2020.

(2) They come into force—

- (a) as regards this Part and regulation 55(a) and (b), immediately before IP completion day;
- (b) as regards Parts 2 and 3 and regulations 53, 54, 55(c) and 56, on IP completion day.

(1) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53(2) of Schedule 5 to, that Act.

PART 2

Amendment of primary and secondary legislation

The Plant Health Act 1967

2. In sections 2(1) and 3(1) of the Plant Health Act 1967(2), omit “or called for by any EU obligation”.

The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015

3.—(1) The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(3) are amended as follows.

(2) In regulation 1A—

(a) in paragraph (1)—

(i) in the definition of “controlled consignment”, for paragraph (b) substitute—

“(b) consists of, or includes, isolated bark or wood of a type that is described in Part A of Annex 11, or Annex 12, to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants(4);”;

(ii) in the definition of “the EU Plant Health Regulation”, omit “EU”, in the first place where it occurs;

(iii) omit the definition of “Phytosanitary Conditions Regulation”;

(iv) in the definition of “plant passport authority” omit “EU”;

(v) in the definition of “WPM authorisation” omit “EU”;

(b) in paragraph (2), omit “EU”, in the first and third places where it occurs.

The Plant Health etc. (Fees) (England) Regulations 2018

4.—(1) The Plant Health etc. (Fees) (England) Regulations 2018(5) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), omit “EU”, in the first place where it occurs;

(b) in paragraph (2), omit “EU”, in the first and third places where it occurs;

(3) In regulation 3—

(a) in paragraph (1), for the words from “the lists” to “Regulation”, in the second place where it occurs, substitute “Part A of Annex 11, or Annex 12, to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants”;

(b) in paragraph (3)—

(2) 1967 c. 8; section 2(1) was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68) and S.I. 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043.

(3) S.I. 2015/350, amended by S.I. 2019/1488, 1517; there are other amending instruments but none is relevant.

(4) EUR 2019/2072.

(5) S.I. 2018/289, amended by S.I. 2019/1257, 1488, 2020/9; there are other amending instruments but none is relevant.

- (i) in sub-paragraph (a), for the definition of “controlled plant pest” substitute—
““controlled plant pest” means a GB quarantine pest, a provisional GB quarantine pest, a PFA quarantine pest or a GB regulated non-quarantine pest;”;
- (ii) omit sub-paragraph (aba).
- (4) In regulation 4(6)(a), after “issue” insert “UK”.
- (5) In regulation 5A(5), in the definition of “pre-export service”—
 - (a) omit “to a third country”;
 - (b) for the “phytosanitary requirements of the third country” substitute “relevant phytosanitary import requirements within the meaning of Article 99a of the Plant Health Regulation”.
- (6) In regulation 6—
 - (a) in paragraph (1), omit the words from “whether” to “Decision,”;
 - (b) omit paragraph (2).
- (7) Omit regulation 6A.
- (8) In Schedule 2, in the table, omit the entries in the first, second and third columns relating to *Citrus*, *Mangifera* and *Passiflora*.

The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019

5. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019(6) are amended in accordance with regulations 6 to 25.

Part 1

- 6.—(1) Part 1 is amended as follows.
- (2) In regulation 2—
 - (a) in paragraph (1)—
 - (i) in the definition of “controlled consignment”—
 - (aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
 - (bb) omit sub-paragraph (ii) of paragraph (a);
 - (cc) in paragraph (a)(iii), omit “EU”, in both places where it occurs;
 - (ii) in the definition of “controlled plant pest”—
 - (aa) in paragraph (a), after “2,” insert “2A,”;
 - (bb) omit paragraph (b);
 - (cc) in paragraph (c), omit “EU”;
 - (iii) omit the definition of “EU emergency decision”;
 - (iv) in the definition of “EU Plant Health Regulation”, at the end insert “as it has effect in EU law”;
 - (v) omit the definition of “EU plant health rule”;
 - (vi) in the definition of “Official Controls Regulation”, in the second place where it occurs, omit “EU”;

(6) [S.I. 2019/1517](#), amended by [S.I. 2020/381](#), 1014; there are other amending instruments but none is relevant..

- (vii) after the definition of “plant health inspector”, insert—
 - ““Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants⁽⁷⁾;
 - “plant health rule” means a rule of a kind mentioned in Article 1(2)(g) of the Official Controls Regulation;”;
- (viii) in the definition of “plant pest”, omit “EU”;
- (ix) in the definition of “regulated item”, for “an EU” substitute “a”;
- (b) in paragraph (2), omit “EU”, in both places where it occurs.
- (3) Omit regulations 3 and 4.
- (4) In regulation 5—
 - (a) in the heading, omit “EU”;
 - (b) in paragraphs (1) and (2), omit “EU”, in each place where it occurs.

Part 2

- 7.—(1) Part 2 is amended as follows.
- (2) In regulation 6(3)—
 - (a) in the definition of “forestry professional operator”—
 - (i) in the words before paragraph (a), omit “EU”;
 - (ii) in paragraph (b), for “the Union territory”, in both places where it occurs, substitute “Great Britain or a CD territory”;
 - (iii) after paragraph (c), insert—
 - “(ca) the introduction of forestry material into Northern Ireland from England;”;
 - (b) omit the definition of “official controls”.

Part 3

- 8.—(1) Part 3 is amended as follows.
- (2) In regulation 7—
 - (a) in paragraph (1), after “by air” insert “or into a RoRo port in England”;
 - (b) in paragraph (4)—
 - (i) in the definition of “responsible operator”, for “the Union” substitute “Great Britain”;
 - (ii) after that definition insert—
 - ““RoRo port” means a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018⁽⁸⁾.”.
- (3) In regulation 8—
 - (a) in paragraph (1), for “an EU”, in both places where it occurs, substitute “a”;
 - (b) in paragraph (2)(b), for “the Union territory” substitute “Great Britain”.

(7) EUR 2016/2031.

(8) [S.I. 2018/1248](#) to which there are amendments not relevant to these Regulations.

- (4) In regulation 10(1)—
 - (a) in sub-paragraphs (a) and (b), for “an EU”, in both places where it occurs, substitute “a”;
 - (b) in sub-paragraph (c), for “the Union territory” substitute “Great Britain”.
- (5) In regulation 11(1)(c), for “the Union territory” substitute “Great Britain”.
- (6) In regulation 12—
 - (a) in paragraph (1)(a) and (b), omit the words from “, consignments which” to “Schedule 1”, in both places where they occur;
 - (b) omit paragraph (1A).

Part 4

- 9.—(1) Part 4 is amended as follows.
- (2) In regulation 14(2), in the definition of “prohibited material”—
 - (a) in sub-paragraph (b)—
 - (i) for “the Union territory or England” substitute “Great Britain”;
 - (ii) for “an EU” substitute “a”;
 - (iii) omit “or Part 1 of Schedule 1”;
 - (b) in sub-paragraph (c)—
 - (i) omit “within the Union territory, or”;
 - (ii) for “an EU” substitute “a”;
 - (iii) omit “or Part 2 of Schedule 1”.
- (3) In regulation 16(4), omit “(including representatives of the European Commission)”.

Part 5

- 10. Omit regulation 18.

Part 6

- 11.—(1) Part 6 is amended as follows.
- (2) In regulation 19, omit “EU”.
- (3) In regulation 20—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (b), omit “EU”;
 - (ii) in sub-paragraph (c)—
 - (aa) for the comma substitute “or”;
 - (bb) omit “or a pre-export certificate”;
 - (b) in paragraph (2)—
 - (i) omit “EU”, in the first place where it occurs;
 - (ii) omit “an EU emergency decision”;
 - (iii) omit “EU”, in the final place where it occurs.
- (4) In regulation 21—
 - (a) in paragraph (1)(c)—

- (i) after “under” insert “, or by virtue of”;
- (ii) omit “EU”;
- (iii) after “Regulation”, in the second place where it occurs, insert “, any regulations made under the Plant Health Regulation or the Official Controls Regulation,”;
- (b) in paragraph (3)—
 - (i) in the definition of “plant health derogation”—
 - (aa) omit “EU”, in the first and second places where it occurs;
 - (bb) for “an implementing or delegated act adopted by the European Commission” substitute “retained EU law or regulations made”;
 - (cc) omit sub-paragraph (b), and the “or” which precedes it;
 - (ii) in the definition of “potential quarantine plant pest”, for the words from “Union” to “Regulation”, in the first place where it occurs, substitute “GB quarantine pest or a provisional GB quarantine pest”.
- (5) In regulation 22(1)—
 - (a) omit “EU”;
 - (b) for the comma substitute “or”;
 - (c) after “Regulation or” insert “for the purposes of, or under,”.

Part 8

- 12.—**(1) Part 8 is amended as follows.
- (2) Omit regulations 24 and 25.
- (3) In regulation 26—
- (a) in paragraph (1)—
 - (i) omit “any of the following plants or plant products”;
 - (ii) after “into England” insert “any solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply”;
 - (iii) for “an appropriate” substitute “a”;
 - (iv) omit sub-paragraphs (a) to (c);
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (c), omit “plants or”;
 - (ii) in sub-paragraph (d)—
 - (aa) omit “plants or”;
 - (bb) for “have been, or are” substitute “has been, or is”;
 - (iii) omit sub-paragraph (e);
 - (iv) for sub-paragraph (f) substitute—
 - “(f) the address of the consignor; and
 - (g) details of any phytosanitary treatments applied to the wood.”;
 - (c) in paragraph (3), omit the definition of “appropriate plant health inspector”.

Part 9

- 13.—**(1) Part 9 is amended as follows.

- (2) In regulation 27(1) and (2), omit “EU”, in each place where it occurs.
- (3) In regulation 28—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) in paragraph (ii), omit “EU”;
 - (bb) in paragraph (iv), for the words from “an EU” to the end substitute “a plant health rule comply with that rule”;
 - (ii) in sub-paragraphs (b), (c) and (e), omit “EU”, in each place where it occurs;
 - (b) in paragraph (6), for sub-paragraph (a) substitute—
 - “(a) be accompanied by such persons as the inspector considers necessary; and”;
 - (c) omit paragraph (7);
 - (d) in paragraph (8), in the words before sub-paragraph (a), omit “(ii)”.
- (4) In regulation 31(4)—
 - (a) omit “other”;
 - (b) omit “(including representatives of the European Commission)”.
- (5) In regulation 34(1), omit “EU”.
- (6) In regulation 35(1)—
 - (a) in sub-paragraph (a), omit “EU”;
 - (b) in sub-paragraph (b)—
 - (i) for “another part of the Union territory” substitute “United Kingdom or to a CD territory”;
 - (ii) omit “EU”.

Part 11

- 14.—**(1) Part 11 is amended as follows.
- (2) In regulation 38(1)—
 - (a) in sub-paragraph (a), omit “24(1), 25(1) or”;
 - (b) omit sub-paragraph (b);
 - (c) in sub-paragraph (d), omit “EU”;
 - (d) in sub-paragraph (e), for “an EU” substitute “a”;
 - (e) in sub-paragraph (f), after “other” insert “retained direct”;
 - (f) omit sub-paragraph (g).
- (3) In regulation 41, for “plant passport or” substitute “UK plant passport or a”;
- (4) In regulation 42—
 - (a) in the heading, after “of” insert “UK”;
 - (b) in paragraph (1), in sub-paragraphs (a) to (c), for “plant passport”, in each place where it occurs, substitute “UK plant passport”.
- (5) In regulation 43—
 - (a) in paragraph (1)(a) and (c), omit “EU”, in both places where it occurs;
 - (b) for paragraph (2) substitute—

“(2) In paragraph (1)—

- (a) “authorised person” means a person authorised by an appropriate authority;
- (b) a reference to the Plant Health Regulation or the Official Controls Regulation includes retained EU law adopted, or regulations made, under the Plant Health Regulation or the Official Controls Regulation and any other retained EU law relating to plant health.”.

Part 14

15. In regulation 56(4), omit “EU”.

Schedule 1

16. Omit Schedule 1.

Schedule 2

17. Schedule 2 is amended in accordance with regulations 18 to 23.

Part 1

18.—(1) Part 1 is amended as follows.

(2) In paragraph 1—

- (a) omit the definitions of “[Directive 93/85/EEC](#)”, “[Directive 98/57/EC](#)” and “[Directive 2007/33/EC](#)”;
- (b) before the definition of “premises” insert—

““EPPO PM 7/21” means the standard describing a diagnostic protocol for *Ralstonia solanacearum*, *R. pseudosolanacearum* and *R. syzygii* approved by the European and Mediterranean Plant Protection Organization(9);

“EPPO PM 7/40” means the standard describing a diagnostic protocol for *Globodera rostochiensis* and *Globodera pallida* approved by the European and Mediterranean Plant Protection Organization(10);

“EPPO PM 7/59” means the standard describing a diagnostic protocol for *Clavibacter michiganensis* subsp. *sepedonicus* approved by the European and Mediterranean Plant Protection Organization(11);

“EPPO PM 7/119” means the standard describing the procedures for nematode extraction approved by the European and Mediterranean Plant Protection Organization(12);”.

(9) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(10) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(11) Approved by the European and Mediterranean Plant Protection Organization in September 2005 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(12) Approved by the European and Mediterranean Plant Protection Organization in September 2013 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

Part 2

19.—(1) Part 2 is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (1)(a), for “, other than Switzerland” substitute “to which the prohibition in Article 40(1) of the Plant Health Regulation applies”;
- (b) in sub-paragraph (2)—
 - (i) in paragraph (a) for “an officially approved programme in the European Union or Switzerland” substitute “a programme for the certification of potatoes which has been officially approved by a competent authority or a CD authority”;
 - (ii) in paragraph (b), for “Annex 1 to [Directive 93/85/EEC](#)” substitute “EPPO PM 7/21”;
 - (iii) in paragraph (c), for “Annex 2 to [Directive 98/57/EC](#)” substitute “EPPO PM 7/59”.

Part 4

20.—(1) Part 4 is amended as follows.

(2) In paragraph 8—

- (a) in the definition of “field” for “Article 3 of [Directive 2007/33/EC](#)” substitute “this Part”;
- (b) after the definition of “Potato cyst nematode” insert—

““specified measures” means—

- (a) for the purposes of paragraph 10(2), the official re-sampling of the field and official testing of the samples, carried out at least three years after appropriate officially approved control measures have been taken in the field or, in any other case, at least five years after the year in which the Potato cyst nematodes were found or potatoes were last grown in the field;
- (b) for the purposes of paragraphs 12(3) and 16—
 - (i) the disinfection of the bulbs or plants by appropriate methods that ensure that there is no identifiable risk of Potato cyst nematodes spreading;
 - (ii) the removal of soil from the bulbs or plants by washing or brushing them until they are practically free of soil, so as to ensure that there is no identifiable risk of Potato cyst nematodes spreading.”.

(3) After paragraph 8 insert—

“Official testing

8A. Any official testing of samples for the purposes of this Part must be carried out in accordance with EPPO PM 7/40 and EPPO PM 7/119.”.

(4) In paragraph 9—

- (a) in paragraph (a), for “Articles 4 and 5 of [Directive 2007/33/EC](#)” substitute “this Part”;
- (b) in paragraph (b), for “Article 6 of [Directive 2007/33/EC](#)” substitute “this Part”.

(5) Paragraph 9 becomes paragraph 9(1) and after that sub-paragraph insert—

“(2) An official investigation of a field for the purposes of paragraph 9(1)(a) must be carried out—

- (a) prior to the proposed planting or storing; and

- (b) unless there is documentary evidence of a previous official investigation confirming that no Potato cyst nematodes were found during the investigation and that potatoes or host plants were not present at the time of that investigation and have not been grown in the field since that investigation, between the harvesting of the last crop in the field and the proposed planting of seed potatoes or other susceptible material.
- (3) In the case of a field in which seed potatoes or host plants intended for the production of plants for planting are to be planted or stored, an official investigation for the purposes of paragraph 9(1)(a) must include soil sampling of the field at the appropriate sampling rate and official testing of the samples.
- (4) In the case of a field in which susceptible bulbs or susceptible plants, intended for the production of plants for planting, are to be planted or stored, an official investigation for the purposes of paragraph 9(1)(a) must include—
- soil sampling of the field at the appropriate sampling rate and official testing of the samples; or
 - verification, based on the results of appropriate officially approved testing, that Potato cyst nematodes have not been present in the field during the previous 12 years or verification, based on the known cropping history of the field, that no potatoes or host plants have been grown in the field in the previous 12 years.
- (5) An official survey for the purposes of paragraph 9(1)(b) must include soil sampling of the field at the appropriate sampling rate on at least 0.5% of the acreage used for the production of potatoes in the relevant year and official testing of the samples.
- (6) Paragraph 9(1)(a) does not apply where the Secretary of State has established that there is no risk of Potato cyst nematodes spreading and—
- any susceptible material intended for the production of plants for planting is to be used within the same place of production situated within an officially defined area;
 - seed potatoes are to be used within the same place of production situated within an officially defined area; or
 - in the case of any susceptible bulbs or susceptible plants intended for the production of plants for planting, the harvested plants are to be subject to officially approved measures.
- (7) For the purposes of sub-paragraphs (3) to (5)—
- “the appropriate sampling rate”, in relation to a field, is the minimum sampling rate specified in the following table—

<i>Sub-paragraph</i>	<i>Field</i>	<i>Rate</i>
(3) and (4)	Field ≤ 8 hectares	1,500 ml of soil per hectare collected from at least 100 cores/hectare
	Field > 8 hectares	First 8 1,500 ml of soil per hectare
		Each additional 400 ml of soil per hectare

<i>Sub-paragraph</i>	<i>Field</i>	<i>Rate</i>
	Field $\leq$ 4 hectares that meets at least one of the criteria in paragraph (b)	400 ml of soil per hectare
	Field $>$ 4 hectares that meets at least one of the criteria in paragraph (b)	First 4 400 ml of soil per hectare Each additional hectare 200 ml of soil per hectare
(5)	Field $\leq$ 4 hectares	Any of the following: —400 ml of soil per hectare —targeted sampling of at least 400 ml of soil following the visual examination of roots with visual symptoms; or —where the harvested potatoes can be traced to the field in which they were grown, 400 ml of soil associated with the harvested potatoes.

(b) the criteria are—

- (i) documentary evidence exists to show that potatoes or host plants have not been grown or were not present in the field in the six years prior to the official investigation;
- (ii) no Potato cyst nematodes have been found during the last two successive official investigations in samples of 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the first of those two investigations;
- (iii) no Potato cyst nematodes or Potato cyst nematodes without live content have been found in the last official investigation which consisted of a sample size of at least 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the last official investigation.”.

(6) In paragraph 10(2), for the words from “officially” to “2007/33/EC” substitute “relevant specified measures”.

(7) In paragraphs 12(3) and 16, for “the measures set out in Section 3(A) of Annex 3 to [Directive 2007/33/EC](#)” substitute “one of the relevant specified measures”.

Part 5

21.—(1) Part 5 is amended as follows.

(2) In paragraph 18—

- (a) in the definitions of “contaminated” and “first growing year”, for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “pursuant to paragraph 20(1)(a)”;
 - (b) in the definition of “possibly contaminated”, for “for the purposes of Article 5(1)(b) of [Directive 93/85/EEC](#)” substitute “pursuant to paragraph 20(1)(b)”.
- (3) In paragraph 19—
- (a) in sub-paragraph (1), omit “, in accordance with Article 2(1) of [Directive 93/85/EEC](#)”;
 - (b) after sub-paragraph (1) insert—
 - “(1A) In the case of tubers of *Solanum tuberosum* L., those surveys must include official testing of samples of seed and other potatoes in accordance with EPPO PM 7/59.
 - (1B) In the case of plants of *Solanum tuberosum* L., those surveys must be carried out according to appropriate methods and include appropriate official testing of samples.
 - (1C) The collection of samples for the purposes of sub-paragraphs (1A) and (1B) must be based on sound scientific and statistical principles and the biology of Potato ring rot and take into account relevant potato production systems.”;
 - (c) in sub-paragraph (2)(a), for the words from “Annex” to “93/85/EEC” substitute “EPPO PM 7/59”.
- (4) In paragraph 20(1)—
- (a) in paragraph (b), for “taking into account the matters set out in point 1 of Annex 3 to [Directive 93/85/EEC](#)” substitute—
 - “having regard to the following factors—
 - (i) the susceptible material grown at the contaminated place of production;
 - (ii) places of production with some production link to that susceptible material, including those sharing production equipment and facilities directly or through a common contractor;
 - (iii) the production or presence of other susceptible material at the contaminated place of production;
 - (iv) the premises handling potatoes from the contaminated place of production and the places of production mentioned in sub-paragraph (ii);
 - (v) any object that may have come into contact with the contaminated susceptible material;
 - (vi) any susceptible material stored in, or in contact with, any object prior to its disinfection;
 - (vii) any susceptible material with a sister or parental clonal relationship to the contaminated susceptible material and the places of production of that susceptible material.”;
 - (b) in paragraph (c), for “matters set out in point 2 of Annex 3 to [Directive 93/85/EEC](#)” substitute “proximity of other places of production growing potatoes or other host plants and the common production and use of seed potato stocks”;
 - (c) after paragraph (1), insert—
 - “(1A) When making a designation or determination under sub-paragraph (1), an inspector must have regard to sound scientific principles, the biology of Potato ring rot and relevant production, marketing and processing systems.”.
- (5) In paragraph 21—
- (a) in sub-paragraph (2)—

- (i) in paragraph (a), for “any other measure that complies with point 1 of Annex 4 to [Directive 93/85/EEC](#)” substitute “an officially approved disposal method that ensures that there is no identifiable risk of Potato ring rot spreading”;
- (ii) in paragraph (b), for “in accordance with point 2 of Annex 4 to [Directive 93/85/EEC](#)” substitute “in a manner that ensures that there is no identifiable risk of Potato ring rot spreading”;
- (b) in sub-paragraph (3), for “[Directive 93/85/EEC](#)” substitute “this Part”.
- (6) In paragraph 22—
 - (a) in sub-paragraphs (2)(c), (3)(c) and (4)(d), for “Annex 1 to [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”;
 - (b) in sub-paragraph (8), for “Article 2 of [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”.
- (7) In paragraph 24(7)(b), for “Article 2 of [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”.

Part 6

22.—(1) Part 6 is amended as follows.

(2) In paragraph 25—

- (a) in the definitions of “contaminated” and “first growing year”, for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “pursuant to paragraph 27(2)(c)”;
- (b) in the definition of “possibly contaminated”, for “for the purposes of Article 5(1)(a)(iii) or (c)(iii) of [Directive 98/57/EC](#)” substitute “pursuant to paragraph 27(2)(d)”.

(3) In paragraph 26—

- (a) in sub-paragraph (1), omit “in accordance with Article 2 of [Directive 98/57/EC](#)”;
- (b) after sub-paragraph (1) insert—

“(1A) Those surveys must be based on a risk assessment to identify other possible sources of contamination threatening the production of susceptible material and include targeted official surveys in production areas, based on the relevant risk assessment, to identify the presence of Potato brown rot on—

- (a) relevant material, other than susceptible material;
- (b) surface water which is used for irrigation or spraying of susceptible material;
and
- (c) liquid waste discharged from industrial processing or packaging premises handling susceptible material.

(1B) Those surveys must also be based on the biology of Potato brown rot and the relevant production systems and must include—

- (a) in the case of susceptible material comprising plants of *Solanum tuberosum* L., visual inspection of the growing crop at appropriate times, or the sampling of both seed and other potatoes in the growing season or in store, which must include official visual inspection by cutting of tubers;
- (b) in the case of seed potatoes and, where appropriate, other potatoes, official testing of samples using the method set out in EPPO PM 7/21;
- (c) in the case of susceptible material comprising plants of *Solanum lycopersicum* L., visual inspection at appropriate times of at least the growing crop of plants intended for replanting for professional use;
- (d) for host plants, other than susceptible material, and for water including liquid waste, official testing.

(1C) The collection of samples for the purposes of sub-paragraph (1B) must be based on sound scientific and statistical principles and the biology of Potato brown rot and take into account relevant potato production systems of susceptible material and other host plants of Potato brown rot.”;

(c) in sub-paragraph (2)—

(i) in paragraph (a)(i), for the words from “Annex”, in the first place where it occurs, to the end substitute “EPPO PM 7/21”;

(ii) in paragraph (b), for the words from “specified” to “98/57/EC” substitute “referred to in EPPO PM 7/21”.

(4) In paragraph 27—

(a) in sub-paragraph (2)—

(i) in paragraph (a), for “in accordance with Annex 4 to [Directive 98/57/EC](#)” substitute—

“which includes investigation of the following—

(i) potatoes which are growing or have been harvested that are clonally related to any contaminated potatoes;

(ii) tomatoes which are growing or have been harvested that are from the same source as any contaminated tomatoes;

(iii) potatoes or tomatoes which are growing or have been harvested that are under official control and are suspected to be contaminated with Potato brown rot;

(iv) potatoes which are growing or have been harvested that are clonally related to any potatoes that have been grown at the contaminated place of production;

(v) potatoes or tomatoes which are growing nearby the contaminated place of production, including those sharing production equipment and facilities directly or through a common contractor;

(vi) surface water used for irrigation and spraying from any source confirmed or suspected to be contaminated with Potato brown rot;

(vii) surface water used for irrigation and spraying from a source used in common with the contaminated and possibly contaminated places of production;

(viii) places of production which are flooded or have been flooded with contaminated or possibly contaminated surface water;

(ix) surface water used for irrigation or spraying of the contaminated place of production or flooded fields at the contaminated place of production;”;

(ii) in paragraph (e), for “in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;

(b) in sub-paragraph (3)—

(i) in paragraph (a), for “in accordance with Annex 4 to [Directive 98/57/EC](#)” substitute “which includes an investigation of the things referred to in sub-paragraph (2)(a)(i) to (ix)”;

(ii) in paragraph (d), for “in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;

(c) in sub-paragraph (4)(d), for “in accordance with point 2(ii) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;

(d) at the end insert—

“(5) The “relevant factors” are—

- (a) for the purposes of sub-paragraphs (2)(e) and (3)(d)—
 - (i) the proximity of other places of production growing susceptible material;
 - (ii) the common production and use of seed potato stocks;
 - (iii) places of production using surface water for irrigation or spraying of susceptible material where there is or has been a risk of surface water run-off from the contaminated place of production;
 - (b) for the purposes of sub-paragraph (4)(d)—
 - (i) places of production producing susceptible material adjacent to, or which are at risk from flooding by, contaminated surface water;
 - (ii) any discrete irrigation basin associated with the contaminated surface water;
 - (iii) water bodies connected with the contaminated surface water having regard to the direction and rate of flow of the contaminated surface water and the presence of wild solanaceous host plants.”.
- (5) In paragraph 28—
- (a) in sub-paragraph (2)—
 - (i) in paragraph (a), for “measure that complies with point 1 of Annex 6 to [Directive 98/57/EC](#)” substitute “officially approved disposal method that ensures that there is no identifiable risk of Potato brown rot spreading”;
 - (ii) in paragraph (b), for “in accordance with point 2 of Annex 6 to [Directive 98/57/EC](#)” substitute “by an officially approved disposal method that ensures that there is no identifiable risk of Potato brown rot spreading”;
 - (b) in sub-paragraph (3), for “[Directive 98/57/EC](#)” substitute “this Part”.
- (6) In paragraph 29, in sub-paragraphs (2)(c), (3)(c) and (4)(g), for “Annex 2 to [Directive 98/57/EC](#)”, in each place where it occurs, substitute “EPPO PM 7/21”.
- (7) In paragraph 31—
- (a) in sub-paragraph (7)—
 - (i) in paragraph (a), for “Article 5(1)(a)(iv) of [Directive 98/57/EC](#)” substitute “paragraph 27(3)(d)”;
 - (ii) in paragraph (b), for “Article 5(1)(c)(iii) of [Directive 98/57/EC](#)” substitute “paragraph 27(4)(d)”;
 - (b) in sub-paragraph (8)(b), for “Article 2 to [Directive 98/57/EC](#)” substitute “EPPO PM 7/21”.

Part 7

23. In paragraph 32(1)—

- (a) for the heading substitute “**Additional measures relating to Egyptian potatoes**”;
- (b) for “the Union territory” substitute “Great Britain”;
- (c) for “Commission Implementing [Decision 2011/787/EC](#)” substitute “Article 41(1) of the Plant Health Regulation”.

Schedule 3

24.—(1) Schedule 3 is amended as follows.

- (2) In the heading, for “the EU Regulations” substitute “retained direct EU legislation”.
- (3) In Part 1—
- (a) in the heading, omit “EU”;
 - (b) in the table—
 - (i) in the heading to the first column, omit “EU”;
 - (ii) in the entry relating to Article 5(1)—
 - (aa) for “Union quarantine”, in each place where it occurs, substitute “GB quarantine”;
 - (bb) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
 - (iii) in the entry relating to Article 9(3)—
 - (aa) for “Union”, in the first place where it occurs, substitute “GB”;
 - (bb) for “pest subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”;
 - (cc) for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
 - (dd) for “protected zone”, in the first place where it occurs, substitute “PFA”;
 - (ee) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
 - (iv) in the entry relating to Article 14(1)—
 - (aa) for “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
 - (bb) for “protected zone”, in the first place where it occurs, substitute “PFA”;
 - (cc) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
 - (v) in the entry relating to Article 14(3) for “Union” substitute “GB”;
 - (vi) in the entry relating to Article 15(1)—
 - (aa) for “Union” substitute “GB”;
 - (bb) for “protected zone”, in the first place where it occurs, substitute “PFA”;
 - (cc) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
 - (vii) in the entry relating to Article 32(2)—
 - (aa) for “protected zone quarantine”, in each place where it occurs, substitute “PFA quarantine”;
 - (bb) for “respective protected zone”, in each place where it occurs, substitute “GB pest-free area established in respect of that pest”;
 - (viii) in the entry relating to Article 37(1)—
 - (aa) for “the Union territory”, in both places where it occurs” substitute “Great Britain”;
 - (bb) for “Union”, in the second and third places where it occurs, substitute “GB”;
 - (ix) in the entry relating to Article 40(1) for “the Union territory” substitute “Great Britain”;
 - (x) for the entry relating to Article 41(1) substitute—

“Article 41(1) (as read with Articles 47 and 48(1))	Prohibits the introduction into Great Britain of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled.
Article 41(1A) (as read with Article 48(1))	Prohibits the introduction into Great Britain of certain plants, plant products or other objects from CD territories unless the special requirements in respect of those plants, plant products or other objects are fulfilled.
Article 41(1B) (as read with Article 48(1))	Prohibits the movement within Great Britain of certain plants, plant products or other objects unless the special requirements in respect of those plants, plant products or other objects are fulfilled.”
(xi) in the entries relating to Articles 42(2) and 43(1), for “the Union territory”, in both places where it occurs, substitute “Great Britain”; (xii) in the entry relating to Article 53(1)— (aa) for “certain protected zones”, in the first place where it occurs, substitute “GB pest-free areas”; (bb) for “within the Union territory into certain protected zones” substitute “in Great Britain or a CD territory into GB pest-free areas”; (xiii) in the entry relating to Article 54(1)— (aa) for “certain protected zones”, in both places where it occurs, substitute “GB pest-free areas”; (bb) for “those protected zones”, in both places where it occurs, substitute “those GB pest-free areas”; (xiv) in the entry relating to Article 59— (aa) for “the Union territory”, in both places where it occurs, substitute “Great Britain”; (bb) for “Union quarantine” to “Article 30(1)” substitute “GB quarantine pests or provisional GB quarantine pests”; (cc) for “the protected zones” substitute “GB pest-free areas”; (dd) for “protected zones”, in the second place where it occurs, substitute “GB pest-free areas”; (ee) for “respective protected zone” substitute “PFA”; (ff) at the end insert “relating to those areas”; (xv) in the entry relating to Article 62(1), for “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”; (xvi) in the entry relating to Article 62(2), for “Union” to “Article 30(1)” substitute “GB quarantine pest or a provisional GB quarantine pest”; (xvii) in the entry relating to Articles 72(1) and 73— (aa) in the first column, omit the words from “(as read” to the end;	

- (bb) in the second column, for “the Union territory” substitute “Great Britain”;
- (xviii) in the entry relating to Article 74(1), for “protected zones” substitute “GB pest-free areas”;
- (xix) in the entry relating to Article 79(1)—
 - (aa) in the first column, for “and 83” substitute “, 83 and 92a”;
 - (bb) in the second column, for “the Union territory without a plant passport” substitute “Great Britain or the introduction of certain plants, plant products and other objects into Great Britain from a CD territory without a UK plant passport”;
- (xx) in the entry relating to Article 80(1)—
 - (aa) in the first column, for “and 83” substitute “, 83 and 92a”;
 - (bb) in the second column, for “certain protected zones”, in both places where it occurs, substitute “GB pest-free areas”, and after “a” insert “UK”;
- (xxi) in the entries relating to Article 84(1) and (3), after “issuing”, in each place where it occurs, insert “UK”;
- (xxii) in the entry relating to Article 85—
 - (aa) in the first column, omit “and paragraph 4(2) and (3) of Schedule 1”;
 - (bb) in the second column, after “issuing” insert “UK”;
- (xxiii) in the entry relating to Article 86(1)—
 - (aa) after “issuing” insert “UK”;
 - (bb) for “protected zone” substitute “GB pest-free area”;
- (xxiv) after the entry relating to Article 86(1) insert—

“Article 86a	Prohibits authorised professional operators from issuing UK plant passports for plants, plant products or other objects to be introduced into a CD territory unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.”;

- (xxv) in the entry relating to Article 88, after “attach” insert “UK”;
- (xxvi) in the entry relating to Article 90(1), after “a” insert “UK”;
- (xxvii) in the entries relating to Article 93(1) and 93(5), after “replacement” insert “UK”;
- (xxviii) in the entry relating to Article 96(1), for “the Union territory” substitute “Great Britain”.

(4) In Part 2, in the entries relating to Articles 47(5) and 56(4), for “the Union”, in each place where it occurs, substitute “Great Britain”.

(5) In Part 3, in the entry relating to Article 22(4) of Commission Delegation Regulation (EU) 2019/2124, for “the Union territory” substitute “Great Britain”.

Schedule 4

25. Omit Schedule 4.

PART 3

Amendment of retained direct EU legislation

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants

26. Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants is amended in accordance with regulations 27 to 43.

Chapter 1

27.—(1) Chapter 1 is amended as follows.

(2) In Article 1—

- (a) in paragraph 2, for “the Union territory” substitute “Great Britain”;
- (b) omit paragraph 3.

(3) In Article 2—

- (a) in the definition of ‘plant products’ in point (2), for the words from “implementing” to “41” substitute “Phytosanitary Conditions Regulation, other retained EU law relating to plant health or regulations made under Article 28(1) or 30(1)”;

(b) for point (6) substitute—

“(6) ‘competent authority’ means:

- (a) in relation to England, the Secretary of State or the Forestry Commissioners;
- (b) in relation to Scotland, the Scottish Ministers; and
- (c) in relation to Wales, the Welsh Ministers;”;

(c) at the end insert—

“(23) ‘Regulation (EU) 2017/625’ means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products⁽¹³⁾;

(24) ‘appropriate authority’ has the meaning given in Article 2a;

(25) ‘appropriate computerised information management system’ means the computerised information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625;

(26) ‘CD authority’, in relation to a CD territory, means the authority that is officially responsible in that territory for the implementation of rules in relation to protective measures against pests of plants;

(27) ‘CD pest-free area’ means a CD territory or an area in that territory which has been established as a pest-free area in accordance with ISPM4 in respect of a CD quarantine pest;

(28) ‘CD quarantine pest’ means a pest which:

- (i) is present in Great Britain, but not in a CD territory that is recognised as free from that pest in accordance with ISPM4; and
- (ii) may not, under the relevant CD legislation, be introduced into the CD territory;

⁽¹³⁾ EUR 2017/625.

(29) ‘CD territory’ means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man;

(30) ‘Commission Delegated Regulation (EU) 2019/1702’ means Commission Delegated Regulation (EU) 2019/1702 establishing a list of priority pests⁽¹⁴⁾;

(31) ‘GB pest-free area’ means an area in Great Britain which has been established as a pest-free area in accordance with ISPM4 in respect of a PFA quarantine pest;

(32) ‘GB quarantine pest’ has the meaning given in Article 4;

(33) ‘GB regulated non-quarantine pest’ has the meaning given in Article 36;

(34) ‘IPPC’ means the International Plant Protection Convention 1951⁽¹⁵⁾;

(35) ‘ISPM4’ means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations⁽¹⁶⁾;

(36) ‘ISPM15’ means International Standard for Phytosanitary Measures No. 15 of March 2002 on guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations⁽¹⁷⁾;

(37) ‘PFA quarantine pest’ has the meaning given in Article 32(1);

(38) ‘the Phytosanitary Conditions Regulation’ means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants⁽¹⁸⁾;

(39) ‘priority pest’ has the meaning given in Article 6(1);

(40) ‘provisional GB quarantine pest’ has the meaning given in Article 30(A1);

(41) ‘relevant CD legislation’, in relation to a CD territory, means legislation on protective measures against pests of plants that is in force in that CD territory;

(42) ‘relevant legislation on the marketing of seeds and other propagating material’ means retained EU law that implemented:

- (a) in relation to fodder plant seed, Council Directive 66/401/EEC on the marketing of fodder plant seed⁽¹⁹⁾;
- (b) in relation to cereal seed, Council Directive 66/402/EEC on the marketing of cereal seed⁽²⁰⁾;
- (c) in relation to propagating material of ornamental plants, Council Directive 98/56/EC on the marketing of propagating material of ornamental plants⁽²¹⁾;
- (d) in relation to forest reproductive material, Council Directive 1999/105/EC on the marketing of forest reproductive material⁽²²⁾;

(14) EUR 2019/1702.

(15) Adopted in 1951 (Treaty Series No.16 (1954), Cmd 9077) and last revised in 1997 (Miscellaneous Series No.15 (2003), Cmd 5945).

(16) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

(17) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

(18) EUR 2019/2072.

(19) OJ No 125, 11.7.1966, p.2298, as last amended by Commission Implementing Directive (EU) 2020/177 (OJ No. L 41, 13.2.2020, p.1).

(20) OJ No 125, 11.7.1966, p.2309, as last amended by Commission Implementing Directive (EU) 2020/177.

(21) OJ No. L 226, 13.8.1998, p.16, as last amended by Regulation (EU) No 652/2014 (OJ No. L 189, 27.6.2014, p.1).

(22) OJ No. L 11, 15.1.2000, p.17.

- (e) in relation to beet seed, Council [Directive 2002/54/EC](#) on the marketing of beet seed(23);
- (f) in relation to vegetable seed, Council [Directive 2002/55/EC](#) on the marketing of vegetable seed(24);
- (g) in relation to seed potatoes, Council [Directive 2002/56/EC](#) on the marketing of seed potatoes(25);
- (h) in relation to seed of oil and fibre plants, Council [Directive 2002/57/EC](#) on the marketing of seed of oil and fibre plants(26);
- (i) in relation to vegetable propagating and plant material, other than seed, Council [Directive 2008/72/EC](#) on the marketing of vegetable propagating and plant material, other than seed(27);
- (j) in relation to fruit plant propagating material and fruit plants intended for fruit production, Council [Directive 2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production(28);
- (43) ‘UK NPPO’ means the national plant protection organisation of the United Kingdom;
- (44) ‘UK plant passport’ has the meaning given in Article 78.”.

(4) After Article 2 insert—
“Article 2a

Meaning of appropriate authority

1. In this Regulation, ‘the appropriate authority’ means:
 - (a) in the case of regulations applying in relation to England, the Secretary of State;
 - (b) in the case of regulations applying in relation to Wales, the Welsh Ministers;
 - (c) in the case of regulations applying in relation to Scotland, the Scottish Ministers.
2. But ‘the appropriate authority’ is the Secretary of State:
 - (a) if consent is given:
 - (i) in the case of regulations applying in relation to Wales, by the Welsh Ministers;
 - (ii) in the case of regulations applying in relation to Scotland, by the Scottish Ministers; or
 - (b) in relation to any provision in regulations applying in relation to Great Britain which is outside devolved competence.
3. For the purposes of paragraph 2, a provision is “outside devolved competence”:
 - (a) in relation to Wales, if it would not be within the legislative competence of the Senedd Cymru if it were contained in an Act of the Senedd Cymru (assuming, in the case of provision that could only be made with the consent of a Minister of the

(23) OJ No. L 226, 13.8.1998, p.16, as last amended by Regulation (EU) No 652/2014 (OJ No. L 189, 27.6.2014, p.).

(24) OJ No. L 193, 20.7.2002, p.33, as last amended by Commission Implementing Directive (EU) 2020/432 (OJ No. L 88, 24.3.2020, p.3).

(25) OJ No. L 193, 20.7.2002, p.60, as last amended by Commission Implementing Directive (EU) 2020/177.

(26) OJ No. L 193, 20.7.2002, p.74, as last amended by Commission Implementing Directive (EU) 2020/177.

(27) OJ No. L 205, 1.8.2008, p.28, as last amended by Commission Implementing Directive (EU) 2019/990 (OJ No. L 160, 18.6.2019, p.14).

(28) OJ No. L 267, 8.10.2008, p.8, as last amended by Commission Implementing Decision (EU) 2019/120 (OJ No L 24, 28.1.2019, p.27).

Crown within the meaning of the Ministers of the Crown Act 1975, that such consent were given);

- (b) in relation to Scotland, if it would not be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

Article 2b

Meaning of third country and related expressions

1. In this Regulation:

‘third country’ means any country or territory outside the British Islands;

‘EU Member State’ means a member State.

- 2.** For the purposes of this Regulation, any reference to the territory of an EU Member State or the European Union is not to be treated as including the Canary Islands, Ceuta, Melilla or the French Overseas Departments.”.

Chapter 2

28.—(1) Chapter 2 is amended as follows.

(2) In Section 2, in the heading, for “**Union**” substitute “**GB**”.

(3) In Article 4—

(a) in the heading, for “**Union**” substitute “**GB**”;

(b) in the unnumbered paragraph—

(i) for “Union”, in the first place where it occurs, substitute “GB”;

(ii) for “the Union territory” substitute “Great Britain”;

(iii) for “referred to in Article 5(2)” substitute “in Annex 2 to the Phytosanitary Conditions Regulation”.

(4) In Article 5—

(a) in the heading, for “**Union**” substitute “**GB**”;

(b) in paragraph 1—

(i) for “Union”, in the first place where it occurs, substitute “GB”;

(ii) for “the Union territory” substitute “Great Britain”;

(c) omit paragraph 2.

(d) for paragraph 3 substitute—

“**3.** The appropriate authority may by regulations modify the list of GB quarantine pests in Annex 2 to the Phytosanitary Conditions Regulation where the results of an assessment show, in respect of Great Britain, that a pest which is not included in that list fulfils the conditions listed in Article 3, or that a pest which is included in that list no longer fulfils one or more of those conditions.”;

(e) omit paragraph 4.

(5) In Article 6—

(a) in paragraph 1—

(i) in the words before point (a), for “Union” substitute “GB”;

(ii) in points (a) and (b), for “the Union territory”, in both places where it occurs, substitute “Great Britain”;

- (iii) in point (c), for “listed in accordance with paragraph 2 of this Article” substitute “included in the list in the Annex to Commission Delegated Regulation (EU) 2019/1702”;
- (b) for paragraph 2 substitute—
 - “2. The appropriate authority may by regulations amend the list of priority pests in the Annex to Commission Delegated Regulation (EU) 2019/1702 where the results of an assessment show that a GB quarantine pest which is not included in that list fulfils the conditions referred to in points (a) and (b) of paragraph 1, or that a pest which is included in that list no longer fulfils either of those conditions.”.
- (6) In Article 7, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (7) In Article 8—
 - (a) in the heading, for “**Union**” substitute “**GB**”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “Member States” substitute “a competent authority”;
 - (bb) for the words from “their territory” to “Article 30(1)” substitute “in the relevant territory of GB quarantine pests or provisional GB quarantine pests”;
 - (ii) in the second subparagraph, for “Union” substitute “relevant”;
 - (c) in paragraph 2—
 - (i) in point (a), in point (i), for “authorities consider” substitute “authority considers”;
 - (ii) in point (d), for “Union” substitute “relevant”;
 - (d) in paragraph 3—
 - (i) in the first subparagraph—
 - (aa) for “Authorisations”, in the first place where it occurs, substitute “An authorisation”;
 - (bb) for “are” substitute “is”;
 - (cc) for “Authorisations”, in the second place where it occurs, substitute “The authorisation”;
 - (ii) in the second subparagraph—
 - (aa) for “Authorisations” substitute “An authorisation”;
 - (bb) for the words from “respective” to the end substitute “GB quarantine pest or provisional GB quarantine pest to which the authorisation relates”;
 - (e) in paragraph 5—
 - (i) in the words before point (a), for the words from “Commission” to “laying” substitute “appropriate authority may by regulations lay”;
 - (ii) omit point (a).
- (8) In Article 9—
 - (a) omit paragraphs 1 and 2;
 - (b) for paragraph 3 substitute—
 - “3. Where a professional operator has any evidence concerning an imminent danger of the entry of a GB quarantine pest or a provisional GB quarantine pest into Great

Britain, or into a part of Great Britain where it is not yet present, the professional operator must immediately notify the competent authority.”.

(9) In Article 10—

- (a) in the heading, for “**Union**” substitute “**GB**”;
- (b) in the first subparagraph—
 - (i) for the words from “Union quarantine pest” to “Member State” substitute “GB quarantine pest or a provisional GB quarantine pest in a part of its territory”;
 - (ii) for “the Union territory” substitute “Great Britain”;
- (c) in the second subparagraph, for “Member States concerned” substitute “competent authority”.

(10) In Article 11—

- (a) for the heading substitute “**Notification of GB quarantine pests by competent authorities**”;
- (b) for the words before point (a) substitute—
 - “**1.** A competent authority that officially confirms any of the situations described in paragraph 2 must immediately provide details of the situation to the other competent authorities.
 - 2.** The situations are:”;
- (c) in points (a) and (b), in both places where it occurs, for “Union” substitute “GB”;
- (d) in point (c)—
 - (i) for “Union”, in the first place where it occurs, substitute “GB”;
 - (ii) for “the Union territory” substitute “Great Britain”;
- (e) omit the final paragraph.

(11) In Article 12—

- (a) in the heading, for “**Union**” substitute “**GB**”;
- (b) in paragraph 1—
 - (i) for “Article 11” substitute “Article 11(2)”;
 - (ii) for “Union” substitute “GB”;
- (c) omit paragraph 2.

(12) In Article 13, for “the first paragraph of Article 11” substitute “Article 11(2)”.

(13) In Article 14—

- (a) in paragraph 1, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or a provisional GB quarantine pest”;
- (b) in paragraph 2, for the second sentence substitute—
 - “The competent authority must promptly publish any decision made under this paragraph in such manner as the competent authority considers is appropriate to bring it to the attention of the professional operators who may be affected by the decision.”;
- (c) in paragraph 3, for “Union” substitute “GB”.

(14) In Article 15—

- (a) in paragraph 1, for “Union” substitute “GB”;
- (b) after paragraph 2 insert—

“2A. The competent authority must promptly publish any decision made under paragraph 2 in such manner as the competent authority considers is appropriate to bring the decision to the attention of the public.”.

(15) In Article 16, for “Union”, in both places where it occurs, substitute “GB”.

(16) In Article 17—

(a) in the heading, for “**Union**” substitute “**GB**”;

(b) in paragraph 1—

(i) in the first subparagraph—

(aa) for “the first paragraph of Article 11” substitute “Article 11(2)”;

(bb) for “Union” substitute “GB”;

(ii) in the second subparagraph, for the words from “an implementing” to “provides” substitute “retained direct EU legislation relating to plant health provides or regulations made under Article 28(1) provide”;

(c) in paragraph 2, for “Union” substitute “GB”;

(d) omit paragraph 3.

(17) In Article 18—

(a) in paragraph 1, for “the first paragraph of Article 11” substitute “Article 11(2)”;

(b) omit paragraphs 5 and 6.

(18) In Article 19—

(a) in paragraph 1, for “Competent” substitute “The competent”;

(b) omit paragraph 2;

(c) in paragraph 3—

(i) for “Competent” substitute “Where appropriate, the competent”;

(ii) for “infested zones, buffer zones and demarcated areas, where appropriate” substitute “the infested zones, the buffer zones and the demarcated areas”;

(d) in paragraph 4, for “Competent” substitute “The competent”;

(e) in paragraph 6, in point (b), for “the containment measures referred to in Article 28(2)” substitute “containment measures, where applicable”;

(f) in paragraph 7, for the words from the beginning to “supplementing” substitute “The appropriate authority may by regulations supplement”.

(19) Omit Article 20.

(20) In Article 21, for the words from the beginning to “amending” substitute “The appropriate authority may by regulations amend”.

(21) In Article 22—

(a) in the heading, for “**Union**”, in both places where it occurs, substitute “**GB**”;

(b) in paragraph 1—

(i) in the words before point (a)—

(aa) for “Member States” substitute “The competent authorities”;

(bb) after “surveys” insert “in the territories for which they are responsible”;

(ii) in point (a), for “Union” substitute “GB”;

(iii) in point (b), for the words from “pest” to the end substitute “provisional GB quarantine pest or any pest which has been provisionally assessed, in accordance

with Article 29(2), as fulfilling the criteria set out in Subsection 1 of Section 3 of Annex 1”;

(iv) omit the final subparagraph;

(c) in paragraph 2, in the first subparagraph, after “authority” insert “carrying out the survey”;

(d) omit paragraph 3.

(22) In Article 23—

(a) in paragraph 1, for “Member States” substitute “The competent authorities”;

(b) omit paragraphs 2 and 3.

(23) In Article 24—

(a) in paragraph 1—

(i) in the first subparagraph, for “Member States” substitute “the competent authorities”;

(ii) omit the second subparagraph;

(b) omit paragraph 2.

(24) In Article 25—

(a) in paragraph 1—

(i) in the first subparagraph—

(aa) for “Member State” substitute “competent authority”;

(bb) for “its territory, or a part thereof,” substitute “Great Britain”;

(ii) in the second subparagraph, for “Member States” substitute “The competent authorities”;

(iii) omit the third subparagraph.

(b) in paragraph 2—

(i) in point (a)—

(aa) for “competent authorities” substitute “the competent authority”;

(bb) omit the words from “, including” to the end;

(ii) in points (b) and (c), for “competent authorities”, in both places where it occurs, substitute “the competent authority”;

(iii) in point (d), omit “the Commission, the other Member States,”;

(iv) in point (f), omit the words from “and any” to the end;

(v) in point (j), for “authorities”, in the first place where it occurs, substitute “authority”;

(c) in paragraph 4—

(i) for the first subparagraph substitute—

“4. The competent authorities must, before 1st January 2023, establish contingency plans for the priority pests included in the list of priority pests in the Annex to Commission Delegated Regulation (EU) 2019/1702, as it has effect on IP completion day.”;

(ii) after that subparagraph insert—

“4A. Paragraph 4 does not apply in relation to any priority pest that is removed from that list before 1st January 2023.”;

(iii) the second subparagraph of the existing text becomes paragraph 4B;

- (iv) in that paragraph—
 - (aa) for “Member States” substitute “the competent authorities”;
 - (bb) for “a contingency plan” substitute “contingency plans”;
 - (v) the third subparagraph of the existing text becomes paragraph 4C;
 - (vi) in that paragraph, for “Member States” substitute “The competent authorities”;
 - (d) omit paragraph 5.
- (25) In Article 26—
- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “Member States” substitute “The competent authorities”;
 - (bb) after “exercises” insert “in the territories for which they are responsible”;
 - (ii) in the third subparagraph—
 - (aa) omit “the Member State concerned has recently taken”;
 - (bb) at the end insert “have recently been taken”;
 - (b) omit paragraphs 2 and 3.
- (26) In Article 27—
- (a) in paragraph 1, in the first subparagraph—
 - (i) for “the territory of a Member State” substitute “Great Britain”;
 - (ii) after “competent authority” insert “for the territory in which it has been found to be present”;
 - (iii) omit “, as provided for in Articles 17, 18, and 19,”;
 - (iv) omit “, as provided for in Article 28(2)”;
 - (b) omit paragraph 2.
- (27) In Article 28—
- (a) in the heading, for “**Union**”, in both places where it occurs, substitute “**GB**”;
 - (b) in paragraph 1—
 - (i) for the words before point (a) substitute—

“The appropriate authority may by regulations set out measures against specific GB quarantine pests. The provision that may be made in those regulations may include, in relation to a specific GB quarantine pest, provision.”;
 - (ii) in point (a)—
 - (aa) omit “Article 10”;
 - (bb) after “concerning” insert “the”;
 - (cc) for “Union” substitute “GB”;
 - (iii) in point (b)—
 - (aa) omit “Article 14”;
 - (bb) after “concerning” insert “the”;
 - (iv) in point (c)—
 - (aa) omit “Article 15”;
 - (bb) after “concerning” insert “the”;

- (v) for point (d) substitute—
 - “(d) concerning the eradication of that GB quarantine pest;”;
- (vi) after point (d) insert—
 - “(da) concerning the containment of that GB quarantine pest;”;
- (vii) in point (e)—
 - (aa) omit “Article 18”;
 - (bb) after “concerning” insert “the”;
- (viii) in point (f), omit “Article 19”;
- (ix) for point (g) substitute—
 - “(g) concerning surveys of that GB quarantine pest;”;
- (x) after point (g) insert—
 - “(ga) concerning prevention measures in areas outside demarcated areas where necessary to prevent the establishment of that GB quarantine pest in those areas;”;
- (xi) for point (h) substitute—
 - “(h) in the case of a GB quarantine pest which is a priority pest:
 - (i) concerning surveys for that priority pest, as regards the number of visual examinations, samples and tests for the priority pest;
 - (ii) concerning contingency plans for that priority pest;
 - (iii) concerning simulation exercises for that priority pest;
 - (iv) concerning action plans for that priority pest.”;
- (xii) omit points (i) to (k);
- (xiii) omit the final subparagraph;
- (c) for paragraph 2 substitute—

“2. Regulations under paragraph 1 may only make provision under point (da) of that paragraph if the appropriate authority has concluded, on the basis of surveys or other evidence, that the eradication of the GB quarantine pest in a demarcated area is not possible.”;
- (d) omit paragraph 3;
- (e) for paragraph 4 substitute—

“4. Regulations made under paragraph 1 may include any of the measures specified in Annex 2, taking into account the specific risks of the GB quarantine pest to which the regulations relate and any specific eco-climatic conditions and risks as regards any part of Great Britain.”;
- (f) omit paragraphs 5 to 7.
- (28) In Article 29—
 - (a) in the heading—
 - (i) for “**Member States**” substitute “**competent authorities**”;
 - (ii) for “**Union**” substitute “**GB**”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph—

- (aa) for the first sentence substitute—

“Where the presence of a pest that is not included in Annex 2 or 2A to the Phytosanitary Conditions Regulation is officially confirmed to be present in a part of Great Britain, and the competent authority considers that the pest may fulfil the conditions for inclusion in Annex 2 to the Phytosanitary Conditions Regulation, the competent authority must immediately assess whether the pest fulfils the criteria set out in Subsection 1 of Section 3 of Annex 1 and notify the other competent authorities of its conclusion.”;
- (bb) in the third sentence, for “20” substitute “19”;
- (ii) in the third subparagraph—
 - (aa) for “the territory of a Member State, that Member State” substitute “Great Britain, the competent authority”;
 - (bb) for “the Union territory” substitute “the territory for which it is responsible”;
- (iii) in the fourth subparagraph, for “Member State” substitute “competent authority”;
- (iv) in the fifth subparagraph, for “Member State” substitute “competent authority”;
- (c) for paragraph 2 substitute—

“**2.** The competent authority must notify the other competent authorities of the measures that it has taken pursuant to paragraph 1 and the competent authorities must promptly assess whether the pest concerned fulfils the criteria for quarantine pests set out in Section 1 of Annex 1.”;
- (d) after paragraph 2 insert—

“**2A.** Each competent authority must ensure that interim measures are taken in relation to the pest where it is present in its territory or in a consignment of plants, plant products or other objects introduced into, or moved within, its territory until:

 - (a) a risk assessment has been carried out which shows that the pest does not fulfil the criteria set out in Subsection 1 of Section 3 of Annex 1; or
 - (b) regulations in relation to the pest have been made under Article 30(1).

2B. In paragraph 2A, ‘interim measures’, in relation to a pest which has been provisionally assessed, in accordance with paragraph 2, as fulfilling the criteria set out in Subsection 1 of Section 3 of Annex 1, means any of the following measures insofar as they are relevant:

 - (a) official confirmation of the presence of the pest where its presence is suspected;
 - (b) pending official confirmation of the presence of the pest, phytosanitary measures to mitigate the risk of the pest spreading;
 - (c) where the pest is officially confirmed to be present, eradication measures equivalent to the measures specified in Articles 17 to 19 in relation to GB quarantine pests or, if it is concluded, on the basis of the surveys referred to in Article 19 or other evidence, that the eradication of the pest in a demarcated area is not possible, containment measures; and
 - (d) any other measures which are necessary or appropriate to prevent the entry of that pest into Great Britain, or its establishment or spread within Great Britain, including risk-based surveys to check for signs and symptoms of that pest.”;
- (e) omit paragraph 3.

(29) In Article 30—

(a) for the heading substitute “**Measures concerning provisional GB quarantine pests**”;

(b) before paragraph 1 insert—

“**A1.** In this Article, ‘provisional GB quarantine pest’ means a pest which is not included in the list of GB quarantine pests in Annex 2 to the Phytosanitary Conditions Regulation, but which, according to an appropriate assessment, meets the criteria set out in Subsection 2 of Section 3 of Annex 1 and is listed in Annex 2A to the Phytosanitary Conditions Regulation.

A2. A provisional GB quarantine pest may not be introduced into, moved within, or held, multiplied or released in, Great Britain.”;

(c) for paragraph 1 substitute—

“**1.** The appropriate authority may by regulations:

(a) modify Annex 2A to the Phytosanitary Conditions Regulation where the results of an assessment show, in respect of Great Britain, that a pest which is not included in that Annex fulfils the criteria set out Subsection 2 of Section 3 of Annex 1, or that a pest which is included in that Annex no longer fulfils those criteria or fulfils the criteria in Article 3;

(b) make temporary provision for the purposes of preventing the introduction of a provisional GB quarantine pest into Great Britain, or the spread of a provisional GB quarantine pest within Great Britain.”;

(d) after paragraph 1 insert—

“**1A.** Regulations under paragraph 1 may include, in relation to a pest which is listed, or is to be listed, in Annex 2A, provision concerning:

(a) measures to be taken in the event of suspicion and official confirmation by competent authorities of the presence of that pest;

(b) measures to be taken immediately by professional operators;

(c) measures to be taken by persons other than professional operators;

(d) the eradication of that pest;

(e) the containment of that pest;

(f) the establishment of demarcated areas;

(g) surveys and modifications of demarcated areas and lifting of restrictions;

(h) surveys of that pest;

(i) prevention measures in areas outside demarcated areas where necessary to protect the establishment of that pest in those areas.”;

(e) omit paragraph 2;

(f) for paragraph 3 substitute—

“**3.** Regulations under paragraph 1 may only make provision under point (e) of paragraph 1A if the appropriate authority has concluded, on the basis of the surveys or other evidence, that the eradication of the pest in a demarcated area is not possible.”;

(g) omit paragraph 4;

(h) for paragraph 5 substitute—

“**5.** Regulations under paragraph 1 may include any of the measures specified in Annex 2, taking into account the specific risks of the pest.”;

- (i) omit paragraphs 6 to 8.
- (30) In Article 31—
 - (a) in the heading, omit “**adopted by Member States**”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph, for the words from the beginning to “(4)” substitute “The competent authorities may apply within their respective territories more stringent measures than those specified in regulations made under Article 28(1) or 30(1)”;
 - (ii) in the second subparagraph—
 - (aa) for “the Union territory” substitute “Great Britain”;
 - (bb) after “by” insert “, or under,”;
 - (cc) for “102” substitute “101”;
 - (c) omit paragraph 2.
- (31) In the heading of Section 3, for “**Protected zone**” substitute “**PFA**”;
- (32) In Article 32—
 - (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
 - (b) for paragraph 1 substitute—
 - “1. ‘A PFA quarantine pest’ is a pest which:
 - (a) is present in Great Britain but not in a part of Great Britain that is recognised as free of that pest in accordance with ISPM4; and
 - (b) is listed in column (1) of the table in Annex 3 to the Phytosanitary Conditions Regulation.”;
 - (c) in paragraph 2—
 - (i) for the first subparagraph substitute—

“A PFA quarantine pest may not be introduced into, moved within, or held, multiplied or released in, any GB pest-free area established in respect of that PFA quarantine pest, and described in the corresponding entry in column (2) of the table in Annex 3 to the Phytosanitary Conditions Regulation.”;
 - (ii) in the second subparagraph, for “protected zones of protected zone quarantine pests” substitute “a GB pest-free area of the PFA quarantine pest in respect of which the area was established”;
 - (d) in paragraph 3—
 - (i) omit the first subparagraph;
 - (ii) for the second subparagraph substitute—

“The appropriate authority may by regulations modify Annex 3 to the Phytosanitary Conditions Regulation where:

 - (a) a pest is no longer recognised as a PFA quarantine pest;
 - (b) any additional GB pest-free area is recognised in relation to a PFA quarantine pest;
 - (c) the extent of an existing GB pest-free area has been altered; or
 - (d) an existing GB pest-free area is no longer recognised as free from the PFA quarantine pest in respect of which the area was established.”;
 - (iii) omit the third and fourth subparagraphs;

- (e) omit paragraphs 4 to 7.
- (33) In Article 33—
 - (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
 - (b) in paragraph 1—
 - (i) for “protected zone”, in the first place where it occurs, substitute “GB pest-free area”;
 - (ii) for “respective protected zone” substitute “relevant PFA”;
 - (c) for paragraph 2—

“**2.** Where a PFA quarantine pest is found to be present in a GB pest-free area established in respect of that PFA quarantine pest and the competent authority has established a demarcated area in response to its presence, any plant, plant product or other object originating in the demarcated area may only be moved from that demarcated area into the remaining part of that GB pest-free area or into any other GB pest-free area established in respect of that PFA quarantine pest if its movement has been authorised by, or on behalf of, the competent authority by notice.

2A. By way of derogation from paragraph 2, a plant, plant product or other object may be moved out of that demarcated area and through and out of the GB pest-free area concerned if it is packed and moved in such a way that there is no risk of spreading the relevant PFA quarantine pest within the GB pest-free area.”;
 - (d) omit paragraph 3.
- (34) In Article 34—
 - (a) in the heading, for “**protected zone**” substitute “**PFA**”;
 - (b) in paragraph 1—
 - (i) for the first subparagraph, substitute—

“**1.** The competent authorities must carry out annual surveys of each GB pest-free area within their respective territories as regards the presence of the PFA quarantine pests in respect of which those areas have been established.”;
 - (ii) for the second subparagraph substitute—

“**1A.** The appropriate authority may by regulations supplement this Regulation by laying down detailed rules for the preparation and the content of the surveys referred to in paragraph 1.”;
 - (c) omit paragraph 2.
- (35) Omit Article 35.

Chapter 3

- 29.**—(1) Chapter 3 is amended as follows.
- (2) In the heading of that Chapter, for “**Union**” substitute “**GB**”.
- (3) In Article 36—
 - (a) in the heading, for “**Union**” substitute “**GB**”;
 - (b) in the unnumbered paragraph—
 - (i) in the words before point (a)—
 - (aa) for “Union” substitute “GB”;
 - (bb) for “the list referred to in Article 37” substitute “column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation”;

- (ii) in point (b), for “the Union territory” substitute “Great Britain”;
- (iii) in point (c)—
 - (aa) for “Union” substitute “GB”;
 - (bb) for “pest subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”.
- (4) In Article 37—
 - (a) in the heading for “**Union**” substitute “**GB**”;
 - (b) in paragraph 1, for the first subparagraph substitute—

“A professional operator may not introduce a GB regulated non-quarantine pest into Great Britain, or move a GB regulated non-quarantine pest within, Great Britain on the plants for planting through which it is transmitted, as specified in the entries in respect of that pest in column (2) of the tables in Annex 4 to the Phytosanitary Conditions Regulation, if the presence of that pest on those plants for planting exceeds the thresholds specified in those tables in respect of that pest and those plants for planting.”;
 - (c) omit paragraphs 2 to 4;
 - (d) before paragraph 5 insert—

“**4A.** A professional operator may not introduce into Great Britain, or move within Great Britain, any plants for planting referred to in Annex 5 to the Phytosanitary Conditions Regulation, unless the measures specified in that Annex in respect of those plants for planting to prevent the presence of the GB regulated non-quarantine pests have been taken.
 - (e) for paragraph 5 substitute—

“**5.** The appropriate authority may by regulations modify Annex 4 or 5 to the Phytosanitary Conditions Regulation where the results of an assessment show that:

 - (a) a pest not listed in column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation fulfils the conditions referred to in Article 36;
 - (b) a pest listed in column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation no longer fulfils one or more of the conditions referred to in Article 36; or
 - (c) amendments to Annex 4 or 5 to the Phytosanitary Conditions Regulation are necessary as regards the categories referred to in paragraph 7 of this Article or the thresholds referred to in paragraph 8 of this Article.”;
 - (f) after paragraph 5 insert—

“**5A.** The appropriate authority may by regulations modify Annex 5 to the Phytosanitary Conditions Regulation to make provision as to the measures to be taken to prevent the presence of a GB regulated non-quarantine pest on the plants for planting concerned.

5B. Regulations under paragraph 5A may specify whether the measures are to apply to the introduction of the plants for planting into Great Britain, the movement of those plants for planting within Great Britain, or both.

5C. Any measures specified in regulations under paragraph 5A must be consistent with the principles set out in Section 2 of Annex 2 to this Regulation and are to apply in addition to the measures specified in the relevant legislation on the marketing of seeds and other propagating material.”;

- (g) omit paragraph 6;
- (h) in paragraph 7—
 - (i) after “of the” insert “categories of”;
 - (ii) for the words from “Directives” to “set out” substitute “the relevant legislation on the marketing of seeds and other propagating material, the tables in Annex 4 to the Phytosanitary Conditions Regulation must include”;
 - (iii) omit the words from “stating” to the end.
- (i) in paragraph 8—
 - (i) in the first subparagraph, for the words from “the list” to the end substitute “the tables in Annex 4 to the Phytosanitary Conditions Regulation must include that threshold”;
 - (ii) in the second subparagraph—
 - (aa) in the words before point (a), for “set” substitute “included”;
 - (bb) in point (a), for “Union” substitute “GB”;
- (j) in paragraph 9—
 - (i) for “Member States” substitute “competent authorities”;
 - (ii) after “concerning” insert “GB”.
- (5) In Article 38, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (6) In Article 39—
 - (a) in the heading, for “**Union**” substitute “**GB**”;
 - (b) in the unnumbered paragraph, for “Union” substitute “GB”.

Chapter 4

30.—(1) Chapter 4 is amended as follows.

- (2) In the heading to Section 1, for “**the entire Union territory**” substitute “**Great Britain**”.
- (3) In Article 40—
 - (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
 - (b) for paragraph 1 substitute—

“**1.** Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and C of Annex 6 to the Phytosanitary Conditions Regulation may not be introduced into Great Britain if they originate from any third country listed in the corresponding entry in column (2) of those tables.”;
 - (c) omit paragraph 2;
 - (d) for paragraph 3 substitute—

“**3.** The appropriate authority may by regulations amend Parts A and C of Annex 6 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object originating in or dispatched from a third country.

3A. For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

 - (a) in the case of a plant, plant product or other object which is not included in Part A or C of Annex 6 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level

which cannot be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or

- (b) in the case of a plant, plant product or other object which is included in Part A or C of Annex 6 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object no longer poses a pest risk of an unacceptable level, or that it continues to pose a risk of an unacceptable level, but that the risk can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2.

3B. A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a GB quarantine pest and, in determining the acceptability of the level of pest risk, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2, where appropriate with regard to one or more specific third countries.”;

- (e) omit paragraph 4.

(4) In Article 41—

- (a) for paragraph 1 substitute—

“1. Plants, plant products or other objects of a description specified in column (1) of the tables in Parts A and B of Annex 7 to the Phytosanitary Conditions Regulation, and which originate in a third country listed in the corresponding entry in column (2) of those tables may only be introduced into, or moved within, Great Britain if the special requirements specified in the corresponding entry in column (3) of those tables are fulfilled.

1A. Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and B of Annex 8 to the Phytosanitary Conditions Regulation, and which originate in a CD territory, may only be introduced into Great Britain if the special requirements specified in the corresponding entry in column (2) of those tables are fulfilled.

1B. Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and B of Annex 8 to the Phytosanitary Conditions Regulation, and which originate in Great Britain or a CD territory, may only be moved within Great Britain if the special requirements specified in the corresponding entry in column (2) of those tables are fulfilled.”;

- (b) omit paragraph 2;

- (c) for paragraph 3 substitute—

“3. The appropriate authority may by regulations amend Annex 7 or 8 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.

3A. For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which originates in a third country and is not included in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2;

- (b) in the case of a plant, plant product or other object which originates in a third country and is included in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in relation to the plant, plant product or other object in Annex 7 to the Phytosanitary Conditions Regulation;
- (c) in the case of a plant, plant product or other object which originates in Great Britain or a CD territory and is not included in Annex 8 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (d) in the case of a plant, plant product or other object which originates in Great Britain or a CD territory and is included in Annex 8 to the Phytosanitary Conditions Regulation (“Annex 8”), that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in relation to the plant, plant product or other object in Annex 8.

3B. A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a GB quarantine pest and, in determining the acceptability of the level of pest risk and the measures to reduce that risk to an acceptable level, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2, where appropriate with regard to one or more specific third countries or parts of specific third countries.”;

- (d) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) for “the Union territory” substitute “Great Britain”;
 - (bb) for “Member States” substitute “the competent authority”;
 - (cc) omit the words from “, and shall notify” to the end;
 - (ii) omit the second subparagraph.
- (5) In Article 42—
 - (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) omit the words from “and which is” to “Article 49 and”;
 - (bb) for “the Union territory” substitute “Great Britain”;
 - (ii) in the second subparagraph, after “concerned,” insert “any existing prohibitions or requirements that apply to that plant, plant product or object by virtue of Article 40, or 41 or any measures in regulations made under Article 49(1), and”;
 - (c) for paragraph 2 substitute—

“2. High-risk plants, plant products or other objects listed in Part B of Annex 6 to the Phytosanitary Conditions Regulation may not be introduced into Great Britain from the third countries, groups of third countries or specific areas of third countries of origin specified in respect of those plants, plant products or other objects in that list.”;

(d) in paragraph 3—

(i) for the first subparagraph substitute—

“The appropriate authority may by regulations amend Part B of Annex 6 to the Phytosanitary Conditions Regulation to include at the appropriate taxonomic level, pending the risk assessment referred to in paragraph 4, additional high-risk plants, plant products or other objects and, where appropriate, the third countries, groups of third countries or specific areas of third countries of origin in respect of those plants, plant products or other objects.”;

(ii) omit the second and third subparagraphs;

(e) for paragraph 4 substitute—

“4. Where a risk assessment in relation to a high-risk plant, plant product or other object originating in any third country has been completed, the appropriate authority must by regulations amend the list of high-risk plants, plant products or other objects in Part B of Annex 6 to the Phytosanitary Conditions Regulation to remove the third country from the entry in that list relating to the plant, plant product or other object.

4A. Regulations under paragraph 4 may amend Part A or C of Annex 6, or Part A or B of Annex 7, to the Phytosanitary Conditions Regulation, where appropriate, in the light of the risk assessment.”;

(f) in paragraph 5, in the first subparagraph, for “the implementing act provided for in paragraph 3” substitute “Part B of Annex 6 to the Phytosanitary Conditions Regulation”;

(g) in paragraph 6, for the words “Commission may, by means of implementing acts,” substitute “the appropriate authority may by regulations”;

(h) omit paragraph 7.

(6) In Article 43—

(a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;

(b) in paragraph 1—

(i) in the words before point (a), for “the Union territory” substitute “Great Britain from a third country”;

(ii) in point (a), for the words from “the International Standard” to the end, substitute “ISPM15”;

(c) for paragraph 2 substitute—

“2. The appropriate authority may by regulations:

(a) amend the requirements set out in paragraph 1 of this Article to take into account the development of international standards, and in particular of ISPM15; or

(b) specify derogations from paragraph 1 for the purpose of exempting other wood packaging material which is not subject to the exemptions provided for in ISPM15 from the requirements of paragraph 1 of this Article, or for the purpose of imposing less stringent requirements on wood packaging material which is subject to the exemptions provided for in ISPM15.”.

(7) In Article 44—

- (a) for paragraph 1 substitute—
 - “1. The appropriate authority may by regulations make provision for the purpose of giving effect to a relevant decision.
 - 1A.** Regulations under paragraph 1 may in particular:
 - (a) amend any of the special requirements in column (3) of the table in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation to set out the equivalent requirements that apply to the plant, plant product or other object in question; or
 - (b) specify the conditions under which the decision of the UK NPPO applies.
 - 1B.** In paragraph 1, ‘relevant decision’ means a decision of the UK NPPO confirming that specific measures which are applied in the third country in relation to a particular plant, plant product or other object from that third country provide a level of phytosanitary protection which is equivalent to the measures included in the special requirements in relation to that plant, plant product or other object in Annex 7 to the Phytosanitary Conditions Regulation.”;
 - (b) omit paragraph 2.
- (8) In Article 45—
- (a) in paragraph 1—
 - (i) for the first subparagraph substitute—

“The competent authorities and seaport, airport and international transport operators must make information available to passengers concerning the prohibitions referred to in Article 40(1) and 42(2), the requirements referred to in Article 41(1) and any exemption which applies by virtue of Article 75(1) as regards the introduction of plants, plant products and other objects into Great Britain from a third country.”;
 - (ii) in the second subparagraph, at the end insert “, in the standardised format published by the appropriate authority (if any)”;
 - (iii) for the fourth subparagraph substitute—

“The appropriate authority may publish, in such manner as the appropriate authority considers appropriate, a standardised format for any poster or brochure which must be used for the purposes of the first subparagraph of this paragraph.”;
 - (b) omit paragraph 2.
- (9) Omit Article 46.
- (10) In Article 47—
- (a) in paragraph 1—
 - (i) in the words before point (a), for “the Union territory” substitute “Great Britain”;
 - (ii) in point (b)—
 - (aa) for “Union” substitute “GB”;
 - (bb) for “the Union territory” substitute “Great Britain”;
 - (b) in paragraph 2, for “Competent authorities” substitute “The competent authority”.
- (11) In Article 48—
- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “Member States” substitute “a competent authority”;

- (bb) for “their territory” substitute “the territory for which it is responsible”;
 - (ii) in the second subparagraph, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
 - (b) in paragraph 2—
 - (i) in point (a), for “authorities” substitute “authority”;
 - (ii) in point (d), for “Union territory” substitute “territory in question”;
 - (c) in paragraph 3, in the second subparagraph, for the words from “Union” to the end, substitute “GB quarantine pest or provisional GB quarantine pest”;
 - (d) in paragraph 5—
 - (i) in the words before point (a), for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
 - (ii) omit point (a).
- (12) In Article 49—
- (a) in paragraph 1, in the first subparagraph—
 - (i) in the words before point (a)—
 - (aa) for “Commission may adopt, by means of implementing acts,” substitute “appropriate authority may by regulations impose”;
 - (bb) for “the Union territory” substitute “Great Britain”;
 - (ii) in point (a), for the words for “Union measures” to the end substitute “existing measures and are not linked, or cannot yet be linked to, GB quarantine pests or provisional GB quarantine pests”;
 - (iii) in point (c), for “the Union territory” substitute “Great Britain”;
 - (iv) omit the final subparagraph;
 - (b) in paragraph 2—
 - (i) in the second subparagraph, in points (a) and (c), in both places where it occurs, for “the Union territory” substitute “Great Britain”;
 - (ii) in the final subparagraph—
 - (aa) for “the implementing act referred to in” substitute “regulations made under”;
 - (bb) for “the Union territory” substitute “Great Britain”;
 - (c) omit paragraph 4;
 - (d) in paragraph 5, for “the Union territory” substitute “Great Britain”;
 - (e) omit paragraph 6.
- (13) Omit Article 50.
- (14) In Article 51, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (15) Omit Article 52.
- (16) In the heading of Section 2, for “**protected zones**” substitute “**GB pest-free areas**”.
- (17) In Article 53—
- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
 - (b) for paragraph 1 substitute—

“1. Any plants, plant products or other objects of a description specified in any entry in column (1) of the table in Annex 9 to the Phytosanitary Conditions Regulation, whether originating in a third country, Great Britain or a CD territory, may not be introduced into, or moved within, a GB pest-free area listed in the corresponding entry in column (2) of the table.”;

(c) for paragraph 2 substitute—

“2. The appropriate authority may by regulations amend Annex 9 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.”;

(d) for paragraph 3 substitute—

“3. For the purposes of paragraph 2, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which is not included in Annex 9 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which cannot be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (b) in the case of any plant, plant product or other object which is included in Annex 9 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object no longer poses a pest risk of an unacceptable level, or that it continues to pose a risk of an unacceptable level, but that the risk can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2.

3A. A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3 if the risk assessment shows that the plant, plant product or other object may host a PFA quarantine pest and, in determining the acceptability of the level of pest risk to the GB pest-free area which relates to the PFA quarantine pest, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2.”;

(e) omit paragraph 4.

(18) In Article 54—

(a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;

(b) for paragraph 1 substitute—

“1. Plants, plant products or other objects of a description specified in column (1) of the table in Annex 10 to the Phytosanitary Conditions Regulation, whether originating in a third country, Great Britain or a CD territory, may only be introduced into, or moved within, a GB pest-free area listed in the corresponding entry in column (3) of the table if the special requirements specified in the corresponding entry in column (2) of the table are fulfilled.”;

(c) omit paragraph 2;

(d) for paragraph 3 substitute—

“3. The appropriate authority may by regulations amend Annex 10 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.

3A. For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which is not included in Annex 10 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (b) in the case of a plant, plant product or other object which is included in Annex 10 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in Annex 10 to the Phytosanitary Conditions Regulation.

3B. A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a PFA quarantine pest and, in determining the acceptability of the level of pest risk to the GB pest-free area which relates to the PFA quarantine pest and the measures to reduce that risk to an acceptable level, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2.”;

- (e) omit paragraph 4.

(19) In Article 55—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph, for “protected zones” substitute “GB pest-free areas”;

(20) Omit Article 56.

(21) In Article 57—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph, for the words from “listed” to the end substitute “of a description specified in any entry in column (1) of the tables in Annex 9 and 10 to the Phytosanitary Conditions Regulation through the GB pest-free areas related to those plants, plant products or other objects.”.

(22) In Article 58—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph—
 - (i) omit “the prohibitions and requirements provided for in”;
 - (ii) for the words from “protected” to “54(2) and (3)” substitute “a GB pest-free area of plants, plant products and other objects of a description specified in any entry in column (1) of the tables in Annex 9 or 10 to the Phytosanitary Conditions Regulation which relate to that GB pest-free area”.

(23) In Article 59—

- (a) for paragraph 1 substitute—

“**1.** Vehicles, machinery and packaging material used for plants, plant products or other objects of a description specified in any entry in Annex 6, 7 or 8 to the Phytosanitary Conditions Regulation, or in any regulations made under Article 28(1), 30(1) or 49(1), and moving into or within Great Britain, or through Great Britain pursuant to Article 47, must be free from GB quarantine pests and GB provisional quarantine pests.”;

- (b) in paragraph 2—
 - (i) for “protected zones” substitute “any GB pest-free area”;
 - (ii) for “the respective protected zone pests” substitute “a PFA quarantine pest relating to that GB pest-free area”.
- (24) In Article 60—
 - (a) in paragraph 1—
 - (i) in the words before point (a), for “Member States” substitute “the competent authorities”;
 - (ii) in point (a), for “their territory” substitute “the territories for which they are responsible”;
 - (iii) omit point (b);
 - (iv) in point (c), after “persons” insert “in the territories for which they are responsible”;
 - (b) omit paragraph 2.
- (25) In Article 61—
 - (a) in paragraph 1—
 - (i) in the words before point (a), for “Union” substitute “GB”;
 - (ii) in point (e), for the words from “Union” to “Article 30(1)” substitute “GB quarantine pests and provisional GB quarantine pests”;
 - (b) in paragraph 2—
 - (i) in the first subparagraph, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
 - (ii) omit the second subparagraph.
- (26) In Article 62, in paragraph 1, for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”.
- (27) In Article 63—
 - (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “authority” substitute “authorities”;
 - (bb) after “facilities” insert “which they have designated”;
 - (ii) in the second subparagraph, for “It” substitute “They”;
 - (b) in paragraph 2—
 - (i) in the first subparagraph—
 - (aa) for “On the basis of the inspection referred to in paragraph 1”; substitute “Where corrective actions to ensure compliance with Articles 61 and 62 are considered by a competent authority to be necessary”;
 - (bb) after “implement” insert “those”;
 - (cc) omit “to ensure compliance with Articles 61 and 62”;
 - (ii) in the second subparagraph—
 - (aa) after “facility” insert “does not comply with Articles 61 and 62”;
 - (bb) for “fails” substitute “has failed”.
- (28) In Article 64—
 - (a) in paragraph 1—

- (i) for “the quarantine stations or confinement facilities” substitute “a quarantine station or a confinement facility”;
 - (ii) for “authorities” substitute “authority”;
 - (iii) for the words from “Union” to “zone” substitute “GB quarantine pests and provisional GB quarantine pests, or, where applicable, PFA”;
- (b) in paragraph 2, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
- (c) in paragraph 3—
 - (i) in the first subparagraph, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
 - (ii) omit the second subparagraph.

Chapter 5

31.—(1) In Article 65—

- (a) in paragraph 1—
 - (i) in the first subparagraph, in the words before point (a)—
 - (aa) for “authority” substitute “authorities”;
 - (bb) for the “territory of the Member State concerned” substitute “Great Britain”;
 - (ii) in point (a)—
 - (aa) for “the Union” substitute “Great Britain”;
 - (bb) for “plant passport” substitute “UK plant passport”;
 - (cc) omit “on the basis of the implementing acts adopted”;
 - (iii) in point (c), for “, 101 and 102” substitute “and 101”;
 - (iv) in point (d), omit the words from “introducing” to “Article 56,”;
 - (v) in point (e), for the words from “an implementing act” to the end substitute “the special requirements in Annex 7, 8 or 10 or by regulations made under Article 28(1), 30(1) or 49(1)”;
 - (vi) omit the second subparagraph;
 - (b) in paragraph 2, for the first sentence substitute “The competent authorities must ensure that a professional operator is registered only once”;
 - (c) in paragraph 3—
 - (i) omit point (a);
 - (ii) omit the second subparagraph;
 - (d) in paragraph 4—
 - (i) for the words before point (a) substitute “The appropriate authority may by regulations”;
 - (ii) in point (a), for “amending” substitute “amend”;
 - (iii) in point (b), for “supplementing” substitute “supplement”;
 - (iv) omit point (c).
- (2) In Article 66—
- (a) in paragraph 2—
 - (i) in point (a), for “the Member State of registration” substitute “Great Britain”;

- (ii) in point (d), omit “in the Member State concerned”;
- (b) omit paragraph 4;
- (c) in paragraph 6, for “the”, in the second place where it occurs, substitute “a”.
- (3) In Article 67, in point (a), for the words from “, which shall” to the end substitute “for the professional operator”.
- (4) In Article 68—
 - (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) for “Member State keeping the register” substitute “competent authority”;
 - (ii) for “the Union” substitute “Great Britain”;
 - (c) in paragraph 3, omit “national and Union”.
- (5) In Article 69—
 - (a) in paragraph 1, for the words from “points” to “Article 79(1)” substitute “, or under, Article 28(1), 30(1), 37(1), 41(1), 48(1), 49(1), 54(1), 57, 58 or 79(1)”;
 - (b) in paragraph 2, for the words from “points” to “Article 79(1)” substitute “, or under, Article 28(1), 30(1), 37(1), 41(1), 47(1), 48(1), 49(1), 54(1), 57, 58 or 79(1)”;
 - (c) in paragraph 3, for “plant passport”, in each place where it occurs, substitute “UK plant passport”;
 - (d) in paragraph 5—
 - (i) in the first subparagraph, in the words before point (a), for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
 - (ii) omit the second subparagraph.

Chapter 6

32.—(1) Chapter 6 is amended as follows.

- (2) In the heading to Section 1, for “**the Union territory**” substitute “**Great Britain**”.
- (3) In Article 71—
 - (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
 - (b) in paragraph 1—
 - (i) in the words before point (a), for “the Union territory” substitute “Great Britain”;
 - (ii) in point (a), for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
 - (iii) in point (b), for “Union” substitute “GB”;
 - (iv) in point (c), for “(2) and (3)”, in both places where it occurs, substitute “(1)”;
 - (v) in point (d), for the words from “rules” to the end substitute “any requirements specified in regulations made under Article 28(1) or 30(1)”;
 - (c) in paragraph 2, in the first sentence—
 - (i) for “The” substitute “Where one or more options are specified for the purposes of meeting any such requirements, the”;
 - (ii) omit the words from “, whenever” to the end;
 - (d) in paragraph 3—
 - (i) for “applicable” substitute “required by regulations made under Article 44(1)”;

- (ii) after “recognised” insert “for the purposes of those regulations”;
 - (iii) omit the words from “, pursuant to Article 44” to the end;
- (e) in paragraph 4, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (4) In Article 72—
 - (a) in paragraph 1—
 - (i) for the first subparagraph substitute—

“1. Plants, plant products and other objects of a description specified in any entry in columns (1) and (2) of the table in Part A of Annex 11 to the Phytosanitary Conditions Regulation which originate in any third country listed in the corresponding entry in column (3) of that table may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate.”;
 - (ii) omit the second, third and fourth subparagraphs;
 - (b) omit paragraph 2;
 - (c) in paragraph 3—
 - (i) for the words from the beginning to “paragraph 1” substitute “The appropriate authority may by regulations amend Part A of Annex 11 to the Phytosanitary Conditions Regulation”;
 - (ii) for the words from “that act”, in the first place where it occurs, to “Article 30(1)” substitute “that Part hosts a GB quarantine pest or provisional GB quarantine pest”;
 - (iii) for “that act”, in the second place where it occurs, substitute “that Part”;
 - (d) omit paragraph 4;
 - (e) in paragraph 5—
 - (i) omit “, 2”;
 - (ii) for “Articles 46, 47 and 48 and Article 75(1)” substitute “Articles 47, 48 and 75(1)”.
- (5) In Article 73—
 - (a) for the first unnumbered paragraph substitute—

“1. Plants of a description specified in columns (1) and (2) of Part B of Annex 11 to the Phytosanitary Conditions Regulation, may not be introduced into Great Britain from third countries unless they are accompanied by a phytosanitary certificate.”;
 - (b) the second unnumbered paragraph of the existing text becomes paragraph 2 and in that paragraph for the words from “However” to “those plants” substitute “The appropriate authority may by regulations amend Part C of Annex 11 to the Phytosanitary Conditions Regulation”;
 - (c) omit the remaining unnumbered paragraphs.
- (6) In Article 74—
 - (a) in the heading for “**protected zone**” substitute “**GB pest-free area**”;
 - (b) for paragraph 1 substitute—

“1. Any plants, plant products and other objects of a description specified in an entry (if any) in columns (1) and (2) of the table in Annex 12 to the Phytosanitary Conditions Regulation, which originate in a third country specified in the corresponding entry in column (3) of the table and are destined for a GB pest-free area established in respect of

those plants, plant products or other objects, may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate.”;

(c) omit paragraph 2;

(d) for paragraph 3 substitute—

“3. The appropriate authority may by regulations amend Annex 12 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2, where there is a risk that a plant, plant product or other object not listed in Annex 11 or in Annex 12 to the Phytosanitary Conditions Regulation hosts a PFA quarantine pest, or where, for a plant, plant product or other object listed in Annex 11 or 12 to the Phytosanitary Conditions Regulation, that risk no longer exists.”;

(e) after paragraph 3 insert—

“3A. Regulations under paragraph 3 may apply in relation to a plant, plant product or other object originating in, or dispatched from, all third countries or particular third countries or regions.”;

(f) omit paragraph 4;

(g) in paragraph 5—

(aa) omit “, 2”;

(bb) for “Articles 56, 57 and 58 and Article 75(1)” substitute “Article 57, 58 or 75(1)”.

(7) After Article 74 insert—

“Article 74a

Commodity classification

The appropriate authority may by regulations amend Annex 11 to the Phytosanitary Conditions Regulation to:

(a) remove the references to any CN codes used in those Annexes to identify the plants plant products and other objects listed; or

(b) identify the plants, plant products and other objects listed in those Annexes by any alternative commodity code classification system that the appropriate authority considers appropriate.”.

(8) In Article 75—

(a) in paragraph 1—

(i) in the words before point (a), omit “accordance with”;

(ii) in point (a), for “the Union territory” substitute “Great Britain”;

(iii) in point (c), for “an implementing act provided for in” substitute “regulations made under”;

(b) in paragraph 2—

(i) in the first subparagraph, for “Commission shall, by means of implementing acts,” substitute “appropriate authority may by regulations”;

(ii) omit the final subparagraph.

(9) In Article 76—

(a) in paragraph 1, in the first subparagraph, for “International Plant Protection Convention (IPPC)” substitute “IPPC”;

(b) in paragraph 2—

- (i) in point (a), for “at least one of the official languages of the Union” substitute “English”;
 - (ii) in point (b), for “a Member State” substitute “the United Kingdom”;
 - (c) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for “Commission” substitute “UK NPPO”;
 - (bb) omit the second sentence;
 - (ii) in the second subparagraph, for the words from “Commission” to “Article 105, to” substitute “appropriate authority may by regulations supplement”;
 - (d) in paragraph 5, for the words from “IMSOC” to the end substitute “appropriate computerised information management system”.
- (10) In Article 77—
- (a) in paragraph 1, in the second subparagraph—
 - (i) in the first sentence—
 - (aa) for “certificate cancelled” substitute “CERTIFICATE CANCELLED”;
 - (bb) omit “respective”;
 - (ii) omit the second sentence;
 - (b) omit paragraph 2;
 - (c) in paragraph 3—
 - (i) in the first sentence, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
 - (ii) omit the second sentence.
- (11) In Section 2, in the heading—
- (a) at the beginning, for “**Plant**” substitute “**UK plant**”;
 - (b) for “**the Union territory**” substitute “**or into Great Britain**”.
- (12) In Article 78—
- (a) in the heading, for “**Plant**” substitute “**UK plant**”;
 - (b) for the unnumbered paragraph substitute—
 - “**1.** A UK plant passport shall be an official label to be used for:
 - (a) the movement of plants, plant products and other objects described in Articles 79 and 80 (including the introduction of plants, plant products and other objects into Great Britain from a CD territory); and
 - (b) the movement of plants, plant products and other objects from Great Britain to a CD territory.
 - 2.** Articles 83 to 92 and 93 to 95 apply in relation to any UK plant passport issued in Great Britain.
 - 3.** Article 92a applies to any UK plant passport issued in a CD territory that accompanies plants, plant products or other objects that are introduced into Great Britain from that CD territory and are subsequently moved within Great Britain.”
- (13) In Article 79—
- (a) in the heading—
 - (i) after “**a**” insert “**UK**”;

- (ii) for “**the Union territory**” substitute “**or into Great Britain**”;
- (b) for paragraph 1 substitute—
 - “**1.** Plants, plant products and other objects listed in Annex 13 to the Phytosanitary Conditions Regulation may not be moved within Great Britain or introduced into Great Britain from a CD territory, unless they are accompanied by a UK plant passport.”;
- (c) after that paragraph insert—
 - “**1A.** Paragraph 1 is subject to Articles 81 and 82.”;
- (d) omit paragraph 2;
- (e) for paragraph 3 substitute—
 - “**3.** The appropriate authority may by regulations amend Annex 13 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2:
 - (a) to include a plant, plant product or other object that is not included in Annex 13 to the Phytosanitary Conditions Regulation, where there is a risk that the plant, plant product or other object hosts a GB quarantine pest;
 - (b) to remove a plant, plant product or other object listed in that Annex, where the risk that it hosts a GB quarantine pest no longer exists.”;
- (f) omit paragraph 4;
- (g) in paragraph 5—
 - (aa) omit “, 2”;
 - (bb) for “Articles 46, 47, 48 and 75” substitute and “Article 47, 48 or 75(1)”;
- (h) omit paragraph 6.
- (14) In Article 80—
 - (a) in the heading—
 - (i) after “**a**” insert “**UK**”;
 - (ii) for “**protected zones**” substitute “**GB pest-free areas**”;
 - (b) for paragraph 1 substitute—
 - “**1.** Any plants, plant products and other objects described in any entry in column (1) of the table in Annex 14 to Phytosanitary Conditions Regulation may not be introduced into, or moved within, a GB pest-free area specified in the corresponding entry in column (2) of the table unless they are accompanied by a UK plant passport.”;
 - (c) after paragraph 1 insert—
 - “**1A.** Paragraph 1 is subject to Articles 81 and 82.”;
 - (d) omit paragraph 2;
 - (e) for paragraph 3 substitute—
 - “**3.** The appropriate authority may by regulations amend Annex 14 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2:
 - (a) to include a plant, plant product or other object which is not listed in Annex 14 to the Phytosanitary Conditions Regulation, where there is a risk that the plant, plant product or other object hosts a PFA quarantine pest; or

- (b) to remove a plant, plant product or other object from the list in Annex 14 to the Phytosanitary Conditions Regulation where the risk that it hosts a PFA quarantine pest no longer exists.”;
 - (f) omit paragraph 4;
 - (g) in paragraph 5—
 - (aa) omit “, 2”;
 - (bb) for “Articles 56, 57 and 58” substitute “Article 57 or 58”.
- (15) In Article 81—
- (a) at the beginning insert—

“**A1.** This Article applies to the movement of plants, plant products or other objects in Great Britain and the introduction of plants, plant products or other objects into Great Britain from a CD territory.”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) after “No” insert “UK”;
 - (bb) after “objects” insert “which are”;
 - (ii) the second subparagraph of the existing text becomes paragraph 1A and in that paragraph, in point (b), for the words from “for” to the end, substitute “described in an entry (if any) in column (1) of the table in Annex 14 to Phytosanitary Conditions Regulation, who are situated in a GB pest-free area specified in the corresponding entry in column (2) of the table”;
 - (iii) for the third subparagraph substitute—

“**1B.** The appropriate authority may by regulations specify that point (b) of paragraph 1A only applies to particular PFA quarantine pests and plants, plant products or other objects.”;
 - (c) in paragraph 2—
 - (i) in the first sentence, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
 - (ii) in the second sentence, for “delegated acts shall” substitute “regulations must”.
- (16) In Article 82—
- (a) in the first subparagraph, after “No” insert “UK”;
 - (b) omit the second and third subparagraphs.
- (17) In Article 83—
- (a) in the heading, after “**the**” insert “**UK**”;
 - (b) in paragraph 1, in the first subparagraph—
 - (i) for “The” substitute “A UK”;
 - (ii) for “referred to in paragraph 2” substitute “set out in Part A, B, C or D of Annex 7”;
 - (c) in paragraph 2—
 - (i) in the first subparagraph—
 - (aa) for “The”, in the first place where it occurs, substitute “A UK”;
 - (bb) omit “for movement within the Union territory”;
 - (cc) at the end insert “, except where paragraph 4 or 5 applies”;

- (ii) in the second subparagraph—
 - (aa) in the words before point (a), after “required” insert “on a UK plant passport for the movement of plants for planting in Great Britain, or the introduction of plants for planting into Great Britain from a CD territory,” and after “where” insert “the”;
 - (bb) in point (a), for the words from “Union” to the end substitute “GB quarantine pests or provisional GB quarantine pests”;
 - (cc) in point (b), for “listed in an implementing act provided for in” substitute “specified in regulations made under”;
- (d) in paragraph 3—
 - (i) for “Commission shall by means of implementing acts,” substitute “the appropriate authority may by regulations”;
 - (ii) omit the second sentence;
- (e) in paragraph 4—
 - (i) for “The” substitute “A UK”;
 - (ii) for “protected zone” substitute “GB pest-free area or CD pest-free area”;
- (f) in paragraph 5—
 - (i) in the first subparagraph—
 - (aa) for the words from “Directives” to “the plant passport” substitute “the relevant legislation on the marketing of seeds and other propagating material, a UK plant passport”;
 - (bb) for “those Directives” substitute “the relevant retained EU law”;
 - (ii) for the second and third subparagraphs substitute—

“Where this paragraph applies, a UK plant passport must contain:

 - (a) the elements set out in Part C of Annex 7; or
 - (b) in the case of plants, plant products or objects which are to be introduced into a GB pest-free area or CD pest-free area, the elements set out in Part D of Annex 7.”;
- (g) in paragraph 6, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”;
- (h) for paragraph 7 substitute—

“7. A UK plant passport must comply with the requirements set out in Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone⁽²⁹⁾.”;
- (i) after paragraph 7 insert—

“7A. The appropriate authority may by regulations make provision relating to the format or size of UK plant passports.”;
- (j) in paragraph 8—
 - (i) in the first subparagraph—
 - (aa) after “A” insert “UK”;

(29) EUR 2017/2313.

- (bb) for “referred to in paragraph 2” substitute “set out in Part A, B, C or D of Annex 7 (as the case may be)”;
 - (cc) for “through the implementing acts referred to in the second subparagraph of this paragraph” substitute “in regulations made under paragraph 9”;
 - (ii) for the second subparagraph substitute—
 - “9. The appropriate authority may by regulations set out technical arrangements for the issuance of electronic UK plant passports to ensure an appropriate credible and effective mode for their issuance.”.
- (18) In Article 84—
 - (a) in the heading, after “of” insert “UK”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph, for “Plant” substitute “UK plant”;
 - (ii) in the second subparagraph, after “issue” insert “UK”;
 - (c) in paragraphs 2 and 3, after “issue”, in both places where it occurs, insert “UK”.
- (19) In Article 85—
 - (a) in the heading—
 - (i) after “a” insert “UK”;
 - (ii) omit “**for movement within the UK territory**”;
 - (b) in the words before point (a)—
 - (i) for “plant passport shall be issued for movement within the Union territory for” substitute “UK plant passport may only be issued for the movement of”;
 - (ii) for “which” substitute “within Great Britain if the plant, plant product or other object”;
 - (c) in point (a), for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
 - (d) in point (b)—
 - (i) for “Union” substitute “GB”;
 - (ii) for “37(4)” substitute “37(4A)”;
 - (e) in point (c)—
 - (i) omit “concerning its movement within the Union as”;
 - (ii) for “(2) and (3)” substitute “(1B)”;
 - (f) in point (d), for the words from “rules” to the end substitute “any requirements specified in regulations made under Article 28(1) or 30(1)”;
 - (g) in point (e)—
 - (i) after “with” insert “any”;
 - (ii) for “authorities” substitute “authority”;
 - (iii) for “Union”, in the first place where it occurs, substitute “GB”;
 - (iv) for the words from “pests”, in the second place where it occurs, to the end substitute “the eradication of provisional GB quarantine pests pursuant to regulations made under Article 30(1)”.
- (20) In Article 86—
 - (a) in the heading—

- (i) after “a” insert “UK”;
- (ii) for “**protected zone**” substitute “**GB pest-free area**”;
- (b) at the beginning insert—

“**A1.** This Article applies to any plant, plant product or other object of a description specified in any entry in column (1) of the table in Annex 14 to the Phytosanitary Conditions Regulation which is to be introduced into, or moved within, a GB pest-free area specified in the corresponding entry in column (2) of the table.”;
- (c) in paragraph 1—
 - (i) in the words before point (a), for the words from “plant passport” to “which” substitute “UK plant passport may only be issued for the introduction into, or movement within, a GB pest-free area of a plant, plant product or other object if it”;
 - (ii) in point (a), for “respective protected zone quarantine pest” substitute “PFA quarantine pests which relates to that GB pest-free area”;
 - (iii) in point (b), for “(2) and (3)” substitute “(1)”;
- (d) in paragraph 2—
 - (i) for the words from the beginning to “shall” substitute “But where Article 33(2) applies, a UK plant passport may”;
 - (ii) for “protected zone” substitute “PFA quarantine”.
- (21) After Article 86 insert—

“Article 86a

*UK plant passports for the introduction of plants, plant products
and other objects into CD territories from Great Britain*

- 1. This Article applies to any plant, plant product or other object which is to be introduced into a CD territory from Great Britain and is required by the relevant CD legislation to be accompanied by a UK plant passport on its introduction into that territory.
- 2. A UK plant passport may only be issued for the introduction of a plant, plant product or other object into a CD territory if the plant, plant product or other object:
 - (a) fulfils all of the requirements of Articles 85 and 86, where applicable; and
 - (b) fulfils any additional requirements that apply under the relevant CD legislation to the introduction of that plant, plant products or other object into the CD territory.”.
- (22) Article 87 is amended in accordance with paragraphs (23) to (26).
- (23) In the heading, after “**for**” insert “**UK**”.
- (24) In paragraph 1—
 - (a) after “A” insert “UK”;
 - (b) for “Article 86” substitute “Articles 86 and 86a”.
- (25) In paragraph 3—
 - (a) in the first subparagraph—
 - (i) in point (b), for the words from “by the” to “Article 54(2)” substitute “by or under regulations made under Article 28(1) or 30(1) or pursuant to Article 37(4A), 41(1B) or 54(1)”;
 - (ii) in point (c)(i)—
 - (aa) for “Union” substitute “GB”;

- (bb) for “pests subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”;
 - (cc) for “protected zone quarantine pest in the respective protected zone” substitute “PFA quarantine pest in the relevant GB pest-free area”;
 - (iii) in point (c)(ii), for “Union” substitute “GB”;
 - (b) in the second subparagraph, for the words from “adopted” to “Article 54(2) or (3)” substitute “applicable by virtue of regulations made under Article 28(1) or 30(1), or requirements or measures under Article 37(4A), 41(1B) or 54(1), and in the case of plants, plant products and other objects that are to be introduced into a CD territory, under the relevant CD legislation”.
- (26) In paragraph 4—
- (a) in the first subparagraph—
 - (i) in the first sentence, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
 - (ii) in the second sentence, for the words from “, as respectively” to the end substitute “in accordance with relevant legislation on the marketing of seeds and other propagating material”;
 - (b) for the second subparagraph substitute—

“5. Where regulations made under paragraph 4 make provision in relation to specific plants for planting, and those plants for planting are subject to certification schemes under relevant legislation on the marketing of seeds and other propagating material, the regulations must set out the requirements as regards the examinations for the presence of GB quarantine pests, provisional GB quarantine pests and GB regulated non-quarantine pests, and other characteristics of the plants for planting under the relevant legislation, in a single certification scheme.”;
 - (c) for the third subparagraph substitute—

“6. Regulations made under paragraph 4 must take account of developments in scientific and technical knowledge and international standards.”.
- (27) In Article 88—
- (a) in the heading, after “**the**” insert “**UK**”;
 - (b) in the unnumbered paragraph—
 - (i) in the first sentence—
 - (aa) for “Plant” substitute “UK plant”;
 - (bb) after “passports” insert “issued in Great Britain”;
 - (cc) for “the Union territory” substitute “Great Britain”;
 - (dd) for “protected zone” substitute “GB pest-free area”;
 - (ee) at the end, insert “, or before they are introduced into a CD territory”;
 - (ii) in the second sentence, after “the” insert “UK”.
- (28) In Article 89—
- (a) in the heading, after “**issue**” insert “**UK**”;
 - (b) in paragraph 1—
 - (i) in the words before point (a), after “issue”, in both places where it occurs, insert “UK”;

- (ii) in point (a), for the words from “Union quarantine” to “and Union” substitute “GB quarantine pests, provisional GB quarantine pests, PFA quarantine pests, CD quarantine pests and GB”;
- (c) in paragraph 2, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”.
- (29) In Article 90, in paragraph 1, in the first subparagraph—
 - (a) after “a” insert “UK”;
 - (b) for the words from “Article 37(1)” to the end substitute “Articles 33(2), 37(4A), 41(1B), 54(1), 85, 86, 86a and 87 (as the case may be) and any requirements specified in regulations made under Article 28(1) or 30(1)”;
- (30) In Article 91, in paragraph 2, in point (f), for “plant passports”, in both places where it occurs, substitute “UK plant passports”.
- (31) In Article 92—
 - (a) in paragraph 1—
 - (i) after “comply with” insert “, where applicable,”;
 - (ii) for “or”, in each place where it occurs, substitute “and”;
 - (b) in paragraph 2—
 - (i) in the first subparagraph, after “issued a” insert “UK”;
 - (ii) in the second subparagraph, after “issue” insert “UK”;
 - (iii) after “Article 86” insert “or 86a”;
 - (c) in paragraph 3—
 - (i) after “issue” insert “UK”;
 - (ii) after “Article 86” insert “or “86a”.
- (32) After Article 92 insert—
“Article 92a

UK plant passports issued in CD territories

1. A UK plant passport issued in a CD territory may only accompany plants, plant products or other objects that are introduced into Great Britain from that CD territory, and are subsequently moved within Great Britain, if the UK plant passport:

- (a) has been issued, in accordance with the relevant legislation in the CD territory, by the CD authority for that territory or by a professional operator under the supervision of the CD authority;
- (b) is in the relevant form and has the relevant content specified in Article 83; and
- (c) is attached to the trade unit of the plants, plant products or other objects, or where the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.

2. In paragraph 1, ‘relevant legislation’ means legislation containing provision which only permits UK plant passports to be issued for plants, plant products or other objects that are to be introduced into Great Britain if:

- (a) the plants, plant products or other objects:
 - (i) are free from GB quarantine pests, provisional GB quarantine pests, and where applicable, PFA quarantine pests;

- (ii) comply with the provisions of Article 37(1) concerning the presence of GB regulated non-quarantine pests on plants for planting and the provisions of Article 37(4A) concerning the measures to be taken;
 - (iii) comply with the requirements concerning their introduction into, and movement within, Great Britain referred to in Article 41(1A) and (1B) and, where applicable, the requirements referred to in Article 54(1);
 - (iv) comply with any requirements specified in regulations made under Article 28(1) or 30(1); and
 - (v) comply with any measures adopted by the competent authority for the eradication of GB quarantine pests pursuant to Article 17(1) or the eradication of provisional GB quarantine pests pursuant to regulations made under Article 30(1); and
 - (b) examinations have been carried out for the purpose of attesting that the plants, plant products or other objects fulfil those requirements in a manner equivalent to the examinations required under Article 87 in respect of UK plant passports issued for the movement of plants, plant products or other objects within Great Britain.”.
- (33) In Article 93—
- (a) in the heading, after “**a**” insert “**UK**”;
 - (b) in paragraphs 1 to 5, for “plant passport”, in each place where it occurs, insert “UK plant passport”;
 - (c) in paragraph 2, in the second sentence, after “those” insert “UK”.
- (34) In Article 94—
- (a) in the heading, for “**Plant**” substitute “**UK plant**”;
 - (b) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for the words from “, introduced into” to “requires a plant passport” substitute “is introduced into Great Britain from a third country and a UK plant passport is required for the movement of the plant, plant product or other object within Great Britain”;
 - (bb) for “the passport” substitute “a UK plant passport”;
 - (cc) after “issuance of a” insert “UK”;
 - (ii) in the second subparagraph—
 - (aa) for “plant passport” substitute “UK plant passport”;
 - (bb) omit “, as referred to in Union legislation on official controls”;
 - (c) for paragraph 2 substitute—

“**2.** By way of derogation from the first subparagraph of paragraph 1, a UK plant passport need not be issued for the movement of a plant, plant product or other object from its place of entry into Great Britain to its initial destination in Great Britain if the plant, plant product or other object is accompanied by a copy, issued by the competent authority, of the original phytosanitary certificate that accompanied it on its arrival in Great Britain.”.
- (35) In Article 95—
- (a) in the heading, for “**the**” substitute “**a UK**”;
 - (b) at the beginning insert—

“**A1.** This Article applies where a professional operator becomes aware that a trade unit of plants, plant products or other objects, which is under the operator’s control does not comply with any of the requirements in Article 83 to 86, 87, 89, 90, 92a, 93 or 94.”;

(c) for paragraph 1 substitute—

“**1.** The professional operator must invalidate the UK plant passport and, where possible, remove it from that trade unit.”;

(d) in paragraphs 2 to 4, for “plant passport”, in each place where it occurs, insert “UK plant passport”;

(e) omit paragraph 5.

(36) In Article 96—

(a) in paragraph 1—

(i) in the first subparagraph—

(aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;

(bb) in point (b), at the end insert “to a third country or Northern Ireland”;

(cc) in point (c), for the words from “, if required” to the end substitute “or into Great Britain from a CD territory, if so required by regulations made under Article 28(1) or 30(1), or by Article 41(1) or 54(1), or in the case of wood packaging material moving from Great Britain to a CD territory, if required by legislation in force in that CD territory.”;

(ii) in the third subparagraph, for “the Union territory” substitute “Great Britain”;

(b) in paragraph 2, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.

(37) In Article 97—

(a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;

(b) in paragraph 2—

(i) in the first sentence—

(aa) for the words from “Commission” to “acts,” substitute “appropriate authority may by regulations”;

(bb) at the end insert “, taking into account relevant international standards and in particular ISPM15”;

(ii) omit the second and third sentences.

(38) In Article 98—

(a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;

(b) in paragraph 1—

(i) in the first subparagraph, in point (a), for “the acts” substitute “regulations”;

(ii) in the second subparagraph, for “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;

(c) in paragraph 2—

(i) in point (b), for the words from “those” to the end substitute “the treatment facilities referred to in point (a)(i) and (ii) of this paragraph”;

(ii) in point (c)—

- (aa) for the words from “Article 28(1)” to “Article 54(2) and (3)” substitute “regulations made under Article 28(1) or 30(1), or pursuant to Article 41(1) or 54(1)”;
 - (bb) after “by a” insert “UK”;
 - (d) in paragraph 3, after “operators” insert “it has”;
 - (e) in paragraph 4, in the first subparagraph, for “the competent authority” substitute “any of the competent authorities”.
- (39) In Article 99—
- (a) in paragraph 1—
 - (i) for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
 - (ii) for the words from “adopted” to the end substitute “specified in regulations made under Article 28(1), 30(1) or 44(1), or the implementation of measures specified in the requirements to be fulfilled under Article 41(1) or 54(1)”;
 - (b) in paragraph 2, for “The delegated acts referred to in paragraph 1” substitute “Those regulations”;
 - (c) in paragraph 3—
 - (i) in the first sentence, for “Commission shall adopt, by means of implementing acts,” substitute “appropriate authority may by regulations make provision about”;
 - (ii) omit the second sentence.
- (40) In the heading to Section 4, for “**the Union territory**” substitute “**Great Britain**”.
- (41) Before Article 100 insert—
- “Article 99a

Interpretation

In Articles 100 and 101, “relevant phytosanitary import requirements” means:

- (a) in relation to the export of plants, plant products or other objects to a third country other than an EU Member State, the phytosanitary import requirements of that third country;
 - (b) in relation to the export of plants, plant products or other objects to an EU Member State, the phytosanitary import requirements of the European Union;
 - (c) in relation to the movement of plants, plant products or other objects to Northern Ireland, the phytosanitary import requirements of the European Union that apply by virtue of the Protocol on Ireland/Northern Ireland to the withdrawal agreement.”.
- (42) In Article 100—
- (a) in the heading, for “**the Union**” substitute “**Great Britain**”;
 - (b) in paragraph 1—
 - (i) in the words before point (a)—
 - (aa) for “the Union territory” substitute “Great Britain”;
 - (bb) after “country”, in the first place where it occurs, insert “or Northern Ireland”;
 - (cc) for “phytosanitary import requirements of that third country” substitute “relevant phytosanitary import requirements”;
 - (ii) in point (c), for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;

- (c) in paragraph 2—
 - (i) in the words before point (a) for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;
 - (ii) in point (c)—
 - (aa) for “plant passport”, in both places where it occurs, substitute “UK plant passport”;
 - (bb) for “the”, in the final place where it occurs, substitute “a”;
 - (iii) omit point (e);
 - (iv) in point (f), for “the Union territory” substitute “Great Britain”;
 - (d) in paragraph 4—
 - (i) for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”;
 - (ii) omit “and Part A of Annex VIII”;
 - (e) in paragraph 5, for “IMSOC” substitute “appropriate computerised information management system, where the use of electronic phytosanitary certificates is permitted by the competent authority”.
- (43) In Article 101—
- (a) in the heading, for “**the Union**” substitute “**Great Britain**”;
 - (b) in paragraph 1—
 - (i) for “the Union territory” substitute “Great Britain”;
 - (ii) for “the Union” substitute “Great Britain”;
 - (c) in paragraph 2—
 - (i) in the words before point (a), for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;
 - (ii) in point (b), for “the Union territory” substitute “Great Britain”;
 - (iii) in point (c)—
 - (aa) for “by” substitute “for the purposes of imports into”;
 - (bb) for the words from “storage” to the end substitute “its storage in Great Britain”;
 - (d) in paragraph 6, for “IMSOC” substitute “appropriate computerised information management system, where the use of electronic phytosanitary certificates is permitted by the competent authority”.
- (44) Omit Article 102.

Chapter 7

33. Omit Articles 103 and 104.

Chapter 8

- 34.—(1) For Article 105 substitute—
“Article 105

Regulations

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
 2. For regulations made under this Regulation by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽³⁰⁾.
 3. A statutory instrument containing regulations made by the Secretary of State under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
 4. A statutory instrument containing regulations made by the Welsh Ministers under these Regulations is subject to annulment in pursuance of a resolution of the Senedd Cymru.
 5. Regulations made by the Scottish Ministers under these Regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
 6. Such regulations may—
 - (a) contain supplementary, incidental, consequential, transitional, transitory or saving provision, including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018);
 - (b) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas.”.
- (2) Omit Articles 106 to 108.
- (3) After Article 113, omit the words from “This Regulation” to “Member States”.

Annex 1

35. Annex 1 is amended as follows.

- 36.—(1) In the heading to Annex 1, for “THE UNION TERRITORY” substitute “GREAT BRITAIN”.
- (2) In Section 1—
- (a) in the heading, for “*Article 30(2)*” substitute “*Article 30(A1)*”;
 - (b) in point (4)(n), after “Natura 2000” insert “within the meaning of the Conservation of Habitats and Species Regulations 2017⁽³¹⁾”.
- (3) In Section 2—
- (a) in the heading for “*Union*” substitute “*GB*”;
 - (b) in the words before point (a)—
 - (i) for “Union”, in the first place where it occurs, substitute “GB”;
 - (ii) for “the Union territory” substitute “Great Britain”;
 - (c) in point (a), for “the Union territory” substitute “Great Britain”;
 - (d) in point (b)(iii)—
 - (i) for “the Union territory” substitute “Great Britain”;
 - (ii) for “for the Union” substitute “for Great Britain”;
 - (e) in point (c)—

⁽³⁰⁾ 2010 asp 10.

⁽³¹⁾ S.I. 2017/1012, prospectively amended by S.I. 2019/579; there are other amending instruments but none is relevant.

- (i) in point (i), for the words from “listed” to the end substitute “protected by retained EU law relating to the conservation of natural habitats and wild fauna and flora”;
 - (ii) in point (iii)—
 - (aa) for “the Union territory” substitute “Great Britain”;
 - (bb) for “for the Union” substitute “for Great Britain”.
- (4) In Section 3—
 - (a) in the heading—
 - (i) for “**Union**” substitute “**GB**”;
 - (ii) for “**Article 29(1) and 30(1)**” substitute “**Articles 29(2) and 30(A1)**”;
 - (b) in Subsection 1—
 - (i) in the heading for “**Article 29(1)**” substitute “**Article 29(2)**”;
 - (ii) in point (2)—
 - (aa) in the heading, for “the Member State’s territory” substitute “Great Britain”;
 - (bb) for “the territory of a Member State” substitute “Great Britain”;
 - (cc) for “that Member State” substitute “the competent authorities”;
 - (dd) for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
 - (iii) in point (3)—
 - (aa) in the heading, for the words from “in the Union territory” to “present” substitute “Great Britain”;
 - (bb) for “Member State” substitute “competent authorities”;
 - (cc) for the words from “its territory” to the end substitute “Great Britain”;
 - (iv) in point (4)—
 - (aa) for “Member State”, in the first place where it occurs, substitute “competent authorities”;
 - (bb) for the words from “its territory” to “Union territory” substitute “Great Britain”;
 - (cc) for “that territory” substitute “Great Britain”;
 - (c) in Subsection 2—
 - (i) in the heading—
 - (aa) for “**Union**” substitute “**GB**”;
 - (bb) for “**Article 30(1)**” substitute “**Article 30(A1)**”;
 - (ii) in point (2)—
 - (aa) in the heading for “the Union territory” substitute “Great Britain”;
 - (bb) for “Union territory” and “the Union territory” substitute “Great Britain”;
 - (iii) in point (3)—
 - (aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
 - (bb) omit “to the Union”;
 - (iv) in point (4)—
 - (aa) omit “to the Union”;

- (bb) for “the Union territory” substitute “Great Britain”;
 - (cc) for “that territory” substitute “Great Britain”.
- (5) In Section 4—
 - (a) in the heading, for “**Union**” substitute “**GB**”;
 - (b) in point (2), in the heading and in point (1), for “the Union territory” substitute “Great Britain”.

Annex 2

37. Annex 2 is amended as follows.

38.—(1) In Section 1—

- (a) in the heading—
 - (i) omit “**Article 25(2),**”;
 - (ii) for “**Article 28(4) and (6)**” substitute “**Article 28(4)**”;
 - (iii) for “**Article 30(5) and (7)**” substitute “**Article 30(5)**”;
 - (iv) for the words from “**Article 40(3)**” to “**Article 54(3)**” substitute “**Article 40(3A), Article 41(3A), Article 53(3), Article 54(3A)**”;
- (b) in point (1), in the third subparagraph, in point (ii), for “plant passport” substitute “UK plant passport”;
- (c) in point (2), in the second subparagraph, in point (i), for “plant passport” substitute “UK plant passport”.

(2) In Section 2—

- (a) in the heading—
 - (i) for “**Article 28(4) and (6)**” substitute “**Article 28(4)**”;
 - (ii) for “**Article 30(5) and (7)**” substitute “**Article 30(5)**”;
 - (iii) for “**Article 37(4)**” substitute “**Article 37(5C)**”;
 - (iv) for the words from “**Article 40(3)**” to “**Article 54(3)**” substitute “**Article 40(3B), Article 41(3B), Article 49(2), Article 53(3A), Article 54(3B)**”;
- (b) in the words before point (1)—
 - (i) for “Union”, in both places where it occurs, substitute “GB”;
 - (ii) for “protected zone” substitute “PFA”;
- (c) in point (4), for “the Union territory” substitute “Great Britain”.

Annex 3

39. In Annex 3—

- (a) in point (1)(a), for “into the Union” substitute “into Great Britain”;
- (b) for “the Union territory”, in each place where it occurs, substitute “Great Britain”.

Annex 4

40. In Annex 4—

- (a) in the heading, for “**THE UNION TERRITORY**” substitute “**GREAT BRITAIN**”;
- (b) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;

- (c) in point (2)(a), for “pursuant to Article 5(2)” substitute “in Annex 2 to the Phytosanitary Conditions Regulation”.

Annex 5

- 41. In Annex 5, in the heading, for “THE UNION TERRITORY” substitute “GREAT BRITAIN”.

Annex 6

- 42.—(1) Annex 6 is amended as follows.

- (2) In point (1)—
 - (a) for “Union quarantine pests or pests subject to measures adopted pursuant to Article 30” substitute “GB quarantine pests or provisional GB quarantine pests”;
 - (b) for “the Union” substitute “Great Britain”.
- (3) In point (2), for “the Union territory” substitute “Great Britain”;
- (4) In point (3)—
 - (a) for “Union quarantine pests or pests subject to the measures adopted pursuant to Article 30” substitute “GB quarantine pests or provisional GB quarantine pests”;
 - (b) for “the Union territory” substitute “Great Britain”.

Annex 7

- 43.—(1) Annex 7 is amended as follows.

- (2) In the heading to Annex 7, at the beginning insert “UK”.
- (3) In Part A—
 - (a) in the heading—
 - (i) for “*Plant passports*” substitute “*UK plant passports*”;
 - (ii) omit “*for movement within the Union territory*”;
 - (b) in point (1)—
 - (i) in the words before point (a), for “plant passport for movement within the Union territory” substitute “UK plant passport for the movement of plants, plant products and other objects within Great Britain, the introduction of plants, plant products and other objects into Great Britain from a CD territory or the introduction of plants, plant products and other objects into a CD territory from Great Britain”;
 - (ii) for point (a) substitute—
 - “(a) the words ‘UK Plant Passport’ in its upper right-hand corner in English;”;
 - (iii) omit point (b);
 - (iv) in point (d)—
 - (aa) omit the words from “subsequently” to “a hyphen and”;
 - (bb) at the end insert “or the CD authority”;
 - (v) in point (f), for point (ii) substitute—
 - “(ii) if originating in or from Great Britain or a CD territory, ‘GB’.”.
- (4) In Part B—

- (a) for the heading substitute “***UK plant passports for movement into GB pest-free areas and CD pest-free areas, as referred to in Article 83(4)***”;
- (b) in point (1)—
 - (i) in the words before point (a)—
 - (aa) after “The” insert “UK”;
 - (bb) for “protected zones” substitute “GB pest-free areas and for movement into CD pest-free areas”;
 - (ii) for point (a) substitute—
 - “(a) the words ‘UK Plant Passport — PFA’ in its upper right-hand corner in English;”;
 - (iii) in point (b), for “protected zone quarantine pest(s), as referred to in Article 32(3)” substitute “PFA quarantine pest(s) or CD quarantine pest(s)”;
 - (iv) omit point (c);
 - (v) in point (e)—
 - (aa) omit the words from “subsequently” to “a hyphen and”;
 - (bb) at the end, insert “or the CD authority”;
 - (vi) in point (g)(ii), for the words from “two” to “origin and” substitute “if originating in or from Great Britain or a CD territory, ‘GB’”.
- (5) In Part C—
 - (a) in the heading—
 - (i) for “***Plant passports***” substitute “***UK plant passports***”;
 - (ii) omit “***for movement within the Union territory***”;
 - (b) in point (1)—
 - (i) in the words before point (a)—
 - (aa) for “plant passport for movement within the Union territory” substitute “UK plant passport for the movement of plants, plant products and other objects within Great Britain, the introduction of plants, plant products and other objects into Great Britain from a CD territory or the introduction of plants, plant products and other objects into a CD territory from Great Britain”;
 - (bb) for the words from “respectively” to “[Directive 2008/90/EC](#)” substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
 - (ii) for point (a) substitute—
 - “(a) the words ‘UK Plant Passport’ in its upper right-hand corner in English;”;
 - (iii) omit point (b);
 - (iv) in the second subparagraph, for “plant passport” substitute “UK plant passport”.
- (6) In Part D—
 - (a) in the heading—
 - (i) for “***Plant passports***” substitute “***UK plant passports***”;
 - (ii) for “***protected zones***” substitute “***GB pest-free areas and for movement into CD pest-free areas***”;
 - (b) in point (1)—

- (i) in the words before point (a), for “plant passport for movement into and within protected zones” substitute “UK plant passport for movement into and within GB pest-free areas and for movement into CD pest-free areas”;
- (ii) for the words from “respectively” to “[Directive 2008/90/EC](#)” substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
- (iii) for point (a) substitute—
 - “(a) the words ‘UK Plant Passport — PFA’ in its upper right-hand corner in English;”;
- (iv) in point (b), for “protected zone quarantine pest(s)” substitute “PFA quarantine pest(s) or CD quarantine pest(s)”;
- (v) omit point (c);
- (c) in the second subparagraph, for “plant passport” substitute “UK plant passport”.

Commission [Decision 2002/757/EC](#) on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in ‘t Veld sp. nov

44.—(1) Commission [Decision 2002/757/EC](#) on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in ‘t Veld sp. nov⁽³²⁾ is amended as follows.

- (2) In Article 1, omit paragraphs 2 to 4.
- (3) Omit Articles 2 to 9.
- (4) In Annex 1—
 - (a) omit paragraphs 1 to 3;
 - (b) in paragraph 4—
 - (i) for “the Community” substitute “Great Britain”;
 - (ii) for “Member States” substitute “the competent authority”.
- (5) Omit Annex 2.

Commission [Decision 2005/51/EC](#) authorising Member States temporarily to provide for derogations from certain provisions of Council [Directive 2000/29/EC](#) in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes

45.—(1) Commission [Decision 2005/51/EC](#) authorising Member States temporarily to provide for derogations from certain provisions of Council [Directive 2000/29/EC](#) in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes⁽³³⁾ is amended as follows.

- (2) Before Article 1, insert—
“Article A1

In this Decision:

‘contaminated soil’ means:

⁽³²⁾ EUDN 2002/757.

⁽³³⁾ EUDN 2005/51.

- (a) soil contaminated by pesticides governed by the programme of the Food and Agriculture Organization of the United Nations on the prevention and disposal of obsolete and unwanted pesticides or any other similar multilateral programme; or
- (b) soil contaminated with persistent organic pollutants listed in the Stockholm Convention on persistent organic pollutants⁽³⁴⁾ or in the 1998 Protocol to the 1979 Convention on long-range trans-boundary air pollution on persistent organic pollutants⁽³⁵⁾;

‘dedicated hazardous waste incinerator’ means an incinerator in Great Britain which is officially authorised to treat contaminated soil under retained EU law relating to industrial emissions;

‘Plant Health Regulation’ means Regulation (EU) 2016/2031 on protective measures against pests of plants.”.

(3) In Article 1—

- (a) for the first paragraph substitute—

“1. The competent authorities may authorise the introduction into Great Britain of contaminated soil originating in third countries by way of derogation from:

- (a) any prohibition that would otherwise apply to its introduction by virtue of Article 40(1) of the Plant Health Regulation; or
- (b) any requirements that would otherwise apply to its introduction by virtue of Article 41(1) of the Plant Health Regulation.”;

- (b) number the second paragraph as paragraph 2 and in that paragraph—

- (i) for “the Community” substitute “Great Britain”;
- (ii) after “2024 and” insert “is”;

- (c) number the third subparagraph as paragraph 3;

- (d) omit Articles 2 to 5.

(4) In the Annex—

- (a) for paragraphs 1 to 6 substitute—

“1. In this Annex, IMDG Code’ means the 2018 edition of the International Maritime Dangerous Goods Code⁽³⁶⁾.

2. The specific conditions are:

- (a) the introduction of the contaminated soil is authorised in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste prior to its introduction⁽³⁷⁾ by the appropriate competent authority within the meaning of that Regulation;
- (b) the soil is packaged in sealed drums or bags in compliance with the IMDG Code and transported in sealed shipping containers from the packaging site in the country of origin to the dedicated hazardous waste incinerator treatment site in accordance with the authorisation mentioned in point (a);
- (c) the soil is accompanied on its introduction into Great Britain by a phytosanitary certificate issued by the national plant protection organisation

⁽³⁴⁾ Adopted in Stockholm, Sweden on 22nd May 2001 (Treaty series No. 22 (2005), Cm 6581).

⁽³⁵⁾ The 1979 Convention on long range trans-boundary air pollution was adopted in Geneva, Switzerland on 13th November 1979 (Treaty series No. 57 (1983), Cmnd 9034); the 1998 Protocol on persistent organic pollutants was adopted in Aarhus, Denmark on 24th June 1998 (Treaty series No. 5 (2006), Cm 6757).

⁽³⁶⁾ A copy of this edition of the code may be obtained from IMO Publishing: ISBN: 978-92-801-1683-0 (2018 edition).

⁽³⁷⁾ EUR 2006/1013, prospectively amended by S.I. 2019/590.

- in the country of origin which includes under the heading “Additional declaration” the statement: “Authorised under [Decision 2005/55/EC](#)”;
- (d) the soil is introduced through a point of entry in Great Britain approved by the competent authority;
- (e) the soil is transported directly from its point of entry in Great Britain to the dedicated hazardous waste incinerator where it is to be treated.”;
- (b) omit paragraph 7.

Commission Implementing Regulation (EU) 2018/2018 laying down specific rules concerning the procedure to be followed in order to carry out the risk assessment of high risk plants, plant products and other objects within the meaning of Article 42(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council

46.—(1) Commission Implementing Regulation (EU) 2018/2018 laying down specific rules concerning the procedure to be followed in order to carry out the risk assessment of high risk plants, plant products and other objects within the meaning of Article 42(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council⁽³⁸⁾ is amended as follows.

(2) In Article 2—

- (a) the first paragraph becomes paragraph 1 and in that paragraph, for “Commission” substitute “UK NPPO”;
- (b) the second paragraph becomes paragraph 2;
- (c) after that paragraph insert—
 - “**3.** The UK NPPO must:
 - (a) produce a document setting out the detailed information that must be included in a technical dossier to support the completion of a risk assessment which is required to be carried out under Article 42(4) of Regulation (EU) 2016/2031; and
 - (b) publish the document in such manner as it considers appropriate.”.

(3) In Article 3—

- (a) in the first paragraph—
 - (i) in point (d), for “Commission and the European Food Safety Authority (EFSA)” substitute “UK NPPO”;
 - (ii) at the end insert—
 - “(e) the detailed information referred to in point (a) of Article 2(3).”;
 - (iii) omit the second paragraph;
 - (iv) in the final paragraph, for “one of the official languages of the Union” substitute “English”.

(4) In Article 4—

- (a) in the heading, for “**Commission**” substitute “**UK NPPO**”;
- (b) in the first paragraph, for “Commission” substitute “UK NPPO”;
- (c) in the second paragraph, for “(d)” substitute “(e)”;
- (d) omit the third paragraph.

(5) In Article 5—

⁽³⁸⁾ EUR 2018/2018.

- (a) omit the first paragraph;
- (b) in the second and third paragraphs, for “EFSA”, in both places where it occurs, substitute “the UK NPPO”;
- (c) omit the fourth paragraph;
- (d) in the fifth paragraph—
 - (i) omit the first sentence;
 - (ii) for the second sentence substitute “The UK NPPO must publish the risk assessment in such manner as it considers appropriate.”;
- (e) omit the final paragraph.
- (6) After Article 7, omit the words “This Regulation” to “Member States”.

Commission Delegated Regulation (EU) 2019/827 on criteria to be fulfilled by the professional operators in order to comply with the conditions set out in Article 89(1) point (a) of Regulation (EU) 2016/2031 of the European Parliament and of the Council and procedures to ensure that those criteria are met

47.—(1) Commission Delegated Regulation (EU) 2019/827 on criteria to be fulfilled by the professional operators in order to comply with the conditions set out in Article 89(1) point (a) of Regulation (EU) 2016/2031 of the European Parliament and of the Council and procedures to ensure that those criteria are met⁽³⁹⁾ is amended as follows.

- (2) In Article 1—
 - (a) in the heading, after “**issue**” insert “**UK**”;
 - (b) in the words before point (a), after “of” insert “UK”;
 - (c) in point (a), for “Union quarantine” to “Union” substitute “GB quarantine pests, provisional GB quarantine pests, PFA quarantine pests and GB”.
- (3) In Article 2, in paragraph 1, in the first subparagraph, after “of” insert “UK”.
- (4) After Article 3, omit the words from “This Regulation” to “Member States”.

Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding

48.—(1) Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding⁽⁴⁰⁾ is amended as follows.

- (2) In Article 1—
 - (a) in the first paragraph—
 - (i) in the first sentence—
 - (aa) for “the Union” substitute “Great Britain”;
 - (bb) for “protected zones” substitute “GB pest-free areas”;
 - (ii) for points (a) to (i) substitute—
 - “(a) Article 5(1);

⁽³⁹⁾ EUR 2019/827.

⁽⁴⁰⁾ EUR 2019/829.

- (b) Article 30(A2);
 - (c) Article 32(2);
 - (d) Article 40(1);
 - (e) Article 41(1);
 - (f) Article 42(2);
 - (g) Article 49(1);
 - (h) Article 53(1);
 - (i) Article 54(1).”;
- (b) in the second paragraph—
 - (i) omit point (a);
 - (ii) in point (b), for “Member States” substitute “competent authorities”.
- (3) In Article 2—
 - (a) in point (a)—
 - (i) for point (i) substitute—
 - “(i) GB quarantine pests,”;
 - (ii) for point (ii) substitute—
 - “(ii) provisional GB quarantine pests,”;
 - (iii) for point (iii) substitute—
 - “(iii) PFA quarantine pests,”;
 - (b) in point (b), for the words from “subjected” to “54(2) and (3)” substitute “that are subject to measures specified in regulations made under Article 30(1) or 49(1), or are subject to Article 40(1), 41(1), 42(2), 53(1) or 54(1)”;
 - (c) in point (d)—
 - (i) after “within,” insert “or the”;
 - (ii) for “the Union and protected zone thereof” substitute “, Great Britain or any GB pest-free area”;
- (4) In Article 3—
 - (a) for the heading substitute “**Recording of information**”;
 - (b) omit paragraphs 1 and 2;
 - (c) in paragraph 3—
 - (i) for “the Union” substitute “Great Britain”;
 - (ii) for the words from “a computerised” to “(IMSOC)” substitute “the appropriate computerised information management system”;
- (5) In Article 4, in the first unnumbered paragraph—
 - (a) for “the Union” substitute “Great Britain”;
 - (b) for “authorities” substitute “authority”.
- (6) In Article 5—
 - (a) in the words before point (a)—
 - (i) for “the Union” substitute “Great Britain”;
 - (ii) for “Member States” substitute “competent authority”;

- (b) in point (d)—
 - (i) for “has been” substitute “will be”;
 - (ii) omit “or”;
 - (iii) after “use” insert “, or released and moved”.
- (7) In Article 6—
 - (a) in paragraph 1, in the first sentence, omit the words from “of the Member State” to the end;
 - (b) in paragraph 2—
 - (i) in the first sentence, omit the words from “In” to “Union,”;
 - (ii) for “the”, in the third place where it occurs, substitute “The”;
 - (iii) omit “Part A of”;
 - (iv) omit the second sentence;
 - (c) omit paragraph 3;
 - (d) in paragraph 4—
 - (i) in the first paragraph, for “the Union” substitute “Great Britain”;
 - (ii) in the second paragraph—
 - (aa) omit “Parts A and B of”;
 - (bb) for “the Union” substitute “Great Britain”.
- (8) In Article 7, in the words before point (a)—
 - (a) for “Member States” substitute “the competent authority”;
 - (b) for “authorities”, in both places where it occurs, substitute “authority”;
 - (c) for “professional operators” substitute “the professional operator”.
- (9) In Article 8, in point (a), for “the Union”, in both places where it occurs, substitute “Great Britain”.
- (10) After Article 11, omit the words from “This Regulation” to “Member States”.
- (11) In Annex 1, in paragraph 1, in point (h), for “or storage” substitute “, storage or release and movement to another quarantine station or confinement facility”.
- (12) In Annex 2—
 - (a) in the heading preceding the first model letter of authority—
 - (i) omit “A.”;
 - (ii) after “for”, in the first place where it occurs, insert “**the introduction into, or**”;
 - (iii) for “**the Union**” substitute “, **Great Britain**”;
 - (b) in the first model letter of authority—
 - (i) in box 1, in the first column, for “organisation]* of the Member State of origin” substitute “organisation of the third country of origin]*/[competent authority of the place of origin]*”;
 - (ii) in box 2, in the first column, for “responsible body of the Member State of issue” substitute “issuing competent authority”;
 - (iii) in box 9, in the second column—
 - (aa) after “material” insert “introduced into or”;
 - (bb) for the words from “the Union territory” to the end substitute “Great Britain under Regulation (EU) 2016/2031”;

- (iv) in box 11, in the second column, for “or storage” substitute “/storage/release/movement”;
- (v) in box 12, for the entry substitute “Endorsement by the National Plant Protection Organization (NPPO) of the third country of origin of the specified material*/ Endorsement by the competent authority of the place of origin of the specified material*”;
- (vi) in box 13, for “Competent Authority” substitute “issuing competent authority”;
- (vii) in box 14, for “IMSOC Reference” substitute “Appropriate computerised information management system reference”;
- (c) omit the second model letter of authority and the heading preceding it.

Commission Delegated Regulation (EU) 2019/1702 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests

49.—(1) Commission Delegation Regulation (EU) 2019/1702 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests is amended⁽⁴¹⁾ as follows.

- (2) In Article 1, for “6(2)” substitute “6(1)(c)”.
- (3) After Article 2, omit the words from “This Regulation” to “Member States”.
- (4) For the Annex substitute the Annex in Schedule 1.

Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone

50.—(1) Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone⁽⁴²⁾ is amended as follows.

- (2) In Article 1—
 - (a) in the heading, after “**for**” insert “**UK**”;
 - (b) in paragraph 1—
 - (i) for “Plant” substitute “UK plant”;
 - (ii) for “the Union territory” substitute “Great Britain, the introduction into Great Britain from a CD territory and the introduction into a CD territory from Great Britain”;
 - (c) in paragraph 2—
 - (i) for “Plant” substitute “UK plant”;
 - (ii) for “protected zone” substitute “GB pest-free area and for the introduction into a CD pest-free area”;
 - (d) in paragraph 3—
 - (i) for “Plant” substitute “UK plant”;
 - (ii) for “the Union territory” substitute “Great Britain, the introduction into Great Britain from a CD territory and the introduction into a CD territory from Great Britain”;
 - (iii) for “second” substitute “first”;

⁽⁴¹⁾ EUR 2019/1702.

⁽⁴²⁾ EUR 2017/2313.

- (e) in paragraph 4—
 - (i) for “Plant” substitute “UK plant”;
 - (ii) for “protected zone” substitute “GB pest-free area and for the introduction into a CD pest-free area”;
 - (iii) for “third” substitute “first”;
- (3) In Article 2—
 - (a) in the heading, for “**plant**” substitute “**UK plant**”;
 - (b) in the first paragraph, for “plant” substitute “UK plant”.
- (4) In Article 4, after “with” insert “legislation transposing”.
- (5) After Article 4, omit the words from “This Regulation” to “Member States”.
- (6) In the Annex—
 - (a) omit the second paragraph;
 - (b) in point 1—
 - (i) for “Plant”, in both places where it occurs, substitute “UK plant”;
 - (ii) for “PZ” substitute “PFA”;
 - (iii) omit the words from “and” to the end;
 - (c) omit point 3;
 - (d) for point 7 substitute—

“7. Where originating in, or from, Great Britain or a CD territory, ‘GB’.”;
 - (e) in point 9—
 - (i) for “protected zone” substitute “PFA”;
 - (ii) for the words from “the codes” to the end substitute “their EPPO codes”;
 - (f) in point 10, for the words from “respectively” to the end substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
 - (g) in Part A—
 - (i) in the heading—
 - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
 - (bb) omit “**for the movement within the Union territory,**”;
 - (ii) omit the EU flag symbol in each model;
 - (iii) before “Plant”, in each model, insert “UK”;
 - (h) in Part B—
 - (i) in the heading—
 - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
 - (bb) omit “**for the introduction into, and movement within, a protected zone,**”
 - (ii) omit the EU flag symbol in each model;
 - (iii) for “Plant Passport - PZ”, in each model, substitute “UK Plant Passport - PFA”;
 - (i) in Part C—
 - (i) in the heading—
 - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;

- (bb) omit “**for the movement within the Union territory**”;
- (ii) omit the EU flag symbol in each model;
- (iii) before “Plant”, in each model, insert “UK”;
- (j) in Part D—
 - (i) in the heading—
 - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
 - (bb) omit “**for the introduction into, and movement within, a protected zone**”;
 - (ii) omit the EU flag symbol in each model;
 - (iii) for “Plant Passport - PZ”, in each model, substitute “UK Plant Passport - PFA”.

Commission Implementing Regulation (EU) 2020/918 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada

51.—(1) Commission Implementing Regulation (EU) 2020/918 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada⁽⁴³⁾ is amended as follows.

- (2) In Article 1—
 - (a) for “Article 8(1) and point 87(a) and (b)” substitute “Article 41(1) of Regulation (EU) 2016/2031 and entry 125 of Part A of Annex 7 to Commission Implementing Regulation (EU) 2019/2072”;
 - (b) for “the Union” substitute “Great Britain”.
- (3) In Article 2—
 - (a) in paragraph 1—
 - (i) for “Union”, in the first place where it occurs, substitute “GB”;
 - (ii) for “pests not listed as Union” substitute “provisional GB”;
 - (iii) for “the measures adopted pursuant to” substitute “any measures specified in regulations made under”;
 - (b) in paragraph 2, in point (a), for “European Union” substitute “GB”.
- (4) After Article 4, omit the words from “This Regulation” to “Member States”.
- (5) In the Annex—
 - (a) in Part A, in point 4, for “the Union” substitute “Great Britain”;
 - (b) in Part B, for “Union” substitute “GB”.

Commission Implementing Regulation (EU) 2020/1002 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for introduction into the Union of ash wood originating or processed in the United States

52.—(1) . Commission Implementing Regulation (EU) 2020/1002 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in the United States⁽⁴⁴⁾ is amended as follows.

- (2) In Article 1—

⁽⁴³⁾ EUR 2020/918.

⁽⁴⁴⁾ EUR 2020/1002.

- (a) for “Article 8(1) and points 87(a) and (b)” substitute Article 41(1) of Regulation (EU) 2016/2031 and entry 125 of Part A of Annex 7 to Commission Implementing Regulation (EU) 2019/2072”;
- (b) for “the Union” substitute “Great Britain”.
- (3) In Article 2—
 - (a) in paragraph 1—
 - (i) for “Union”, in the first place where it occurs, substitute “GB”;
 - (ii) for “pests not listed as Union” substitute “provisional GB”;
 - (iii) for “the measures adopted pursuant to” substitute “any measures specified in regulations made under”;
 - (b) in paragraph 2, in point (a), for “European Union” substitute “GB”.
- (4) After Article 4, omit the words from “This Regulation” to “Member States”.
- (5) In the Annex—
 - (a) in Part A, in point 4, for “the Union” substitute “Great Britain”;
 - (b) in Part B, for “Union” substitute “GB”.

PART 4

Miscellaneous

Transitional provision: plants, plant products and other objects from EU Member States

53.—(1) This regulation applies to plants, plant products and other objects which originate in, or are dispatched from, an EU Member State, other than qualifying Northern Ireland goods, and are introduced into Great Britain during the period commencing on IP completion day and ending on 31st March 2021.

- (2) In relation to plants, plant products and other objects to which regulation applies—
 - (a) Article 72(1) of Regulation (EU) 2016/2031 only applies if the plants, plant products and other objects are specified in Schedule 2;
 - (b) Article 73(1) of Regulation (EU) 2016/2031 does not apply.
- (3) In paragraph (1), “qualifying Northern Ireland goods” has the meaning given in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020(**45**).

Transitional provision: UK plant passports

54.—(1) An authorisation to issue plant passports which has been granted and has effect immediately before IP completion day continues to apply after IP completion day as if it were an authorisation to issue UK plant passports.

(2) In the case of any plant passport that has been issued in respect of any plant, plant product or other object before IP completion day for the purposes of the movement of that plant, plant product or other object which takes place in part before and in part after IP completion day, the plant passport is after the IP completion day to be treated as if it were a UK plant passport and references to a UK plant passport are to be construed accordingly.

- (3) In this regulation—

“plant passport” has the meaning given in Article 78 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, as it has effect in EU law⁽⁴⁶⁾;

“UK plant passport” has the meaning given in Article 78 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants⁽⁴⁷⁾.

Revocations

55. The following are revoked—

- (a) The Plant Health (Amendment) (England) (EU Exit) Regulation 2019⁽⁴⁸⁾;
- (b) the Plant Health (EU Exit) Regulations 2019⁽⁴⁹⁾;
- (c) the retained direct EU legislation listed in Schedule 3.

Savings

56.—(1) The revocations of the instruments listed in Schedule 3 and the amendments to Regulation (EU) 2016/2031 have no effect on the validity of any notice issued or any licence, authorisation or other approval given under or for the purposes of those instruments or that Regulation before IP completion day.

(2) Any such notice, licence, authorisation or other approval remains in force and continues to have effect on or after IP completion day in so far as it applies to anything done, or omitted to be done, before or after IP completion day.

(3) Paragraph (1) is subject to regulation 54.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Date

⁽⁴⁶⁾ OJ No L 317, 23.11.2016, p.4, as amended by Regulation (EU) 2017/625 (OJ No L 95, 7.4.2017, p.1).

⁽⁴⁷⁾ EUR 2016/2031.

⁽⁴⁸⁾ [S.I. 2019/786](#).

⁽⁴⁹⁾ [S.I. 2019/787](#).

SCHEDULE 1

Regulation 49(4)

New Annex to Commission Implementing Regulation (EU) 2019/1702

“Annex

List of priority pests

Agrilus anxius Gory
Agrilus planipennis Fairmaire
Anoplophora chinensis (Forster)
Anoplophora glabripennis (Motschulsky)
Aromia bungii (Faldermann)
Bactericera cockerelli (Sulc.)
Ceratocystis platani (J.M. Walter) Engelbr. & T.C. Harr
Clavibacter sepedonicus (Spieckermann & Kotthoff) Li *et al.*
Epitrix cucumeris (Harris)
Epitrix papa (Orlova-Bienkowskaja)
Epitrix subcrinita (Leconte)
Epitrix tuberis Gentner
Fusarium circinatum Nirenberg & O'Donnell
Ips amitinus (Eichhoff)
Ips duplicatus (Sahlberg)
Ips typographus (L.)
Leptinotarsa decemlineata Say
Rose Rosette virus and *Phyllocoptes fructiphilus* Keifer
Thaumetopoea pityocampa Denis & Schiffermüller
Thaumetopoea processionea L.
Thrips palmi Karny
Xylella fastidiosa (Wells *et al.*) (all strains and subspecies).”

SCHEDULE 2

Regulation 53(2)(a)

Transitional provision: EU plants, plant products and other objects

1. Machinery and vehicles which have been operated for agricultural or forestry purposes.
2. Plants for planting, other than seeds.
3. Tubers of *Solanum tuberosum* L. intended for planting (seed potatoes).
4. Tubers of *Solanum tuberosum* L. (ware potatoes).
5. Seeds of—
 - (a) *Allium cepa* L.,
 - (b) *Allium porrum* L.,

- (c) *Castanea* Mill.,
 - (d) *Capsicum* spp. L.,
 - (e) *Helianthus annuus* L.,
 - (f) *Medicago sativa* L.,
 - (g) *Phaseolus cocineus*.,
 - (h) *Phaseolus vulgaris* L.,
 - (i) *Solanum lycopersicum* L.,
 - (j) *Solanum tuberosum* L. (True potato seed).
6. Vegetable seeds of *Pisum sativum* L. and *Vicia faba* L.
7. Seeds of oil and fibre plants of—
- (a) *Brassica napus* L.,
 - (b) *Brassica rapa* L.,
 - (c) *Sinapis alba* L.,
 - (d) *Glycine max* (L.) Merrill,
 - (e) *Linum usitatissimum* L.
8. Isolated bark of—
- (a) *Castanea* Mill.,
 - (b) Conifers (Pinales),
 - (c) *Juglans* L.,
 - (d) *Pterocarya* Kunth.
9. Wood of *Platanus* L., including wood which has not kept its natural round surface.
10. Wood of *Castanea* Mill., excluding wood which is bark-free.
11. Wood of Conifers (Pinales), including wood which has not kept its natural round surface.
12. Wood of *Prunus* L. including wood which has not kept its natural round surface, other than wood of *Prunus laurocerasus* L.
13. Wood, including wood which has not kept its natural round surface of—
- (a) *Acer* L.,
 - (b) *Aesculus* L.,
 - (c) *Alnus* L.,
 - (d) *Betula* L.,
 - (e) *Carpinus* L.,
 - (f) *Cercidiphyllum* Siebold & Zucc.,
 - (g) *Corylus* L.,
 - (h) *Fagus* L.,
 - (i) *Fraxinus* L.,
 - (j) *Koelreuteria* Medikus.,
 - (k) *Platanus* L.,
 - (l) *Populus* L.,
 - (m) *Salix* L.,

- (n) *Tilia* L.,
- (o) *Ulmus* L.

14. Wood of *Juglans* L. and *Pterocarya* Kunth.

SCHEDULE 3

Regulation 55(c)

Revocation of retained direct EU legislation

1. Commission [Decision 91/261/EEC](#) recognising Australia as being free from *Erwinia amylovora* (Burr.) Winsl. *et al.*
2. Commission [Decision 93/360/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of wood of *Thula* L., originating in Canada.
3. Commission [Decision 93/365/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of heat-treated coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the heat-treated wood.
4. Commission [Decision 93/422/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of kiln dried coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the kiln dried wood.
5. Commission [Decision 93/423/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of kiln dried coniferous wood, originating in the United States of America, and establishing the details of the indicator system to be applied to the kiln dried wood.
6. Commission [Decision 98/109/EC](#) authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand.
7. [Commission Regulation \(EC\) No 1040/2002](#) establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing Regulation (EC) No 2051/97.
8. Commission [Decision 2004/200/EC](#) on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus.
9. Commission [Decision 2005/359/EC](#) providing for a derogation from certain provisions of Council [Directive 2000/29/EC](#) as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.
10. Commission [Decision 2006/750/EC](#) amending [Decision 2005/359/EC](#) as regards the ports of unloading of oak (*Quercus* L.) logs with bark attached, originating in the United States.
11. Commission [Decision 2010/723/EU](#) extending the period of validity of [Decision 2005/359/EC](#) providing for a derogation from certain provisions of Council [Directive 2000/29/EC](#) as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.
12. Commission Implementing [Decision 2011/787/EU](#) authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* as regards Egypt.

13. Commission Implementing [Decision 2012/138/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis*.

14. Commission Implementing [Decision 2012/270/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

15. Commission Implementing [Decision 2012/535/EU](#) on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

16. Commission Implementing [Decision 2012/697/EU](#) as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry).

17. Commission Implementing [Decision 2013/780/EU](#) providing for a derogation from Article 13(1)(ii) of Council [Directive 2000/29/EC](#) in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

18. Commission Implementing [Decision 2014/356/EU](#) amending Implementing [Decision 2012/138/EU](#) as regards the conditions of introduction into and movement within the Union of specified plants to prevent the introduction and the spread of *Anoplophora chinensis* (Forster).

19. Commission Implementing [Decision 2014/679/EU](#) amending Implementing [Decision 2012/270/EU](#) as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

20. Commission Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council [Directive 2000/29/EC](#) in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

21. Commission Implementing Decision (EU) 2015/226 amending Implementing [Decision 2012/535/EU](#) as regards the definition of susceptible wood and measures to be taken in demarcated areas.

22. Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky).

23. Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann and Kotthoff) Davis et al.

24. Commission Implementing Decision (EU) 2016/1359 amending Implementing [Decision 2012/270/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

25. Commission Implementing Decision (EU) 2016/2004 amending Implementing [Decision 2013/780/EU](#) providing for a derogation from Article 13(1)(ii) of Council [Directive 2000/29/EC](#) in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

26. Commission Implementing Decision (EU) 2017/427 amending Implementing [Decision 2012/535/EU](#) as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

27. Commission Implementing Decision (EU) 2017/2187 extending the period of validity of Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation

from certain provisions of Council [Directive 2000/29/EC](#) in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

28. Commission Implementing Decision (EU) 2018/5 amending Implementing [Decision 2012/270/EU](#) as regards the symptoms of *Epitrix cucumeris* (Harris), *Epitrix papa* sp. n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) and the establishment of relevant demarcated areas.

29. Commission Implementing Decision (EU) 2018/618 amending Implementing [Decision 2012/535/EU](#) as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode).

30. Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

31. Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann).

32. Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation.

33. Commission Implementing Decision (EU) 2019/1598 amending Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

34. Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus.

35. Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O'Donnell (formerly *Gibberella circinata*) and repealing [Decision 2007/433/EC](#).

36. Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto.

37. Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV).

38. Commission Implementing Regulation (EU) 2020/1164 providing for a temporary derogation from certain provisions of Implementing Regulation (EU) 2019/2072 in respect of measures to prevent the introduction into and the spread within the Union of the pest *Agrilus planipennis* Fairmaire from Canada and the United States.

39. Commission Implementing Regulation (EU) 2020/1199 of 13 August 2020 amending Annex VI to Implementing Regulation (EU) 2019/2072 to temporarily prohibit the introduction into the Union of certain fruits originating in Argentina to prevent the introduction into and the spread within the Union of *Phyllosticta citricarpa* (McAlpine) Van der Aa.

40. Commission Implementing Regulation (EU) 2020/1201 of 14 August 2020 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies referred to in paragraphs (a), (d) and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of plant health. Part 2 amends domestic legislation relating to plant health. Part 3 amends Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and other retained direct EU legislation relating to plant health. Part 4 contains transitional provisions and savings, and revocations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020
2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.
- 2.2 Regulation (EU) 2016/2031 on protective measures against pests of plants and Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the EU Regulations”) and associated implementing legislation will be made operable for GB. The result of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) is that the UK leaves the EU single market. The operability amendments contained in this instrument create a ‘single market’ covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls. Plant health controls on material imported from third countries will continue to be applied and will focus on risks to GB, rather than risks to the EU. Internal controls will also continue to apply to movement of goods within the GB internal market.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures.
- 2.4 The EU Regulations, and the implementing legislation made under these Regulations, such as Commission Implementing Regulation (EU) 2019/2072, are directly applicable (i.e. national implementing legislation was not needed for them to take effect in UK law). The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (“the 2019 Regulations”) contain supplementary domestic provisions to enable the competent authorities in England to carry out their obligations under the EU Regulations, enforce these EU Regulations and implement derogations to various provisions in the EU Regulations that are available to Member States. Separate but parallel domestic legislation applies in Wales, Northern Ireland, and Scotland.

Why is it being changed?

- 2.5 The Plant make operability changes and other consequential amendments to Regulation (EU) 2016/2031 on protective measures against pests of plants the (“EU Plant Health Regulation”) and the 2019 Regulations to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

What will it now do?

- 2.6 This instrument will ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:
- “In my view the provisions of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Withdrawal Act converts and preserves EU law at the end of the Transition Period into domestic law (“retained EU law”). This instrument is made under powers conferred by the Withdrawal Act, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 6.2 If retained EU law was not amended, it would contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver workable legislation on plant health. This instrument uses the powers in Section 8 of the Withdrawal Act to correct these deficiencies. The legislation being amended would not have the right effect as it would not reflect the change in the legislative position following the Withdrawal Act, the Protocol of Ireland / Northern Ireland (“the Protocol”) and amendments which have been made to the EU Regulations since they were made.
- 6.3 This instrument makes amendments to legislation in the field of plant health. Part 2 of the Plant amends domestic legislation relating to plant health. Part 3 amends

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and other directly applicable EU legislation relating to plant health. Part 4 makes consequential amendments, contains transitional provisions and savings, and revokes retained direct EU legislation.

7. Policy background

What is being done and why?

- 7.1 All the amendments introduced by this instrument are technical operability amendments and do not include any policy changes.
- 7.2 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.
- 7.3 The revised approach for EU imports will be phased in over 6 months, from 1 January 2021 to stagger the operational implementation of controls on EU products to allow trade to continue to flow whilst businesses adapt to the application of third country import controls. This will be a temporary and risk-based transitional arrangement, with the aim of ensuring consistent and technically justified import controls which apply to all countries exporting to GB.
- 7.4 For Northern Ireland, separate legislative arrangements will be needed in order to maintain alignment with Sanitary and Phytosanitary related EU regulations and specify requirements for GB goods entering Northern Ireland.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 The Plant are being made using the power in section 8 of the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively or other deficiencies (within the meaning of that Act) arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 Stakeholders have not been consulted as all the amendments introduced by this instrument are technical operability amendments and not policy changes.
- 10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

11. Guidance

- 11.1 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery body and are developing an implementation plan and associated guidance for publication on GOV.UK.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.
- 12.2 There is no significant impact on the public sector as a result of policy changes introduced under this instrument.
- 12.3 The result of the Withdrawal Act is that the UK leaves the EU single market. The amendments in this instrument reflect this change which results in the EU becoming a third country for plant health purposes.
- 12.4 As the EU becomes a third country at the end of the Transition Period, regulated EU commodities imported to GB will be subject to standard third country controls for plant health (provide a certificate, pre-notify imports from the EU, undergo document, identity and physical checks). These direct impacts on businesses and the public sector are a result of the terms of the Withdrawal Act and do not reflect any change in GB plant health policy, therefore an impact assessment has not been prepared for this instrument.
- 12.5 Requirement to use UK rather than EU plant passports for intra-GB movements of plant passported commodities – this will require businesses moving plant passported commodities within GB to modify the reference code that they use when issuing plant passports, replacing ‘EU’ with ‘UK’. The process for authorising businesses for plant passporting will not change and businesses who will need to use the system from 1 January 2021 are likely to already be registered. Therefore, we expect no extra impact on business from this change.

Additional Benefits

- 12.6 There may be some increase in protection against the spread of plant pests and diseases. This is because the current requirement is for an EU plant passport for trade in higher risk plants and plant products between the GB and other EU countries and that requirement would now increase to a phytosanitary certificate for all imports of regulated plants and plant products, as defined by the EU Plant Health Regulation, that have been assessed to be higher risk by GB. In addition, there may be extra data available on higher risk commodities (through pre-notification), which would allow for better targeting of plants and pests from the EU which present a biosecurity risk.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.

Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.

Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate”.
- 1.2 This is the case because this instrument corrects technical deficiencies that arise from the UK’s withdrawal from the EU and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively after the end of the Transition Period. This is in line with government policy.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument and I have concluded they are a reasonable course of action”.
- 2.2 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”
- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this instrument, I, Lord Gardiner of Kimble have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref MA/LG/3436/20

Mick Antoniw MS
Chair Legislation Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

22 October 2020

Dear Mick

I am writing to inform you that I have laid a statutory instrument consent memorandum ("the memorandum") in relation to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 ("the Regulations") which were made by the Parliamentary Under Secretary of State for the Environment, on 15 October. The Regulations contain amendments to the Plant Health Act 1967 that apply to Wales.

The purpose of the Regulations is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

I have laid the memorandum in accordance with the requirement under Standing Order 30A. I consider that the Regulations make relevant provision as they amend primary legislation that applies to Wales and that is within the legislative competence of the Senedd.

Regards

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Plant Health (Amendment etc) (EU Exit) Regulations 2020**

DATE **19 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Plant Health (Amendment etc) (EU Exit) Regulations 2020

The purpose of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (“the 2020 Regulations”) is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

European Directly Applicable Instruments amended by the 2020 Regulations

- Regulation (EU) 2016/2031;
- Commission Decision 2002/757/EC;
- Commission Decision 2005/51/EC;
- Commission Implementing Regulation (EU) 2017/2313;
- Commission Implementing Regulation (EU) 2018/2018;
- Commission Delegated Regulation (EU) 2019/827;
- Commission Delegated Regulation (EU) 2019/829;
- Commission Implementing Regulation (EU) 2019/2148;
- Commission Implementing Regulation (EU) 2020/918; and
Commission Implementing Regulation (EU) 2020/1002.

The 2020 Regulations revoke the EU Legislation listed in the Annex to this notice.

Primary domestic legislation amended by the 2020 Regulations

The Plant Health Act 1967.

Subordinate domestic legislation amended by the 2020 Regulations (none of which applies to Wales)

- The Plant Health (Forestry) (Fees) (England and Scotland) Regulations 2015;
- The Plant Health etc. (Fees) (England) Regulations 2018; and
- Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

Subordinate domestic legislation revoked by the 2020 Regulations

- The Plant Health (Amendment) (England) (EU Exit) Regulation 2019; and
- The Plant Health (EU Exit) Regulations 2019.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations contain provisions that enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

The concurrent functions contained in the 2020 Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the Secretary of State for Wales in relation to a s.109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The 2020 Regulations make operability and other consequential amendments to domestic legislation, to Regulation (EU) 2016/2031 on the protective measures against the pests of plants and related tertiary legislation to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period. They create a 'single market' covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls.

The amendments introduced by the 2020 Regulations are technical operability amendments and do not include any policy changes. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.

If retained EU law were not amended, it would contain inoperable rules that would prevent the UK Government, the Scottish Government and the Welsh Government from being able

to deliver workable legislation on plant health. The legislation being amended would not have the desired effect without amendment as it would not reflect the change in the legislative position following the European Union (Withdrawal) Act 2018, the Northern Ireland Protocol and amendments that have been made to EU legislation since they were made.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the provenance and purpose of the Regulations is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213775/introduction>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

Annex

The 2020 Regulations revoke the following EU legislation

EU Regulations

1. Commission Regulation (EC) No 1040/2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing Regulation (EC) No 2051/97.

2. Commission Regulation (EC) No 1756/2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC.

EU decisions

3. Commission Decision 91/261/EEC recognising Australia as being free from *Erwinia amylovora* (Burr.) Winsl. *et al.*

4. Commission Decision 93/360/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of wood of *Thuja* L., originating in Canada.

5. Commission Decision 93/365/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of heat-treated coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the heat-treated wood.

6. Commission Decision 93/422/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln dried coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the kiln dried wood.

7. Commission Decision 93/423/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln dried coniferous wood, originating in the United States of America, and establishing the details of the indicator system to be applied to the kiln dried wood.

8. Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand.

9. Commission Decision 2002/499/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

10. Commission Decision 2002/887/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in Japan.

11. Commission Decision 2003/248/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

12. Commission Decision 2003/249/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

13. Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus.

14. Commission Decision 2005/775/EC amending Decision 2002/499/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

15. Commission Decision 2005/359/EC providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.

16. Commission Decision 2006/750/EC amending Decision 2005/359/EC as regards the ports of unloading of oak (*Quercus* L.) logs with bark attached, originating in the United States.

17. Commission Decision 2007/212/EC amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

18. Commission Decision 2007/221/EC amending Decision 2003/249/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

19. Commission Decision 2007/432/EC extending the period of validity of Decision 2002/499/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

20. Commission Decision 2010/646/EU extending the period of validity of Decision 2002/499/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

21. Commission Decision 2011/74/EU amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

22. Commission Decision 2010/723/EU extending the period of validity of Decision 2005/359/EC providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.

23. Commission Decision 2011/75/EU amending Decision 2003/249/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

24. Commission Implementing Decision 2011/787/EU authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt.

25. Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis*.

26. Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

27. Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

28. Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry).

29. Commission Implementing Decision 2013/780/EU providing for a derogation from Article 13(1)(ii) of Council Directive 2000/29/EC in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

30. Commission Implementing Decision 2014/356/EU amending Implementing Decision 2012/138/EU as regards the conditions of introduction into and movement within the Union of specified plants to prevent the introduction and the spread of *Anoplophora chinensis* (Forster).

31. Commission Implementing Decision 2014/679/EU amending Implementing Decision 2012/270/EU as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

32. Commission Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council Directive 2000/29/EC in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

33. Commission Implementing Decision (EU) 2015/226 amending Implementing Decision 2012/535/EU as regards the definition of susceptible wood and measures to be taken in demarcated areas.

34. Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky).

35. Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann and Kotthoff) Davis et al.

36. Commission Implementing Decision (EU) 2016/1359 amending Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

37. Commission Implementing Decision (EU) 2017/427 amending Implementing Decision 2012/535/EU as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

38. Commission Implementing Decision (EU) 2017/2187 extending the period of validity of Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council Directive 2000/29/EC in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

39. Commission Implementing Decision (EU) 2018/5 amending Implementing Decision 2012/270/EU as regards the symptoms of *Epitrix cucumeris* (Harris), *Epitrix papa* sp. n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) and the establishment of relevant demarcated areas.

40. Commission Implementing Decision (EU) 2018/618 amending Implementing Decision 2012/535/EU as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

41. Commission Implementing Decision (EU) 2016/2004 amending Implementing Decision 2013/780/EU providing for a derogation from Article 13(1)(ii) of Council Directive 2000/29/EC in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

42. Commission Implementing Decision 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

43. Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann).

44. Commission Implementing Decision (EU) 2019/1598 of amending Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)

45. Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus.

46. Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O'Donnell (formerly *Gibberella circinata*) and repealing Decision 2007/433/EC.

47. Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation.

48. Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto.

49. Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV).

50. Commission Implementing Regulation (EU) 2020/1164 providing for a temporary derogation from certain provisions of Implementing Regulation (EU) 2019/2072 in respect of measures to prevent the introduction into and the spread within the Union of the pest *Agilus planipennis* Fairmaire from Canada and the United States.

51. Commission Implementing Regulation (EU) 2020/1199 of 13 August 2020 amending Annex VI to Implementing Regulation (EU) 2019/2072 to temporarily prohibit the introduction into the Union of certain fruits originating in Argentina to prevent the introduction into and the spread within the Union of *Phyllosticta citricarpa* (McAlpine) Van der Aa.

52. Commission Implementing Regulation (EU) 2020/1201 of 14 August 2020 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.).

UK MINISTERS ACTING IN DEVOLVED AREAS

187 - The Plant Health (Amendment etc) (EU Exit) Regulations 2020

Laid in the UK Parliament: 15 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 69
SICM under SO 30A (because amends primary legislation)	SICM(5)35

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government under section 8 of the European Union (Withdrawal) Act 2018.

Summary

The purpose of these Regulations 2020 is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

These Regulations also reflect the Ireland – Northern Ireland Protocol.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 19 October 2020 regarding the effect of these Regulations.

We note that the Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers. If the Senedd wishes to

remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd.

However, we also note that the Welsh Government is in discussions with the UK Government regarding a section 109 order (i.e. an Order in Council made under section 109 of the Government of Wales Act 2006). Such an order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

We note that the policy of risk-based plant health controls that applies under EU law will continue, but that the operation of that policy within Great Britain (rather than within the European Union) will lead to a focus on risks in Great Britain (rather than risks in the European Union).

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 22 October 2020, on the basis that one of the amendments made by the Regulations is an amendment to primary legislation within the legislative competence of the Senedd (in this case, sections 2(1) and 3(1) of the Plant Health Act 1967).

In a [letter](#) to the Committee dated 22 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM.

Agenda Item 10.6

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 were laid before Parliament on 14 October 2020. The Regulations can be found at:

<https://statutoryinstruments.parliament.uk/timeline/pBNWzAvN/SI-2020/>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also corrects out-of-date references to EU legislation.
4. The SI makes amendments to:
 - The Environmental Protection Act 1990.

Relevant provision to be made by the SI

5. The changes made by these Regulations were required as the relevant EU legislation had been changed and new EU legislation had been adopted since the existing EU Exit SIs were made. Powers need to be repatriated to the UK, and some amendments were necessary as a consequence of the Northern Ireland Protocol.
6. The Regulations ensured that existing domestic and retained EU legislation will still be fit for purpose. For example, it updated references in domestic EU Exit legislation so that they referred to waste and resources Directives and Regulations as amended by the EU Circular Economy Package. It also made EU Exit related amendments to, or revoked, recent EU legislation which will become retained direct EU law. The European Commission’s powers related to the Waste Framework Directive Article 7(1) will now be exercised by the Secretary of State and devolved administrations as appropriate.

7. Part 3 of the Regulations amended primary legislation relating to the Environmental Protection Act 1990; omitting section 62A. As a consequential amendment to transferring the Article 7(1) power in relation to the List of Waste, the power in Section 62A of the Environmental Protection Act 1990 is being revoked.
8. This power allows the SoS in England, or Welsh Ministers in Wales, to list a waste as hazardous in the List of Waste established by Commission Decision 2000/532/EC. Once the Article 7(1) power has been transferred we don't consider there will be a need for the s.62A power. The rationale is that in circumstances where a certain waste is not listed as hazardous but displays Annex 3 properties, the obvious thing is for an amendment to be made to Decision 2000/532 to reflect that rather than exercise the s.62A power.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

October 2020

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION ENVIRONMENTAL PROTECTION WASTE

**The Waste and Environmental Permitting etc. (Legislative
Functions and Amendment etc.) (EU Exit) Regulations 2020**

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾.

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020.

(2) These Regulations come into force on IP completion day, except as provided in paragraphs (3) and (4).

(3) Regulations 10 to 12 and 14 come into force immediately before IP completion day.

(1) 2018 c. 16, amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(4) Regulations 13 and 15, and this regulation, come into force immediately before the coming into force of the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019(2).

(5) Parts 1 and 2 extend to the United Kingdom.

(6) An amendment, repeal or revocation made by Part 3, 4 or 5 or the Schedule has the same extent as the provision being amended, repealed or revoked, subject to paragraph (7).

(7) The revocations in paragraphs 7, 9, 10 and 11 of the Schedule extend to England and Wales and Northern Ireland.

PART 2

Retention of legislative functions: list of waste

Interpretation

2.—(1) In this Part—

“the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste(3), as last amended by Directive (EU) 2018/851(4), and read in accordance with paragraph (2);

“the appropriate authority” has the meaning given in paragraphs (3) and (4);

“hazardous waste” and “non-hazardous waste” have the meanings given in Article 3(2) and (2a) of the Waste Framework Directive;

“waste” has the meaning given in Article 3(1) of the Waste Framework Directive.

(2) For the purposes of this Part, the Waste Framework Directive is to be read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(3) “The appropriate authority” means—

- (a) for regulations applying in relation to England, the Secretary of State;
- (b) for regulations applying in relation to Wales, the Welsh Ministers;
- (c) for regulations applying in relation to Scotland, the Scottish Ministers;
- (d) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(4) But the appropriate authority is the Secretary of State if consent is given by—

- (a) for regulations applying in relation to Wales, the Welsh Ministers;
- (b) for regulations applying in relation to Scotland, the Scottish Ministers;
- (c) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

Power to prescribe list of waste

3.—(1) The appropriate authority may, by regulations, make provision for or in connection with prescribing or amending a list which categorises different types of waste (a “list of waste”).

(2) The provision which may be made by regulations under paragraph (1) includes—

(2) [S.I. 2019/1078](#). Regulation 1 states that those Regulations come into force immediately before exit day. By virtue of Schedule 5, paragraph 1(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) they instead come into force immediately before IP completion day.

(3) OJ No L 312, 22.11.2008, p. 3.

(4) OJ No L 150, 14.6.2018, p. 109.

- (a) provision specifying identifying codes for categories of waste; and
- (b) provision specifying categories of waste which—
 - (i) are hazardous waste;
 - (ii) are non-hazardous waste; or
 - (iii) are hazardous waste if they contain a concentration of a substance which exceeds a value specified in the regulations, and are non-hazardous waste otherwise;
- (c) provision amending Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste⁽⁵⁾.

(3) The inclusion of a substance or object in a list of waste is not conclusive as to whether it is waste in all circumstances, and a substance or object is only to be considered as waste for the purposes of any legislation if, in the circumstances, it meets the definition of waste which applies for those purposes.

Consultation

4. Before making any regulations under regulation 3, the appropriate authority must consult such persons as the appropriate authority considers appropriate.

Regulations: procedure

5.—(1) Regulations by the Secretary of State or the Welsh Ministers under regulation 3 are to be made by statutory instrument.

(2) For regulations made by the Scottish Ministers under regulation 3, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽⁶⁾.

(3) Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under regulation 3 is exercisable by statutory rule for the purpose of the Statutory Rules (Northern Ireland) Order 1979⁽⁷⁾.

(4) A statutory instrument containing regulations made by the Secretary of State under regulation 3 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) A statutory instrument containing regulations by the Welsh Ministers under regulation 3 is subject to annulment in pursuance of a resolution of the Senedd Cymru.

(6) Regulations made by the Scottish Ministers under regulation 3 are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(7) Regulations made by the Department of Agriculture, Environment and Rural Affairs under regulation 3 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954⁽⁸⁾.

Power to make consequential etc. provision

6. Regulations made under regulation 3 may—

- (a) include consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);

(5) EUDN 2000/532.

(6) [2010 asp 10](#).

(7) [S.I. 1979/1573 \(N.I. 12\)](#).

(8) [1954 c. 33 \(N.I.\)](#). Section 41(6) was amended by [S.I. 1999/663](#).

- (b) make different provision for different purposes.

PART 3

Amendment of primary legislation

Environmental Protection Act 1990

7. In the Environmental Protection Act 1990(9), omit section 62A.

PART 4

Amendment of subordinate legislation

The Hazardous Waste (England and Wales) Regulations 2005

8. In the Hazardous Waste (England and Wales) Regulations 2005(10), omit regulations 6(b), 8(1)(b), 9(1)(b) and 72(3).

The Marine Licensing (Exempted Activities) Order 2011

- 9.—(1) The Marine Licensing (Exempted Activities) Order 2011(11) is amended as follows.
- (2) In article 3, in the definition of waste, at the end insert—
- “
- and for this purpose Article 5(1) of that Directive is to be read as if the words “Member States shall take appropriate measures to ensure that” were omitted”.

The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019

- 10.—(1) In the Schedule to the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019(12), the inserted Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016(13) is amended as follows.

- (2) In paragraph 4—
- (a) in sub-paragraph (2)(b), for “exit day” substitute “IP completion day”;
- (b) in sub-paragraph (5), for paragraph (a) substitute—
- “(a) in paragraph 1, for “[Directive 2008/98/EC](#) of the European Parliament and of the Council” there were substituted “the Waste Framework Directive”;;
- (3) In paragraph 6(3)(f) and (g), for “exit day” substitute “IP completion day”;
- (4) In paragraph 7—
- (a) in sub-paragraph (2)(d), for “exit day” substitute “IP completion day”;

(9) 1990 c. 43. Section 62A was inserted by [S.I. 2005/894](#) for England and Wales, and amended by [S.I. 2011/988](#), [2015/1360](#) and [2019/620](#).

(10) [S.I. 2005/894](#), to which relevant amendments were made by [S.I. 2011/988](#).

(11) [S.I. 2011/409](#), to which relevant amendments were made by [S.I. 2016/738](#), [2018/942](#) and [2020/904](#).

(12) [S.I. 2019/39](#), amended by [S.I. 2019/559](#) and [2019/1078](#).

(13) [S.I. 2016/1154](#); relevant amending instruments are [S.I. 2018/575](#), [2018/721](#) and [2020/904](#). In regulation 2(1), the definition of “waste” is prospectively amended from IP completion day by [S.I. 2019/39](#).

- (b) for sub-paragraph (4) substitute—
 - “(4) Article 2 is to be read as if—
 - (a) for point (a) there were substituted—
 - “(a) the definitions of ‘municipal waste’, ‘waste producer’, ‘waste holder’, ‘waste management’, ‘separate collection’, ‘preparing for re-use’ and ‘recycling’ in the Waste Framework Directive apply, with references to ‘waste’ in those definitions being interpreted in accordance with the definition of ‘waste’ in Part 1 of the Environmental Permitting (England and Wales) Regulations 2016.”;
 - (b) points (l), (p) and (r) were omitted.”;
 - (c) for sub-paragraph (5) substitute—
 - “(5) Article 3 is to be read as if—
 - (a) in paragraph 2, in the words before the first indent, “Without prejudice to existing Community legislation,” were omitted;
 - (b) for paragraph 3 there were substituted—
 - “**3.** The management of extractive waste is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to the Environmental Permitting (England and Wales) Regulations 2016.”;
 - (d) in sub-paragraph (6), at the end insert—
 - “(d) in point (f)—
 - (i) after “waste”, in the first place it occurs, there were inserted “paper, metal, plastic and glass”;
 - (ii) the words from “pursuant” to “Article 22 of that Directive” were omitted;
 - (ii) for “Article 4 of that Directive” there were substituted “Article 4 of the Waste Framework Directive”;
 - (e) for sub-paragraph (7) substitute—
 - “(7) In Article 6, point (a) is to be read as if—
 - (a) in the first paragraph, in the second sentence, for “may” there were substituted “does”;
 - (b) in the second paragraph, for the words from “of [Directive 2008/98/EC](#)” to the end, there were substituted “set out in Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011⁽¹⁴⁾, or any objectives in retained EU law relating to the increase of preparing for re-use and recycling”.
 - (f) omit sub-paragraphs (15)(d) and (16)(d);
 - (g) for sub-paragraph (17)(a) substitute—
 - “(a) in Section 2, in the table, in the first column, for “14.00 h CET” in both places it occurs there were substituted “1 p.m.”;
- (5) In paragraph 9(2)(c), for “exit day” substitute “IP completion day”.
- (6) In paragraph 12—
- (a) for sub-paragraph (2) substitute—

(14) [S.I. 2011/988](#), to which relevant amendments are made by [S.I. 2020/904](#).

“(2) When interpreting the Waste Framework Directive for the purposes of these Regulations—

- (a) an expression used in the Directive that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “permit” means an environmental permit;
- (c) a reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion so far as it related to England or Wales;
- (d) the competent authority is the regulator.”;

(b) for sub-paragraphs (6), (7) and (8) substitute—

“(6) Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(7) Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

- (i) the first subparagraph were omitted;
- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
- (iii) the third and fourth subparagraphs were omitted;

- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (8) Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) after sub-paragraph (9) insert—

“(9A) Article 35(1) is to be read as if, for the second paragraph, there were substituted—

“They shall make that data available to the regulator through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner as the regulator may specify.”.”;
- (d) at the end insert—

“(11) Annex 4a is to be read as if, in point 6, “, including through Union funds” were omitted.

(12) In sub-paragraph (2)(c), “local authority” has the meaning given in paragraph 4(7).”.
- (7) In paragraph 14(2), for “exit day” substitute “IP completion day”.

The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

11.—(1) The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019(15) are amended as follows.

- (2) After regulation 1 insert—

(15) [S.I. 2019/188](#), amended by [S.I. 2019/1078](#).

“Extent

1A.—(1) Subject to paragraph (2), the amendments made by Parts 2 and 3 have the same extent as the Regulations being amended.

(2) The amendments made by regulations 18 and 20 do not extend to Northern Ireland.”.

(3) In regulation 9—

(a) in paragraph (3), in the inserted regulation 2A—

(i) for paragraphs (2), (3) and (4) substitute—

“(2) Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(3) Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria

- have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (4) In this regulation—
 - “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - “appropriate authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”;
- (b) in paragraph (5), for sub-paragraph (b) substitute—
 - “(b) for “existing EU legislation and relevant national legislation” substitute “any other relevant legislation”.”.
- (4) In regulation 10—
 - (a) in paragraph (3), in the inserted regulation 2A—
 - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (ii) in paragraph (5), for sub-paragraph (a) substitute—
 - “(a) in paragraph 3—
 - (i) in the first paragraph, for “Treatment facilities, which have obtained a permit in accordance with Article 6,” there were substituted “Authorised treatment facilities”;
 - (ii) in the third paragraph, the final sentence were omitted;”;
 - (iii) omit paragraph (6);
 - (b) in paragraph (3), in the inserted regulation 2B—
 - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (ii) omit paragraph (3);
 - (iii) for paragraphs (4) to (6) substitute—
 - “(4) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

- “1A. Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first subparagraph—
- (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
- (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
- “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

- (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iv) omit paragraphs (7) and (8);
- (c) in paragraph (3), omit the inserted regulation 2C;
- (d) for paragraph (4) substitute—
 - “(4) In regulation 3(2), for “the appropriate Community or domestic provisions” substitute “any relevant legislation”. ”;
- (e) in paragraph (5), for sub-paragraph (b) substitute—
 - “(b) for “existing EU legislation and relevant national legislation” substitute “any other relevant legislation””;
- (f) after paragraph (6) insert—
 - “(7) In regulation 12(1), for “the requirements of Article 6 and Annex I of the Directive” substitute “the requirements set out in Annex 1 to the Directive, and the general requirements referred to in Article 13 of the Waste Directive”. ”.
- (5) In regulation 11—
 - (a) in paragraph (3), in the inserted regulation 2A—
 - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (ii) omit paragraph (4);
 - (iii) for paragraphs (5) to (7) substitute—
 - “(5) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - (6) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the Agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The Agency”;
 - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England.”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (b) in paragraph (3), in the inserted regulation 2B—
 - (i) in the heading, omit “and “Industrial Emissions Directive””;
 - (ii) omit paragraphs (4), (5) and (6);
- (c) in paragraph (4)(b), for the inserted definition of “Landfill Directive” substitute—

““Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste(**16**), as last amended by Directive (EU) 2018/850, and read as if—

 - (a) in Article 2—

- (i) in point (a)—
 - (aa) “‘waste’,” were omitted; and
 - (bb) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
 - (ii) after point (a) there were inserted—
 - “(aa) ‘waste’ has the meaning given by regulation 2(1)(b) of the Hazardous Waste (England and Wales) Regulations 2005(17);”;
 - (b) in Article 3—
 - (i) in paragraph (2), “Without prejudice to existing Community legislation,” were omitted;
 - (ii) for paragraph (3) there were substituted—
 - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting Regulations, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”.
 - (b) in Article 3—
 - (i) in paragraph (2), “Without prejudice to existing Community legislation,” were omitted;
 - (ii) for paragraph (3) there were substituted—
 - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting Regulations, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”.
 - (d) in paragraph (7), after “landfill of waste” insert “, as last amended by Directive (EU) 2018/850”.
- (6) In regulation 12—
- (a) in paragraph (2)(b), for paragraph (i) substitute—
 - “(i) in the definition of “appropriate authority”, in paragraph (a), for “regulation 4(7)” substitute “regulations 2A, 2B and 4(7)”;
 - (b) in paragraph (3), in the inserted regulation 2A—
 - (i) in paragraph (1), for “Packaging Directive” substitute “Packaging Waste Directive”;
 - (ii) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (iii) for paragraph (3) substitute—
 - “(3) Article 3 is to be read as if—
 - (a) in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive;
 - (b) in paragraph 2c, for “[Directive 2008/98/EC](#)” there were substituted “the Waste Directive”.

(17) [S.I. 2005/894](#); relevant amendments were made by [S.I. 2011/988](#).

- (iv) omit paragraph (4);
- (c) in paragraph (3), in the inserted regulation 2B—
 - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (ii) for paragraphs (3) and (4) substitute—
 - “(3) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - (4) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;

- (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.”;
 - (d) for paragraph (4) substitute—
 - “(4) In regulation 24—
 - (a) in paragraph (3)(b)—
 - (i) in paragraph (i)—
 - (aa) for “European Union” substitute “United Kingdom”;
 - (bb) for the words from “the requirements” to the end, substitute “any recovery or recycling operations taking place in each such site take place under conditions that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”;
 - (ii) in paragraph (ii)—
 - (aa) for “European Union” substitute “United Kingdom”;
 - (bb) for “of Article 6(2) of that Directive” substitute “applicable to the shipment of waste from the United Kingdom”;
 - (b) omit paragraph (8);
 - (c) in paragraph (9)—
 - (i) for “European Union” substitute “United Kingdom”;
 - (ii) for “the requirements of Article 6(2) of the Packaging Waste Directive” substitute “requirements that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”.”;
 - (e) after paragraph (4) insert—
 - “(4A) In regulation 26(2), for the words from the beginning to “Directive”, substitute “Where the appropriate Agency has granted an accreditation to an exporter, and is no longer satisfied that the requirements in regulation 24(3)(b) or (9), which applied to that grant of accreditation,”.”;
 - (f) in paragraph (5), in paragraph (2) of the inserted regulation 43, for “exit day” substitute “IP completion day”.
- (7) In regulation 13—
- (a) for paragraph (2)(b) substitute—
 - “(b) for the definition of “placing on the market” substitute—
 - ““placing on the market”—
 - (a) except in relation to a person in Northern Ireland, means supplying or making available, whether in return for payment or free of charge, to a third party within the United Kingdom;
 - (b) in relation to a person in Northern Ireland, means supplying or making available, whether in return for payment or free of charge, to a third party within the United Kingdom or the European Economic Area, and includes import into the customs territory of the Union as defined in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council

laying down the Union Customs Code⁽¹⁸⁾, as that Regulation applies in EU law;”;

(b) for paragraph (3) substitute—

“(3) In regulation 3—

(a) in paragraph (2)(a), for “the essential security interests of EEA states” substitute “essential security interests”;

(b) after paragraph (2) insert—

“(3) In paragraph (2)(a)—

(a) as it applies in England and Wales and Scotland, “essential security interests” means the essential security interests of the United Kingdom;

(b) as it applies in Northern Ireland, “essential security interests” means the essential security interests of the United Kingdom or EEA states.”;

(c) in paragraph (4)(b), for the inserted paragraphs (5), (6) and (7) substitute—

“(5) Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first subparagraph were omitted;

- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (7) In paragraphs (5) and (6)—
 - “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - “appropriate authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.
- (8) In regulation 14—
 - (a) in paragraph (2)—
 - (i) in sub-paragraph (a), at the end insert—
 - “(iv) after the definition of “waste disposal authority” insert—
 - ““the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and as read in accordance with regulation 2A.”;”;
 - (ii) for sub-paragraph (c) substitute—
 - “(c) omit paragraph (1A).”;
 - (b) in paragraph (3), in the inserted regulation 2A—
 - (i) omit paragraph (2);
 - (ii) for paragraphs (3) and (4) substitute—

- “(3) Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
- (4) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.”;
 - (iii) omit paragraphs (5) and (6);

- (iv) in paragraph (7)—
 - (aa) for “paragraph (2)” substitute “paragraphs (2) and (3)”;
 - (bb) omit the definition of “local authority”;
 - (c) after paragraph (3) insert—
 - “(3A) In regulation 6—
 - (a) in paragraph (2)(a), for “the essential security interests of EEA states” substitute “essential security interests”;
 - (b) after paragraph (2) insert—
 - “(3) In paragraph (2)(a)—
 - (a) as it applies in England and Wales and Scotland, “essential security interests” means the essential security interests of the United Kingdom;
 - (b) as it applies in Northern Ireland, “essential security interests” means the essential security interests of the United Kingdom or EEA states.”;
 - (d) in paragraph (9), in the inserted regulation 56A, for paragraph (2) substitute—
 - “(2) Article 2 is to be read as if—
 - (a) in point (a)—
 - (i) “‘waste’,” were omitted; and
 - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
 - (b) after point (a) there were inserted—
 - “(aa) ‘waste’ has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive;”;
 - (e) in paragraph (13), in the substituted text, at the end insert “and, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement”.
- (9) In regulation 15(3)—
- (a) in the inserted regulation 2A, in paragraph (2), for “exit day” substitute “IP completion day”;
 - (b) in the inserted regulation 2C—
 - (i) in paragraph (1), for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (ii) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (iii) for paragraphs (4), (5) and (6) substitute—
 - “(4) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—
 - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;

- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) in the inserted regulation 2D, for paragraph (4) substitute—
 - “(4) In paragraph (3)(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—
 - (a) in point (a)—
 - (i) “‘waste’,” were omitted; and
 - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
 - (b) after point (a) there were inserted—
 - “(aa) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”.
- (10) In regulation 16—
 - (a) in paragraph (2)(b), in the inserted text, in the definition of “Landfill Directive”, for “Council [Directive 2011/97/EU](#)” substitute “Directive (EU) 2018/850”;
 - (b) in paragraph (3), in the inserted regulation 3B—
 - (i) for paragraph (2)(a) substitute—
 - “(a) in point (a)—
 - (i) “‘waste’,” were omitted; and
 - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
 - (aa) after point (a) there were inserted—
 - “(aa) ‘waste’ means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”;
 - (ii) for paragraph (3) substitute—
 - “(3) Article 3 is to be read as if—
 - (a) in paragraph 2, “Without prejudice to existing Community legislation” were omitted;
 - (b) for paragraph 3 there were substituted—
 - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting (England and Wales) Regulations 2016, is excluded from the scope of this Directive where

it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”.”;

(c) in paragraph (3), in the inserted regulation 3C, in paragraph (2), for “exit day” substitute “IP completion day”;

(d) in paragraph (3), in the inserted regulation 3D—

(i) in paragraph (2), for “exit day” substitute “IP completion day”;

(ii) for paragraphs (5), (6) and (7) substitute—

“(5) Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate body for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate body for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria

- have not been set out as referred to in paragraph 1A(a), the appropriate body”;
- (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate body”;
 - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—

“A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iii) for paragraph (10) substitute—

“(10) Article 35(1) is to be read as if, for the second paragraph, there were substituted—

“They shall make that data available to the appropriate body through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner as the appropriate body may specify.”;
- (iv) at the end insert—

“(13) Annex 4a is to be read as if, in point 6, “including through Union funds” were omitted.”;
- (e) in paragraph (5), in sub-paragraphs (a) and (c)(i), in the words to be replaced, at the end insert “as last amended by Directive (EU) 2018/850”;
- (f) in paragraph (6), omit sub-paragraph (a).
- (11) In regulation 17—
 - (a) in paragraph (2), after sub-paragraph (a) insert—

“(aa) in the definition of “Directive waste”, in paragraph (a), after “Waste Directive” insert “as read with Articles 5 and 6 of that Directive”;
 - (b) in paragraph (3), in the inserted paragraph 2A—
 - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
 - (ii) for paragraphs (4), (5) and (6) substitute—

“(4) Article 5 is to be read as if—

 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

- “1A. Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first subparagraph—
- (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
- (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
- “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;

- (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
 - (c) in paragraph (3), in the inserted paragraph 2B, in paragraph (2), for “exit day” substitute “IP completion day”.
- (12) In regulation 19—
- (a) in paragraph (2)—
 - (i) after sub-paragraph (g) insert—
 - “(ga) before the definition of “Natural Resources Body for Wales” insert—
 - ““national authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;”;
 - (ii) at the end insert—
 - “(j) in the definition of “waste electrical and electronic equipment”, after “Waste Directive” insert “, as read with Articles 5 and 6 of that Directive,”;
 - (b) in paragraph (3), in the inserted paragraph 2A, in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
 - (c) in paragraph (3), in the inserted paragraph 2B—
 - (i) in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
 - (ii) for paragraphs (4), (5) and (6) substitute—
 - “(4) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any relevant guidance published by the national authority or the appropriate authority.”;
 - (c) paragraphs 2 and 3 were omitted.

- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any relevant guidance published by the national authority or the appropriate authority.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate authority”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate authority”;
 - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
 - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
 - (iii) after paragraph (7) insert—
 - “(7A) Article 25 is to be read as if paragraph 3 were omitted.”;

- (d) in paragraph (3), in the inserted paragraph 2C—
 - (i) in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
 - (ii) for paragraph (9) substitute—

“(9) In paragraph (7)(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—

 - (a) in point (a) “waste,” were omitted; and
 - (b) after point (a) there were inserted—

“(aa) “waste” means anything that—

 - (i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.
- (e) in paragraph (5)—
 - (i) in sub-paragraph (a), in the substituted heading, at the end insert “etc”;
 - (ii) in sub-paragraph (b), in the substituted text, at the end insert “and, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.”.
- (13) In regulation 20—
- (a) in paragraph (3), in the inserted regulation 2A, for paragraphs (2), (3) and (4) substitute—

“(2) Article 5 is to be read as if—

 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - (3) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- (4) In this regulation—
 - “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - “appropriate authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers.”;
 - (b) in paragraph (5), for sub-paragraph (a) substitute—
 - “(a) in paragraph (1), for “EU market” substitute “market of Great Britain”.”;
 - (c) for paragraph (6) substitute—
 - “(6) In regulation 5(1), for “EU market” substitute “market of Great Britain”.”.

The Environment (Amendment etc.) (EU Exit) Regulations 2019

12.—(1) The Environment (Amendment etc.) (EU Exit) Regulations 2019⁽¹⁹⁾ are amended as follows.

⁽¹⁹⁾ [S.I. 2019/458](#), to which there are amendments not relevant to these Regulations.

- (2) In regulation 3—
 - (a) in paragraph (3)(a)(iii) and (iv), in the substituted text, for “exit day” substitute “IP completion day”;
 - (b) in paragraph (14)(a), in paragraph (b)(i) of the substituted text, for “exit day” substitute “IP completion day”.
- (3) In regulation 6(2)(a), in the substituted text, for “exit day” substitute “IP completion day”.
- (4) In regulation 7(4)(a), in the inserted paragraph 1A, for “exit day” substitute “IP completion day”.
- (5) In regulation 8(1) and (3), for “exit day”, in each place that it occurs, substitute “IP completion day”.

The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019

13.—(1) The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019(**20**) are amended as follows.

- (2) In regulation 3(3), in the inserted paragraph 6(5A), in paragraph (b), for “exit day” substitute “IP completion day”.

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

14.—(1) The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019(**21**) are amended as follows.

- (2) In regulation 5(4), in the inserted section 75A of the Environmental Protection Act 1990(**22**)—
 - (a) in subsection (2), for “exit day” substitute “IP completion day”;
 - (b) for subsections (4) to (6) substitute—
 - “(4) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the waste regulation authority for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - (5) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

(20) [S.I. 2019/559](#).

(21) [S.I. 2019/620](#), amended by [S.I. 2019/1078](#).

(22) [1990 c. 43](#). Section 75A was inserted by [S.I. 2019/620](#), and amended by [S.I. 2020/904](#).

- “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the waste regulation authority for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the waste regulation authority”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The waste regulation authority”;
 - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales or Scotland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) in subsection (8), for “subsection (2)” substitute “this section”.
- (3) In regulation 6(4)(b)—

- (a) in the inserted subsection (3) of section 37 of the Waste and Emissions Trading Act 2003(23), for “exit day” substitute “IP completion day”;
- (b) in the inserted subsection (4) of that section, in paragraph (a)(i), at the end of the substituted text insert “or, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement”;
- (c) for the inserted subsections (5), (6) and (7) of that section substitute—
 - “(5) Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - (6) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have

(23) 2003 c. 33. Section 37 was amended by [S.I. 2011/988](#) (as it extends to England and Wales), [S.S.I. 2011/226](#) (as it extends to Scotland), [S.I. 2019/620](#) and [S.I. 2020/904](#).

- not been set out as referred to in paragraph 1A(a), the appropriate agency”;
- (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
- (aa) for “Member States” there were substituted “The appropriate agency”;
- (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
- “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
- (b) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”.
- (4) In regulation 8—
- (a) in paragraph (2)—
- (i) before sub-paragraph (a) insert—
- “(za) for the heading, substitute “Scope and interpretation”.”;
- (ii) in sub-paragraph (b), in the inserted paragraph 1A, for “United Kingdom”, in both places that it occurs, substitute “Great Britain”;
- (iii) after sub-paragraph (b) insert—
- “(c) after paragraph 2 insert—
- “**3.** In this Regulation, “appliance” means any electrical or electronic equipment, as defined by Article 3(1)(a) of [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), which is fully or partly powered by batteries or accumulators or is capable of being so.”;
- (b) for paragraph (5) substitute—
- “(5) In Annex 1, in point (1), for “Article 11 of [Directive 2006/66/EC](#)” substitute “regulation 7 of the Batteries and Accumulators (Placing on the Market) Regulations 2008(**24**)”.”;
- (c) omit paragraph (6).
- (5) In regulation 9—
- (a) in paragraph (3), in the inserted Article 2A—
- (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (ii) in paragraph 2, for “exit day” substitute “IP completion day”;

(24) [S.I. 2008/2164](#), to which relevant amendments were made by [S.I. 2015/63](#) and [2019/188](#).

(iii) for paragraphs 5, 6 and 7 substitute—

“5. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

6. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—

(i) in the first subparagraph—

- (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
- (bb) the second sentence were omitted;

(ii) in the second subparagraph—

- (aa) for “Member States” there were substituted “The competent authority”;

(bb) “by competent authorities” were omitted.

7. Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”;

(iv) in paragraph 9, for “paragraph 2” substitute “this Article”;

(b) in paragraph (3), in the inserted Article 2B, for paragraph 8 substitute—

“**8.** In paragraph 6(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—

(a) in point (a) “waste’,” were omitted; and

(b) after point (a) there were inserted—

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”;

(c) in paragraph (5), in the inserted Article 6A, for “exit day” in each place that it occurs, substitute “IP completion day”.

(6) In regulation 10—

(a) in paragraph (2)(b), in the inserted point (4C), for “[Directive 2013/56/EU](#)” substitute “Directive (EU) 2018/849”;

(b) in paragraph (2)(c), in the inserted text—

(i) in paragraph 2, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;

(ii) for paragraphs 3, 4 and 5 substitute—

“**3.** Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
- 4. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The competent authority”;
 - (bb) “by competent authorities” were omitted.
- 5. In this Article—
 - “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;

- “appropriate authority” means—
- (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers.”;
- (c) in paragraph (6), in the inserted text—
- (i) in point 8—
 - (aa) omit “in the United Kingdom”;
 - (bb) for “within the United Kingdom” substitute “within Great Britain”;
 - (ii) in point 9(a), for “as it had effect immediately before 4th July 2018” substitute “as last amended by Directive (EU) 2018/849”;
 - (iii) in point 9(c), for “the United Kingdom”, in both places that it occurs, substitute “Great Britain”.
- (7) In regulation 11—
- (a) in paragraph (3), in the inserted Article 2A—
 - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
 - (iii) for paragraphs 3, 4 and 5 substitute—
 - “3. Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - 4. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The competent authority”;
 - (bb) “by competent authorities” were omitted.
5. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
 - (iv) in paragraph 7, for “paragraph 2” substitute “this Article”.
- (b) in paragraph (5), in the inserted Article 5A, for “exit day”, in each place that it occurs, substitute “IP completion day”.
- (8) In regulation 12—
- (a) in paragraph (3), in the inserted Article 2A—
 - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;

(iii) for paragraphs 5, 6 and 7 substitute—

“5. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

6. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for “Member States” there were substituted “The competent authority”;

(bb) “by competent authorities” were omitted.

7. Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”;

(b) in paragraph (3), in the inserted Article 2B, for paragraph 8 substitute—

“**8.** In paragraph 6(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—

(a) in point (a) ““waste’,” were omitted; and

(b) after point (a) there were inserted—

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”;

(c) in paragraph (5), in the inserted Article 6A, for “exit day” in each place that it occurs, substitute “IP completion day”;

(d) in paragraph (8)(b)—

(i) for “Commission Directive (EU) 2017/2096” substitute “Commission Delegated Directive (EU) 2020/363”;

(ii) for “as it had effect immediately before 4th July 2018” substitute “as last amended by Directive (EU) 2018/849”.

(9) Omit regulation 13.

(10) In regulation 14(2), in the inserted Article A1—

(a) in paragraph 1 for “Directive (EU) 2015/720” substitute “Directive (EU) 2018/852”;

(b) for paragraph 3 substitute—

“**3.** Article 3 is to be read as if, in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.”;

(c) in paragraph 4—

(i) for “3(b)” substitute “3”;

- (ii) for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (d) for paragraphs 5, 6 and 7 substitute—
 - “5. Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
 - 6. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—

(aa) for “Member States” there were substituted “The appropriate agency”;

(bb) “by competent authorities” were omitted.

7. In this Article—

“appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers.”.

(11) In regulation 15—

(a) in paragraph (2), in the inserted Article A1—

(i) in paragraph 2, for “Council [Directive 2011/97/EU](#)” substitute “Directive (EU) 2018/850”;

(ii) in paragraph 3, for “exit day” substitute “IP completion day”;

(iii) in paragraph 5, for points (a) and (b) substitute—

“(a) in point (a)—

(i) “‘waste’,” were omitted; and

(ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;

(b) after point (a) there were inserted—

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;

(iv) after paragraph 5 insert—

“**5A.** Article 3 is to be read as if—

(a) in paragraph 2, “Without prejudice to existing Community legislation” were omitted;

(b) for paragraph 3 there were substituted—

“**3.** The management of extractive waste is excluded from the scope of this Directive—

(a) in relation to England and Wales, where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”);

(b) in relation to Northern Ireland, where it falls within the scope of the Planning (Management of Waste from

Extractive Industries) Regulations (Northern Ireland)
2015(25) (“the 2015 Regulations”).

In this paragraph, “extractive waste”—

- (a) in relation to England and Wales, has the meaning given in regulation 2(1) of the 2016 Regulations;
- (b) in relation to Northern Ireland, has the meaning given in regulation 2(2) of the 2015 Regulations.”.”;

(v) in paragraph 6, at the end insert—

“(d) in point (f)—

- (i) after “waste”, in the first place it occurs, there were inserted “paper, metal, plastic and glass”;
- (ii) the words from “pursuant” to “Article 22 of that Directive” were omitted;
- (iii) for “Article 4 of that Directive” there were substituted “Article 4 of the Waste Framework Directive”.”.”;

(vi) after paragraph 6, insert—

“**6A.** Article 6(a) is to be read as if—

- (a) in the first paragraph, in the second sentence, for “may” there were substituted “does”;
- (b) in the second paragraph, for the words from “of [Directive 2008/98/EC](#)” to the end, there were substituted “set out in Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011, or any objectives in retained EU law relating to the increase of preparing for re-use and recycling”.”;

(vii) omit paragraphs 10(b), 11(d) and 12(a)(i);

(b) in paragraph (2), in the inserted Article A2—

- (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
- (iii) for paragraphs 4, 5 and 6, substitute—

“**4.** Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

- (c) paragraphs 2 and 3 were omitted..
- 5. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- 6. Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—
 - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which

is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”;

(c) for paragraph (7)(d)(v) substitute—

“(v) in section 2.2.1, in the first paragraph—

(aa) for “Article 2(b) of the Landfill Directive” substitute “Article 3(2b) of the Waste Framework Directive”;

(bb) for “the European waste list” substitute “Commission [Decision 2000/532/EC](#)”;

(12) In regulation 16—

(a) in paragraph (2), in the inserted Article 1A—

(i) in paragraph 1, for “Directive (EU) 2015/720” substitute “Directive (EU) 2018/852(26)”;

(ii) for paragraph 2 substitute—

“**2.** Article 3 is to be read as if, in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.”;

(iii) in paragraph 4—

(aa) for “2(b)” substitute “2”;

(bb) for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;

(iv) for paragraphs 5, 6 and 7 substitute—

“**5.** Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

6. Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.

7. In this Article—

“appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers.”;

- (b) in paragraph (6)(c), in the inserted paragraph 2, for “exit day” substitute “IP completion day”.

(13) In regulation 17—

- (a) in paragraph (2)(b), for the inserted paragraph 3(a) substitute—

“(a) in so far as it extends to England and Wales—

- (i) “financial guarantee” means the financial guarantee referred to in Article 14 of [Directive 2006/21/EC](#), as it applies by virtue of paragraph 7(j) of Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”);

- (ii) “rehabilitation” has the meaning given in Article 3(20) of [Directive 2006/21/EC](#), and for the purposes of that definition “waste facility” has the meaning given in paragraph (iv);
 - (iii) “treatment” has the meaning given in Article 3(8) of [Directive 2006/21/EC](#), and for the purposes of that definition “waste” has the meaning given in paragraph (b) of the definition of “waste” in regulation 2(1) of the 2016 Regulations;
 - (iv) “waste facility” has the meaning given to “mining waste facility” in paragraph 2(1) of Schedule 20 to the 2016 Regulations;”;
- (b) omit paragraph (3).
- (14) In regulation 18(2)—
 - (a) in the inserted Article A2, in paragraph 2, for “exit day” substitute “IP completion day”;
 - (b) in the inserted Article A3—
 - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
 - (iii) for paragraph 3, 4 and 5 substitute—
 - “3. Article 5 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
- 4. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—

- (i) the first subparagraph were omitted;
- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
- (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.

5. Article 7 is to be read as if—

- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
- (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”.

(15) In regulation 19(3)—

- (a) in the inserted Article 1A, in paragraph 2, for “exit day” substitute “IP completion day”;
- (b) in the inserted Article 1B—
 - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
 - (iii) for paragraphs 3, 4 and 5 substitute—

“3. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

4. Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

- (i) the first subparagraph were omitted;
- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
- (iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

- (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

- (aa) for “Member States” there were substituted “The appropriate agency”;

(bb) “by competent authorities” were omitted.

5. Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list

- has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
- (b) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iv) in paragraph 7, for “paragraph 2” substitute “this Article”.
- (16) In regulation 20(2), in the inserted Article A1—
- (a) in paragraph 3, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (b) in paragraph 4, for “exit day” substitute “IP completion day”;
- (c) for paragraphs 5, 6 and 7 substitute—
- “5. Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
6. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;

- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
7. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
 - (d) in paragraph 9, for “paragraph 4” substitute “this Article”.
- (17) In regulation 21(3), in the inserted Article 1A—
- (a) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (b) in paragraph 2, for “exit day” substitute “IP completion day”;
 - (c) after paragraph 2 insert—

“**2A.** Article 3 is to be read as if points 2b, 2c, 15a and 17a were omitted.”;
 - (d) for paragraphs 3 to 6 substitute—

“**3.** Article 5 is to be read as if—

 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) paragraphs 2 and 3 were omitted.
- 4. Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- 5. Article 7 is to be read as if—
 - (a) before paragraph 1 there were inserted—
 - “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
 - (b) in paragraph 1—

- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.
- 6. Article 11(2) is to be read as if—
 - (a) in the words before point (a), for “European” there were substituted “United Kingdom”;
 - (b) points (c) to (e) were omitted.”;
 - (e) in paragraph 8, for “paragraph 2” substitute “this Article”.

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

15.—(1) The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019⁽²⁷⁾ are amended as follows.

- (2) In regulation 4(3), for “regulations 13(3) and” substitute “regulation”.
- (3) Omit regulation 5.

PART 5

Amendment and revocation of retained direct EU legislation

Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste

16.—(1) Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste is amended as follows.

- (2) Omit Articles 4, 5 and 6.
- (3) In the Annex, in the “Definitions” section, before point 1 insert—
 - “**A1.** ‘the Waste Framework Directive’ means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted;
 - A2.** ‘waste’, ‘hazardous waste’ and ‘non-hazardous waste’ have the meanings given in the Waste Framework Directive.”.
- (4) In the Annex, in the “Assessment and Classification” section—
 - (a) for “[Directive 2008/98/EC](#)”, in each place that it occurs, substitute “the Waste Framework Directive”;
 - (b) in paragraph 2 (classification of waste as hazardous)—

(27) [S.I. 2019/1078](#).

- (i) in the first subparagraph, for the words from “pursuant” to the end, substitute “for the purposes of any legislation relating to hazardous waste”;
- (ii) after that subparagraph, insert—

“This is subject to any legislation which provides, or gives a person power to determine, that—

 - (a) waste of a kind which is listed as hazardous waste in the list of wastes is to be treated as non-hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste); or
 - (b) waste of a kind which is listed as non-hazardous waste in the list of wastes is to be treated as hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste).”;
- (iii) in the second subparagraph (commencing “For those wastes”), in the first indent, in the second sentence, omit “in the Member States”.

Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council

17.—(1) Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 1—

- (a) the existing text is numbered paragraph 1;
- (b) in paragraph 1, for “waste facilities in accordance with Article 17 of Directive 2006/21/EC” substitute “mining waste facilities”;
- (c) after paragraph 1 insert—

“2. In this Decision—

“the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries⁽²⁸⁾, read with the modifications in Article 1A;

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851;

“Category A facility” or “Category A waste facility” means a mining waste facility classified as Category A in accordance with the criteria in Annex 3 to the Mining Waste Directive;

“competent authority” means an authority responsible for carrying out inspections of mining waste facilities under the inspection provisions;

“the inspection provisions” means the provisions of the relevant mining waste legislation which, immediately before IP completion day, implemented Article 17 of the Mining Waste Directive;

“mining waste facility” or “waste facility”—

- (a) in relation to England and Wales, has the meaning given to “mining waste facility” by paragraph 2(1) of Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;

(28) OJ L 102, 11.4.2006, p. 15.

- (b) in relation to Scotland, has the meaning given to “waste facility” by regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010⁽²⁹⁾;
- (c) in relation to Northern Ireland, has the meaning given to “waste facility” by regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015⁽³⁰⁾;

“the relevant mining waste legislation” means—

- (a) in relation to England and Wales, Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;
- (b) in relation to Scotland, the Management of Extractive Waste (Scotland) Regulations 2010;
- (c) in relation to Northern Ireland, the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015;

“waste management plan” has the meaning given in the relevant mining waste legislation.

3. Other expressions used in this Decision which are defined in the Mining Waste Directive have the meanings given in that Directive.”.

(3) After Article 1 insert—

“Article 1A

1. For the purposes of Article 1(2) and (3), the Mining Waste Directive is to be read with the modifications in paragraphs 2 and 3.

2. Article 3 is to be read as if—

- (a) in point (1), for “Article 1(a) of [Directive 75/442/EEC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (2), for “Article 1(4) of Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
- (c) in point (24), the words from “in accordance” to “takes place,” were omitted;
- (d) point (27) were omitted.

3. Annex 3 is to be read as if—

- (a) in the second indent, for “[Directive 91/689/EEC](#)” there were substituted “the Waste Framework Directive”;
- (b) in the third indent, for “Directives [67/548/EEC](#) or [1999/45/EC](#)” there were substituted “Regulation [\(EC\) 1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.

Article 1B

1. For the purposes of Article 1A, “the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read with the modifications in paragraphs 2 to 4.

⁽²⁹⁾ [S.S.I. 2010/60](#), to which there are amendments not relevant to these Regulations.

⁽³⁰⁾ [S.R. 2015 No. 85](#), to which there are amendments not relevant to these Regulations.

2. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

3. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for “Member States” there were substituted “The appropriate agency”;

(bb) “by competent authorities” were omitted.

4. Article 7 is to be read as if—

- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

- (b) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
 - (c) paragraphs 2, 3, 6 and 7 were omitted
5. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.”.
- (4) Omit Article 2.
 - (5) In Part A of the Annex, in the first paragraph—
 - (a) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities;
 - (b) for “Article 17 of that Directive” substitute “the inspection provisions”.
 - (6) In Part B of the Annex, in the first paragraph, for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”.
 - (7) In Part C of the Annex—
 - (a) in paragraph 1, in the first sub-paragraph—
 - (i) in point (a)—
 - (aa) for “the entire territory of the Member State” substitute “each part of the United Kingdom”;
 - (bb) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (ii) in point (e)—
 - (aa) omit “national or Union”;
 - (bb) for “facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (iii) in point (h), for “Article 17 of [Directive 2006/21/EC](#)” substitute “the inspection provisions”;
 - (b) in paragraph 2.1—
 - (i) in point (c), for “waste facility under Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facility”;
 - (ii) in point (d)(iv), for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (iii) in point (d)(viii)—
 - (aa) omit “national or Union”;
 - (bb) for “the waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
 - (c) in paragraph 2.2, in point (d), omit “Union”;
 - (d) in paragraph 2.3—
 - (i) in point (a), omit “according to Article 11(3) or Article 12(6) of [Directive 2006/21/EC](#)”
 - (ii) in point (b), omit “Union”;

- (e) in paragraph 3.1, in point (f), for “[Directive 2003/4/EC](#) of the European Parliament and of the Council” substitute “the Environmental Information Regulations 2004(**31**) or the Environmental Information (Scotland) Regulations 2004(**32**)”.
- (8) In Part D of the Annex—
- (a) in paragraph 1—
- (i) in point (f), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (h), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (b) in paragraph 2—
- (i) in point (l), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (o), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (c) in paragraph 3—
- (i) in the heading, omit “in accordance with Article 12(3) of [Directive 2006/21/EC](#)”;
- (ii) in point (b), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (iii) in point (g), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (d) in paragraph 4—
- (i) in point (d), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (e), omit “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)”;
- (iii) in point (j), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”.

Revocations

- 18.** The instruments listed in the Schedule are revoked.

	<i>Name</i>
	Parliamentary Under Secretary of State
	Department for Environment, Food and Rural
Date	Affairs

(31) [S.I. 2004/3391](#).

(32) [S.S.I. 2004/520](#), amended by [S.S.I. 2013/127](#).

SCHEDULE

Regulation 18

Revocations

1. Commission Implementing Regulation (EU) 2017/699 establishing a common methodology for the calculation of the weight of electrical and electronic equipment (EEE) placed on the market of each Member State and a common methodology for the calculation of the quantity of waste electrical and electronic equipment (WEEE) generated by weight in each Member State.
2. Commission Implementing Decision (EU) 2018/896 laying down the methodology for the calculation of the annual consumption of lightweight plastic carrier bags and amending [Decision 2005/270/EC](#).
3. Commission Decision (EU) 2018/1702 establishing the EU Ecolabel criteria for lubricants.
4. Commission Implementing Regulation (EU) 2019/290 establishing the format for registration and reporting of producers of electrical and electronic equipment to the register.
5. Commission Decision (EU) 2019/418 amending Decisions (EU) 2017/1214, (EU) 2017/1215, (EU) 2017/1216, (EU) 2017/1217, (EU) 2017/1218 and (EU) 2017/1219.
6. Commission Implementing Decision (EU) 2019/665 amending [Decision 2005/270/EC](#) establishing the formats relating to the database system pursuant to European Parliament and Council [Directive 94/62/EC](#) on packaging and packaging waste.
7. Commission Implementing Decision (EU) 2019/1004 laying down rules for the calculation, verification and reporting of data on waste in accordance with [Directive 2008/98/EC](#) on the European Parliament and of the Council and repealing Commission Implementing Decision C(2012) 2384.
8. Commission Decision (EU) 2019/1134 amending [Decision 2009/300/EC](#) and Decision (EU) 2015/2099, as regards the period of validity of the ecological criteria for the award of the EU Ecolabel to certain products, and of the related assessment and verification requirements.
9. Commission Delegated Decision (EU) 2019/1597 supplementing [Directive 2008/98/EC](#) of the European Parliament and of the Council as regards a common methodology and minimum quantity requirements for the uniform measurement of levels of food waste.
10. Commission Implementing Decision (EU) 2019/1885 laying down rules for the calculation, verification and reporting of data on landfill of municipal waste in accordance with Council [Directive 1999/31/EC](#) and repealing Commission [Decision 2000/738/EC](#).
11. Commission Implementing Decision (EU) 2019/2000 laying down a format for reporting of data on food waste and for submission of the quality check report in accordance with [Directive 2008/98/EC](#) of the European Parliament and of the Council.
12. Commission Implementing Decision (EU) 2019/2193 laying down rules for the calculation, verification and reporting of data and establishing data formats for the purposes of [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE).
13. Commission Decision (EU) 2020/503 amending [Decision 2014/312/EU](#) in order to extend the derogation of zinc oxide to allow its use as a preservative stabilizer to cover ‘in-can preservation’ and preservation of ‘tinting pastes’.
14. Commission Decision (EU) 2020/519 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the waste management sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d), (f) and (g)) arising from the withdrawal of the United Kingdom from the European Union, and under section 8C(1) of the 2018 Act to make provision to implement the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

Part 2 provides for a legislative function of the European Commission under Directive 2008/98/EC of the European Parliament and of the Council on waste to be exercisable instead by public authorities in the United Kingdom.

Part 3 amends primary legislation and Part 4 amends subordinate legislation, including previous instruments made under section 8(1) of the 2018 Act. The amendments relate principally to waste and environmental permitting, and in a few cases to other aspects of the environment.

Part 5 amends or revokes retained EU tertiary legislation relating to resources and waste.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

EXPLANATORY MEMORANDUM TO
THE WASTE AND ENVIRONMENTAL PERMITTING ETC. (LEGISLATIVE
FUNCTIONS AND AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends a number of existing EU Exit SIs to ensure that the legislation amended by those instruments will continue to operate effectively at the end of the Transition Period and makes EU Exit related amendments to, or revokes, some recent EU legislation which will become retained direct EU law. It also makes amendments to primary and subordinate domestic legislation for similar purposes. It also includes some technical amendments to EU Exit SIs that are needed in consequence of the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”). This instrument also transfers some functions from the European Commission to the Secretary of State and the Devolved Administrations.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The European Commission has powers under Article 7(1) of Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on waste (Waste Framework Directive) to adopt delegated acts establishing and reviewing a list of waste. Commission Decision 2000/532/EC establishing a list of waste was adopted under the predecessor of this power. The list of waste classifies types of waste for the purposes of waste management, and indicates which categories of waste are normally to be treated as hazardous waste..
- 2.3 Commission Implementing Decision (EU) 2020/248 lays down technical guidelines for inspections of mining waste facilities.
- 2.4 The provisions of S.I. 2019/620 which are amended by regulation 14 of this instrument include provisions amending 14 EU Regulations and Decisions on waste, details of which are included in the Explanatory Memorandum to S.I. 2019/620.
- 2.5 The retained direct EU legislation revoked by the Schedule to this instrument includes legislation relating to landfill of waste, food waste, packaging waste and waste electrical and electronic equipment, and legislation relating to the EU Ecolabel and eco-management and audit schemes.

Why is it being changed?

- 2.6 The changes made by this instrument will ensure that waste regulation and environmental permitting can continue to be effectively managed after the end of the EU Exit transition period. The legislative power conferred on the Commission by Article 7(1) of the Waste Framework Directive is being transferred into domestic law in order to enable the list of waste to be amended without having to use primary legislation. This will provide flexibility to update the list from time to time, for example to respond to scientific and technical changes. The existing EU Exit SIs amended by this instrument are being changed principally in consequence of recent amendments to EU and domestic legislation on waste. Some amendments are also necessary in consequence of the Protocol.

What will it now do?

- 2.7 This instrument will ensure that existing domestic and retained EU legislation will still be fit for purpose. For example, it updates references in domestic EU Exit legislation so that they refer to waste and resources Directives and domestic Regulations as amended by the EU Circular Economy Package. It also makes EU Exit related amendments to, or revokes, recent EU legislation which will become retained direct EU law. The European Commission's powers related to Article 7(1) of the Waste Framework Directive will now be exercised by the Secretary of State and Devolved Administrations as appropriate. Section 7 of this Explanatory Memorandum further explains what this instrument does.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 The Committee's 52nd Report of Session 2017-19 reported regulation 10(3) of the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188) for defective drafting, on the ground that the modification of Article 6 of Directive 2000/53/EC by new regulation 2A of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (S.I. 2005/263) ("the ELV Regulations"), as inserted by regulation 10(3), left uncertain the extent to which Article 6 was intended to apply after EU Exit. The amendments made to regulation 10 of S.I. 2019/188 by regulation 11(4) of this instrument include amendments to address this issue. The amendments made to the ELV Regulations by regulation 10 are changed so that the ELV Regulations will no longer refer to Article 6, or to any other provision of the Directive which cross-refers to it. In consequence, the modifications of Article 6 which were inserted by regulation 10(3) of S.I. 2019/188 are no longer required, and are omitted by regulation 11(4)(a)(iii) of this instrument.
- 3.2 The other errors in S.I. 2019/188 which the Committee reported have already been corrected by the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1078).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

- 3.4 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by this instrument.
- 4. Extent and Territorial Application**
- 4.1 The territorial extent of this instrument is the United Kingdom, subject to paragraphs 4.3 and 4.4.
- 4.2 The territorial application of this instrument is the United Kingdom, subject to paragraphs 4.3 and 4.4.
- 4.3 Amendments made to domestic Regulations by Parts 3 and 4 of this instrument have the same extent and application as the Regulations being amended.
- 4.4 The revocations of retained direct EU legislation by paragraphs 7, 9, 10 and 11 of the Schedule extend and apply to England, Wales and Northern Ireland, but not Scotland.
- 5. European Convention on Human Rights**
- 5.1 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”
- 6. Legislative Context**
- 6.1 This instrument is principally made in exercise of powers conferred by Sections 8(1) and 8C of the European Union (Withdrawal) Act 2018.
- 6.2 This instrument makes amendments to the following existing Act and instruments:
- The Environmental Protection Act 1990 (c. 43)
 - The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894)
 - The Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409)
 - The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39)
 - The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/620)
 - The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188)
 - The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458)
 - The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/559)
- The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1078).
- 6.3 S.I. 2019/39, 188 and 620 contain amendments to domestic legislation which implements, and to retained direct EU legislation which is made under, 8 EU Directives relating to waste management (“the EU Waste Directives”), which are listed in the Explanatory Memorandum to S.I. 2019/188. The EU Waste Directives

have recently been amended by a series of amending Directives (Directives (EU) 2018/849 to 2018/853 of the European Parliament and of the Council), collectively known as the “Circular Economy Package”. The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904) amended domestic waste legislation to implement the Circular Economy Package.

- 6.4 Three of the EU Waste Directives (Directive 94/62/EC on packaging and packaging waste, Directive 2006/66/EC on batteries and accumulators, and Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment) are listed in Annex 2 to the Protocol, and will therefore continue to apply in relation to Northern Ireland after the end of the EU Exit transition period.

7. Policy background

What is being done and why?

- 7.1 This instrument makes technical amendments, which can be grouped as follows:
- Transferring some of the European Commission’s functions in relation to Article 7(1) of the Waste Framework Directive, which allows the European Commission to establish and review, in accordance with Article 7(2) and (3) of that Directive, a list of waste. This power has been exercised by the Commission to make Decision 2000/532/EC, which sets out the list of waste types and their codes (“EU waste codes”), and identifies which categories of waste are normally to be treated as hazardous waste. For England this power is being transferred to the Secretary of State and to the appropriate devolved Ministers in Wales and Scotland. For Northern Ireland this power will go to Department of Agriculture, Environment and Rural Affairs (DAERA). This instrument will allow the Secretary of State and the Devolved Administrations to establish their own lists of waste or amend the existing list of waste (Decision 2000/532/EC) as it will have effect as retained direct EU legislation on and after the end of the EU Exit transition period. The consent of the relevant Devolved Administrations will be required for the Secretary of State to make amendments to the list of waste on their behalf. Any amendments to the list of waste would be subject to public consultation.
 - Amending cross-references which existing EU Exit SIs insert into legislation, where the cross-references have become out of date due to recent legislative changes.
 - Amending provisions of existing EU Exit SIs which amend legislation to provide for EU Directives to be read with modifications, for the purpose of interpreting references to those Directives in that legislation. In most cases this is being done because the modifications as originally drafted no longer work because the Directives have been amended by the Circular Economy Package. The opportunity has also been taken, in a few places, to simplify provisions of this kind in existing EU Exit SIs.
 - Making EU Exit related amendments to, or revoking, recent EU legislation which will become retained direct EU law. This relates to EU legislation which has been adopted by the EU since the existing EU Exit SIs were made.
 - Amending references to ‘exit day’ in existing EU Exit SIs, to refer instead to IP completion day.

- Making some amendments that are needed in consequence of the Protocol, to provisions of existing EU Exit SIs that amend legislation relating to batteries and accumulators, and packaging. For example: EU Exit SIs have inserted definitions of terms such as “appropriate authority” into UK-wide legislation, which include a Northern Ireland authority. For the Protocol Annex legislation, the amendments made by EU Exit SIs will no longer apply to Northern Ireland, so the Northern Ireland specific references need to be removed.
- The Schedule lists retained direct EU legislation relating to resources and waste which is being revoked.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in Section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. It also makes provision to implement the Protocol in the EU Withdrawal Agreement.
- 8.2 This instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Parliamentary Under Secretary of State for the Environment Rebecca Pow MP, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Not considered necessary.

10. Consultation outcome

- 10.1 A consultation was not required because no policy changes are being made via this instrument.
- 10.2 The Department for Environment, Food and Rural Affairs has worked with the Devolved Administrations in developing this instrument.

11. Guidance

- 11.1 There is no associated guidance as this instrument only amends deficiencies arising from the UK’s withdrawal from the EU.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared because this instrument only amends deficiencies arising from the UK’s withdrawal from the EU, along with associated repatriation of powers to the UK.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.

- 13.2 The effect of this instrument is to maintain the status quo, therefore no specific action was required to minimise the impact of the requirements on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this instrument is that no specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Dawn Woodward at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Dawn.Woodward@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because it does no more than: ensure that existing domestic EU legislation is still fit for purpose, update references in domestic EU Exit legislation and transfers a European Commission power related to Article 7(1) of the Waste Framework Directive to appropriate UK authorities, as explained further in Section 7 of this Explanatory Memorandum.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: this instrument corrects deficiencies in the waste regulatory regime to ensure that it can continue to operate from the end of the EU Exit transition period.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 3.2 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Rebecca Pow MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref MA-L/LG/3269/20

Mick Antoniw MS
Chair Legislation Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

27 October 2020

Dear Mick

I am writing to inform you that I have laid a statutory instrument consent memorandum ("the memorandum") in relation to the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 ("the Regulations") which were made by the Parliamentary Under Secretary of State for the Environment, on 20 October. The Regulations contain amendments to the Environmental Protection Act 1990 which include provision for Wales.

The purpose of the Regulations will ensure that existing domestic and retained EU legislation will still be fit for purpose. For example, it updates references in domestic EU Exit legislation so that they refer to waste and resources Directives and Regulations as amended by the EU Circular Economy Package. It also makes EU Exit related amendments to, or revokes, recent EU legislation which will become retained direct EU law. The European Commission's powers related to the Waste Framework Directive Article 7(1) will now be exercised by the Secretary of State and devolved administrations as appropriate.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

I have laid the memorandum in accordance with the requirement under Standing Order (SO) 30A. I consider the Regulations to be a relevant statutory instrument because they make a provision in relation to Wales amending primary legislation within the legislative competence of the Senedd, which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters that are not within the legislative competence of the Senedd.

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's' at the end.

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 **The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020**

DATE **22 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

The 2020 Regulations amend a number of existing EU Exit instruments to ensure that they are still fit for purpose at the end of the Transition Period and makes EU Exit related amendments to, or revokes, a small amount of recent EU legislation which will become retained direct EU law. It also includes some technical amendments to EU Exit instruments that are needed in consequence of the NI Protocol.

European Directly Applicable Instruments amended by the 2020 Regulations

- Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, and
- Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council.

Subordinate legislation

- The Hazardous Waste (England and Wales) Regulations 2005
- The Marine Licensing (Exempted Activities) Order 2011
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 201

- The Environment (Amendment etc.) (EU Exit) Regulations 2019
- The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019
- The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

Primary legislation amended

- The Environmental Protection Act 1990.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

There is no impact on the Assembly's legislative competence. The 2020 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The 2020 Regulations will ensure that existing domestic and retained EU legislation will still be fit for purpose. For example, it updates references in domestic EU Exit legislation so that they refer to waste and resources Directives and Regulations as amended by the EU Circular Economy Package. It also makes EU Exit related amendments to, or revokes, recent EU legislation which will become retained direct EU law. The European Commission's powers related to the Waste Framework Directive Article 7(1) will now be exercised by the Secretary of State and devolved administrations as appropriate.

The 2020 Regulations makes technical amendments, which can be grouped as follows:

- a. Transferring some of the European Commission's functions in relation to article 7(1) in the Waste Framework Directive, which allows the European Commission to establish and review, in accordance with Article 7(2) and (3) of that Directive, a list of waste. This power has been exercised by the Commission to make Decision 2000/532, which sets out the list of waste types and their codes (EU waste codes). This power is being transferred to the Secretary of State and the DAs. The 2020 Regulations will allow the Secretary of State and the devolved administrations to establish a list of waste or amend the existing list of waste

(Decision 2000/532) as it becomes part of UK law (retained EU law) on EU exit, in line with the provisions in Article 7. Any amendments to the list of waste would be subject to public consultation. The use of this power would also be subject to consultation with relevant trade associations and waste producers.

- b. Inserting provisions into legislation for EU Directives to be read with modifications, where the modifications no longer work because the Directives have been amended. Omitting or simplifying modifications to Directives that are made by existing EU exit SIs, because on review they appeared unnecessary or unnecessarily complicated.
- c. Amending cross-references which existing EU Exit SIs insert into legislation, where the cross-references have become out of date due to recent legislative changes – in most cases, the instrument is updating existing EU Exit SIs so that they refer to the latest version of the EU waste and resources Regulations and Directives as amended by the EU Circular Economy Package.
- d. Making EU exit related amendments to, or revoking, recent EU legislation which will become retained direct EU law. This relates to EU legislation which has been adopted by the EU since the existing EU Exit SIs were made.
- e. Amending references to ‘exit day’ in existing EU Exit SIs. Commencement provisions in EU Exit SIs do not need amending, because the Withdrawal Agreement Act contains a general provision that SIs which were to come into force on exit day instead come into force on Implementation Period completion day. However, the general provision does not apply to other references to exit day which EU Exit SIs have inserted into legislation, and those references need amending individually to refer instead to IP completion day.
- f. Making some technical amendments to EU Exit SIs that are needed in consequence of the NI Protocol, where they are technical and can be made under s.8(1) of the European Union (Withdrawal) Act 2018 (some amendments will be able to be made under 8C. For example: EU Exit SIs have inserted definitions of terms such as “appropriate authority” into UK-wide legislation, which include a NI authority. For NIP Annex legislation, the amendments made by EU exit SIs will no longer apply to Northern Ireland, so the NI-specific references need to be removed. EU Exit SIs have amended general references to “EU legislation” to refer instead to “retained EU law”. In some cases, those references need further amending to include reference to NIP Annex legislation because, in relation to Northern Ireland, NIP Annex legislation will apply directly by virtue of the Withdrawal Agreement and s.7A EU(W)A, and will not be within the definition of retained EU law.
- g. References to Waste Framework Directive articles 5 and 6 were inserted by earlier EU Exit SIs (i.e. the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (for primary legislation and EU Regulations and Decisions) and the Waste (Miscellaneous Amendments) (EU Exit) (No 2) Regulations 2019 (for domestic SIs / regulations)), which say that the Waste Framework Directive is to apply with modifications. The 2020 Regulations insert amended modifications to Articles 5 and 6 to reflect the latest wording in the Waste Framework Directive

2008 (Directive2008/98(EC)), which was last amended by Directive (EU) 2018/851.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/pBNWzAvN/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. A Statutory Instrument Consent Memorandum is being laid in compliance with Standing Order 30.A.

UK MINISTERS ACTING IN DEVOLVED AREAS

194 – The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 20 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 75
SICM under SO 30A (because amends primary legislation)	SICM(5)37

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations:

- Amend a number of existing EU Exit instruments to ensure that they are still fit for purpose at the end of the Transition Period and make EU Exit related amendments to, or revoke, a small amount of recent EU legislation which will become retained direct EU law (and also make amendments to primary and subordinate domestic legislation for similar purposes).
- Include some technical amendments to EU Exit instruments that are needed in consequence of the Northern Ireland Protocol.

- Transfer some functions from the European Commission to the Secretary of State and the Devolved Administrations.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 22 October 2020 regarding the effect of these Regulations:

- These Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 ("the 2006 Act"), the Senedd cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent. The Welsh Government's written statement says that the Welsh Government are in negotiations with the UK Government in relation to a section 109 Order to amend Schedule 7B of the 2006 Act so as to negate the potential restriction on the future competence of the Senedd.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 27 October 2020, on the basis that the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, section 62A of the Environmental Protection Act 1990).

In a letter to the Committee dated 27 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM in Plenary.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Persistent Organic Pollutants (Amendments) (EU Exit) Regulations 2020**

DATE **13 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Persistent Organic Pollutants (Amendments) (EU Exit) Regulations 2020

Following the UK's withdrawal from the European Union, the amendments to Regulation (EU) 2019/1021 will enable the UK to implement the Stockholm Convention by regulating the production, placing on the market and use of persistent organic pollutants. The amendments will also enable the UK authorities to regulate stockpiles and manage waste where persistent organic pollutants are present, and set out monitoring and reporting requirements. Furthermore, the amendments will create a power which will enable UK to put in place the necessary measures to ensure the control and traceability of waste contaminated by relevant pollutants.

European Directly Applicable Instruments amended by the 2019 Regulations

- Regulation (EU) 2019/1021

Subordinate legislation

- Persistent Organic Pollutants Regulations 2007
- The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1405)
- The Environment and Wildlife (Legislative Functions) (EU Exit) Regulation 2019 (SI.2019/473)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

There is no impact on the Senedd's legislative competence. Under the 2019 Regulations, functions of the EU Commission are transferred to Welsh Ministers for areas within

competence. Alternatively, the 2020 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The purpose of the amendments

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make a number of corrections to retained EU law, relating to legislative functions. These are necessary to preserve the underpinning legislation for the areas set out above and below. They also ensure EU legislation can continue to work across the UK once the UK leaves the EU. It brings together changes to legislative functions which triggers the affirmative resolution procedure, whereas the non-legislative functions were included in earlier negative Defra SIs laid in late 2018 for each of the legislative areas.

The 2020 Regulations make corrections to address deficiencies within the legislation to enable the legislation to function post exit day. The 2020 Regulations change the identity of bodies carrying out the specified functions of a legislative nature and converts the EU procedures to UK procedures as appropriate.

The 2020 Regulations amend:

The Persistent Organic Pollutants Regulations 2007. Persistent Organic Pollutant (“POPs”) are substances identified as toxic, persistent bioaccumulative and subject to long range transportation. The intention is to have a UK regulation which, after EU Exit, sets out the same restrictions as the EU Regulation on production, placing on the market, and use of POPs. It also sets out the same exemptions to those restrictions. Additionally, it will also prohibit the import of intentionally produced POPs. It will set limits for the concentration of POPs in products and for the destruction of POPs in waste products. It will require stockpiles and wastes be identified and managed to reduce or eliminate POPs releases from these sources. Parties to the Stockholm Convention are required to report on their management of POPs and this is set out in the regulation. The changes covered by this instrument include:

- (a) amending references to the EU and EU institutions and administrative processes to GB equivalents;
- (b) updating legal references to refer to relevant GB legislation; and
- (c) retaining the requirements for the governments of the United Kingdom to monitor and report.

Regulation (EU) 2019/1021 on persistent organic pollutants. The 2020 Regulations amends Regulation (EU) 2019/1021 in order to ensure it remains operable after the completion of the implementation period when the UK will have fully left the EU.

Part 4 of the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018

is revoked, which made corrections to the, now repealed, Regulation (EC) No 850/2004 on POPs.

Regulation 2 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulation 2019 is revoked, which transferred legislative functions contained in Regulation (EC) No 850/2004 on POPs

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/1MRfOFTK/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

174 - The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 8 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 77
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21 October 2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

This instrument makes the necessary corrections to ensure that Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants ("POPs") functions in Great Britain after the end of the Implementation Period. This instrument also makes amendments for purposes relating to the implementation of the Protocol on Ireland / Northern Ireland ("the Protocol").

Following the end of the Implementation Period, the amendments to Regulation (EU) 2019/1021 will enable GB authorities to independently implement the Stockholm Convention by regulating the production, placing on the market, and use of POPs. The amendments will also allow

GB authorities to regulate stockpiles of POPs and manage waste where POPs are present. They also set out monitoring and reporting requirements. Furthermore, the amendments will create a power which will enable GB to put in place the necessary measures to ensure the control and traceability of waste contaminated by relevant pollutants.

The Stockholm Convention came into effect in 2004 and aims to eliminate or restrict the production and use of these POPs. It regulates the production, placing on the market and use of POPs, which are banned or restricted under the Stockholm Convention with exemptions and limits for the quantity of the substance allowed in new articles. It also sets out requirements to take appropriate measures to destroy POPs waste and requirements to monitor and report on listed substance elimination, stockpiles and waste management. The UK is a Party to the Stockholm Convention in its own right and continues to be bound by its international obligations under the Convention following the UK's withdrawal from the EU.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 13 October 2020 regarding the effect of these Regulations, but make the following comments:

1. Article 7 of Regulation (EU) 2019/1021, as amended by regulation 14 of these Regulations and forming part of retained EU law, provides (at the new paragraph 7 of Article 7) a power to the Welsh Ministers, or with their consent, the Secretary of State, to make regulations to ensure the control and traceability of waste containing or contaminated by a substance listed in Annex 4 of Regulation (EU) 2019/1021. A similar power is currently exercisable via section 2(2) of the European Communities Act 1972, which will cease to have effect following the end of the Implementation Period.
2. The amendments to Article 7 ensure that this power operates effectively following the end of the Implementation Period. However, it is noted that the new paragraph 14 of Article 7 of Regulation (EU) 2019/1021 provides that no regulations may be made under paragraph 7 on or after 31 October 2023 (see regulation 14(4) of these Regulations).
3. Stylistically, the statement by the Welsh Government refers to both “the 2019 Regulations” and “the 2020 Regulations”. This seems to be an error, as both terms appear to be in reference to these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Pesticides (Amendment) (EU Exit) Regulations 2020**

DATE **13 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament that contains provision in a devolved area

Pesticides (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations make a number of amendments to earlier EU Exit Statutory Instruments that convert EU legislation (which forms the plant protection product (“PPP”) and maximum residue level (“MRL”) regulatory regimes) into national law, to reflect when EU law ceases to apply and retained EU law comes into force at the end of the implementation period, thereby ensuring that the national regime will operate effectively. Most of its amendments are required because of new EU legislation that has come into force shortly prior to and during the implementation period, and so was not addressed by earlier EU Exit SIs. The 2020 Regulations also make amendments as a result of the Northern Ireland Protocol where the EU PPP and MRL regimes will continue to apply, therefore legislative changes are required to remove Northern Ireland from the retained EU legislation so that the new PPP and MRL regime applies in Great Britain only, rather than UK-wide.

The 2020 Regulations amend the following legislation

European Legislation

The 2020 Regulations amend Commission Implementing Regulation (EU) No 844/2012 setting out the renewal procedure for active substances related to the placing of plant protection products on the market.

The 2020 Regulations revoke points in Annex 2 to the EEA Agreement.

The 2020 Regulations revoke the EU legislation set out at Annex to this Statement.

Domestic legislation

The 2020 Regulations amend the following domestic legislation:

- The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019;
- The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019;
- The Pesticides (Amendment) (EU Exit) Regulations 2019;
- The Plant Protection Products (Sustainable Use) Regulations 2012; and
- The Official Controls (Plant Protection Products) Regulations 2020.

Any impact the SI may have on the legislative competence of the Senedd and/or the Welsh Ministers' executive competence

The 2020 Regulations do not impact on the legislative competence of the Senedd but broaden the executive competence of the Welsh Ministers' by conferring functions on them (in their capacity as the 'Competent Authority' for Wales) without encumbrance.

The purpose of the amendments

The main corrections required to the regulatory regime for pesticides as a result of EU Exit have already been put in place through a series of earlier EU Exit SIs, primarily the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI No 2019/556) and the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 (SI No 2019/557).

The Pesticides (Amendment) (EU Exit) Regulations 2019 (SI No 2019/1410) amended the earlier EU Exit SIs because of changes to "Exit Day" which impacted on various dates specified in the retained EU law. It also corrected several deficiencies within those SIs. The 2020 Regulations make further changes because of the implementation period. Various additional pieces of EU legislation have come into force in the period since the earlier EU Exit SIs, and so they are amended in order to correct new deficiencies arising from exiting the EU.

Another consequence is that corrections are required to reflect the change to the date when EU law ceases to apply, and when retained law comes into force, which is now at the end of the implementation period rather than Exit Day. Therefore, the 2020 Regulations make a number of minor corrections and additions so that retained law can function correctly.

Since the EU Exit SIs were finalised, the Northern Ireland Protocol was agreed which now requires that Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005 will continue to apply directly in Northern Ireland after the end of the implementation period. The 2020

Regulations therefore amend these UK-wide EU Exit SIs so that references related to Northern Ireland are removed and consequently they only have practical application in Great Britain. This will clarify that the required legal framework remains in place for Northern Ireland, for the relevant EU Regulations to continue to apply to Northern Ireland and to continue to operate as envisaged under the Northern Ireland Protocol.

The 2020 Regulations also make minor modifications to the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI No 2019/306), following the issue of an EU Commission Directive as regards to the establishment of harmonised risk indicators in order to correct new deficiencies in the retained EU law.

Finally, the 2020 Regulations also make minor modifications to the Official Controls (Plant Protection Products) Regulations 2020 (SI No 2020/552), which implemented Regulation (EU) 2017/625 of the Parliament and of the Council on official controls for plant protection products.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the Regulations, are available here:

<https://statutoryinstruments.parliament.uk/timeline/sOqcsMAG/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

ANNEX

The 2020 Regulations revoke the following EU legislation.

- Commission Regulation (EU) 2019/973 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels certain substances.
- Commission Regulation (EU) 2019/977 amending Annexes II and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for certain substances.
- Commission Implementing Regulation (EU) 2019/989 concerning the non-renewal of approval of the active substance chlorpropham
- Commission Regulation (EU) 2019/1015 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for certain substances.
- Commission Implementing Regulation (EU) 2019/1085 renewing the approval of the active substance 1-methylcyclopropene.
- Commission Implementing Regulation (EU) 2019/1090 concerning the non-renewal of approval of the active substance dimethoate.
- Commission Implementing Regulation (EU) 2019/1100 concerning the non-renewal of approval of the active substance desmedipham.
- Commission Implementing Regulation (EU) 2019/1101 renewing the approval of the active substance tolclofos-methyl.
- Commission Implementing Regulation (EU) 2019/1137 renewing the approval of the active substance dimethenamid-P.
- Commission Implementing Regulation (EU) 2019/1138 approving the active substance florpyrauxifen-benzyl.
- Commission Regulation (EU) 2019/1176 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for certain substances.
- Commission Regulation (EU) 2019/1559 amending Annexes II and II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels certain substances.
- Commission Regulation (EU) 2019/1561 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlormequat in cultivated fungi.

- Commission Implementing Regulation (EU) 2019/1582 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for imazalil in or on certain products.
- Commission Implementing Regulation (EU) 2019/1589 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of certain active substances.
- Commission Implementing Regulation (EU) 2019/1605 approving the low-risk active substance *Bacillus subtilis* strain IAB/BS03.
- Commission Implementing Regulation (EU) 2019/1606 concerning the non-renewal of the approval of the active substance methiocarb.
- Commission Implementing Regulation (EU) 2019/1675 renewing the approval of the active substance *Verticillium albo-atrum* strain WCS850 as a low-risk substance.
- Commission Implementing Regulation (EU) 2019/1690 renewing the approval of the active substance alpha-cypermethrin.
- Commission Regulation (EU) 2019/1791 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for certain substances.
- Commission Regulation (EU) 2019/1792 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for certain substances.
- Commission Implementing Regulation 2019/2094 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of certain active substances.
- Commission Implementing Regulation (EU) 2020/17 concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl.
- Commission Implementing Regulation (EU) 2020/18 concerning the non-renewal of the approval of the active substance chlorpyrifos.
- Commission Implementing Regulation (EU) 2020/23 concerning the non-renewal of the approval of the active substance thiacloprid.
- Commission Implementing Regulation 2020/192 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for prochloraz in or on certain products.
- Commission Implementing Regulation (EU) 2020/421 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of certain active substances.

UK MINISTERS ACTING IN DEVOLVED AREAS

175 - Pesticides (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 08 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 79
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21/10/2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20/10/2020

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The 2020 Regulations make a number of amendments to earlier EU Exit Statutory Instruments that convert EU legislation (which forms the plant protection product ("PPP") and maximum residue level ("MRL") regulatory regimes) into national law, to reflect when EU law ceases to apply and retained EU law comes into force at the end of the implementation period, thereby ensuring that the national regime will operate effectively. Most of its amendments are required because of new EU legislation that has come into force shortly prior to and during the implementation period, and so was not addressed by earlier EU Exit SIs. The 2020 Regulations also make amendments as a result of the Northern Ireland Protocol where the EU PPP and MRL regimes will continue to apply,

therefore legislative changes are required to remove Northern Ireland from the retained EU legislation so that the new PPP and MRL regime applies in Great Britain only, rather than UK-wide.

Statement by the Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 13 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – SI laid in Parliament, which amends secondary legislation in a devolved area

The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020

The 2020 Regulations contain provisions which fall within devolved competence. They amends the following legislation:-

Domestic Legislation

- The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019 (2019 Regulations), and
- The Fluorinated Greenhouse Gases Regulations 2015

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The 2019 Regulations transferred functions falling within devolved competence to the Welsh Ministers and Natural Resources Wales.

The 2019 Regulations also provided the Welsh Ministers with a power to consent to the SoS exercising those Welsh Ministerial functions, in relation to Wales.

The 2020 Regulations contain one new function for the Secretary of State without encumbrance. This represents a practical decision taken to comply with the Montreal and NIP Protocols, and also reflects that the resources and expertise in this area sit with HMRC

and Border Force. Should the NIP come to an end this function will cease to exist.

The introduction of provisions to control imports and exports at the GB boundary rather than at the UK border, is critical to ensure that the integrity of the GB and EU F gas and ODS quota and licensing systems are maintained. It acknowledges the movement of F gases and ODS as an exception to the principle of unfettered market access for trade from NI to GB, to ensure that the UK continues to comply with its international obligations under the Montreal Protocol.

Existing enforcement functions within the UK are devolved in all but two areas (which relate to disposal and the power of customs to seize and detain goods). These existing devolved enforcement functions will remain, and the new SoS enforcement function will be added in over and above these existing devolved enforcement functions. The new enforcement function for the SoS is specific to imports/exports over the NI/GB border which for the purposes of compliance with the protocol is to be treated as an international border rather than an internal one. In practice it has been agreed that checks undertaken by Border Force on F-Gas and ODS at the NI/GB border will be documentary, rather than physical, and local enforcement agencies, such as Natural Resources Wales, Local Authorities and Port Health Authorities in Wales will still retain their enforcement role. While exact data is not available it is thought that the volume of goods which this will impact will be minimal.

Welsh Ministers still have the power to establish and operate our own systems if they choose to. In practice, however, the Welsh Government, UK, and Scottish Government intend to operate GB-wide F gas and ODS systems, which from the end of the Implementation Period will be administrated by the Environment Agency. The detailed arrangements for long term cooperation between the UK Government and Devolved Administrations will be agreed through a Common Framework.

The purpose of the amendments

The 2020 Regulations are made in exercise of the exercise of the powers conferred by sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal) Act 2020.

The 2020 Regulations corrects operability deficiencies necessary for the implementation of the Protocol. In particular it reduces the extent of the 2019 Regulations from the UK to GB, as NI will remain subject to the EU F gas and ODS Regulations under the Protocol. The 2019 Regulations, as amended by the 2020 Regulations will transfer powers previously held previously held by the EU Commission to England, Scotland and Wales.

The 2020 Regulations introduces provisions to control the movement of F gases and ODS between GB and NI. These provisions define that this movement will be deemed as imports/exports for the purposes of F gas and ODS trade. Controlling F gas and ODS trade between GB and NI is vital to maintain the integrity of the GB (and EU) F gas and ODS systems, and to implement the Protocol. It therefore supports our ability to meet the UK's obligations under the Montreal Protocol and, as such, is acknowledged as an exception to the principle of unfettered market access for trade from NI to GB.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/dXJbyQy9/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

177 - The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) EU Exit Regulations 2020

Laid in the UK Parliament: 13 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 81
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations make technical amendments to the following:

- The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”), and
- The Fluorinated Greenhouse Gases Regulations 2015

This instrument amends the above-mentioned EU Exit SIs to correct operability deficiencies, so that the UK retained EU legislation on the use of fluorinated greenhouse gases (“F gas”) and ozone depleting substances

("OSD") does not apply in Northern Ireland and only applies to and in Great Britain. Northern Ireland will remain subject to the EU F gas and OSD under the Protocol on Ireland and Northern Ireland.

The 2019 Regulations, as amended by these Regulations will transfer powers previously held previously held by the EU Commission to England, Scotland and Wales.

These Regulations also introduce provisions to control the movement of F gases and ODS between Great Britain and Northern Ireland. These provisions define that this movement will be deemed as imports/exports for the purposes of F gas and ODS trade. Controlling F gas and ODS trade between Great Britain and Northern Ireland is vital to maintain the integrity of the Great Britain (and EU) F gas and ODS systems, and to ensure that the UK continues to comply with its international obligations under the Montreal Protocol.

These amendments are made to ensure that the statute book remains functional at the end of the Implementation Period and there is no divergence in policy.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 15 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The State Aid (Revocation etc.) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Jeremy Miles AM, Counsel General and Minister for European Transition**

The State Aid (Revocation etc.) (EU Exit) Regulations 2020

In accordance with Standing Order 30C, Welsh Ministers notify the Senedd when they have given consent to UK Ministers making regulations in relation to EU Exit which impact on devolved competence.

In the case of the State Aid (Revocation etc.) (EU Exit) Regulations 2020, Welsh Ministers have not been asked to give consent, because the UK Government asserts that state aid is a reserved matter. The Welsh Government does not agree as there is no reference in Article 7(A) of the Government of Wales Act to this subject.

I have therefore considered whether we should give consent to these regulations and decided we should not.

The 2020 Regulations:

- Revoke EU State aid regulations and decisions insofar as they form part of domestic law;
- Amend retained EU law;
- Amend references to revoked EU State aid regulations in UK legislation.

In more detail, the regulations revoke the following legislation:

- **Rights under the Treaty on the Functioning of the EU (TFEU)**

The Regulations revoke any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, at the end of the Transition period —

- (a) Would otherwise continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from—
 - (i) Article 107(1) or 108 of the TFEU;

- (ii) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or Article 108(3) of the TFEU;
- (iii) Article 61(1) or 62(1) of the EEA agreement; or
- (iv) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement;

- **Rights under the European Economic Area (EEA) Agreement**

The Regulations revoke Annex 15 of the EEA agreement, insofar as it would otherwise form part of domestic law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018..

- **EU Regulations**

The Regulations revoke the following Regulations:

- (a) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (b) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- (c) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- (d) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- (e) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;
- (f) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (g) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;
- (h) Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (i) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid; and

- (j) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

- **EU Decisions**

The Regulations also revoke the following EU decisions

- (a) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
- (b) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest; and
- (c) any other EU decision which forms part of domestic law on and after Implementation Period (IP) completion day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018 and is made under—
 - (i) the procedural regulation or predecessor regulation¹; or
 - (ii) [Article 108(2) of the TFEU] [or Article 88 of the EEC Treaty].

The 2020 Regulations also make a number of consequential amendments to UK legislation in other devolved areas for which consent should have been sought under the Intergovernmental Agreement, notably
:

- Water Industry (Determination of Turnover for Penalties) Order 2005
- Community Infrastructure Levy Regulations 2010
- Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

Consent for these amendments has not been sought by UK Government.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

¹ “procedural regulation” means Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union. “predecessor legislation” means:

- a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (as it had effect immediately before IP completion day); and
- b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (as it had effect immediately before IP completion day).

<https://www.legislation.gov.uk/ukdsi/2020/9780348212570/contents>

The effect of these Regulations would be to remove the current state aid rules which provide a framework which ensures trade is not distorted by unregulated public subsidy of individual enterprises but does not put any alternative subsidy regime in its place.

We have therefore informed the UK Government that its failure to request our consent is in contravention of the Inter-governmental Agreement and that we withhold our consent.

UK MINISTERS ACTING IN DEVOLVED AREAS

178 - The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020

Laid in the UK Parliament: 29 September 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 83
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	14 October 2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	13 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) and section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The State Aid (EU Exit) Regulations 2019 (“the draft 2019 Regulations”) would have, if made, transferred the state aid enforcement functions of the European Commission to the UK Competition and Markets Authority and made corrections to deficient retained law to give effect to the continued application of State aid law in the UK in event of no deal with the EU.

The Explanatory Memorandum to these Regulations provides that:

“Following the UK’s conclusion of the Withdrawal Agreement, the draft 2019 regulations were withdrawn in February 2020 without

being made as this approach is no longer appropriate. This Government's policy is that at the end of the transition period the UK will have its own domestic subsidy control regime... Therefore, retained EU law on State aid will have no practical application in the UK after the end of the transition period and will become redundant."

These Regulations disapply EU law relating to State aid that is currently retained in UK law by the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"), thereby ensuring that EU State aid law does not form part of UK domestic law after the end of the transition period.

In a letter to the Committee's Chair dated 25 January 2019, the Counsel General made the following statement regarding the draft 2019 Regulations:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

Given the significant effect of these Regulations, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 15 October 2020 regarding the effect of these Regulations.

Legal Advisers note the following errors in the Welsh Government's statement:

1. The statement erroneously refers to these Regulations as "The State Aid (Revocation etc.) (EU Exit) Regulations 2020", however the correct title is "The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020"
2. The statement erroneously refers to "Article 7(A) of the Government of Wales Act", the correct reference should be "Schedule 7A to the Government of Wales Act 2006" [*emphasis added*].

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers draw the Committee's attention to the following issue in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks:

1. The Welsh Government and UK Government have opposing views on whether State aid is devolved. As the UK Government consider that the matter is reserved, they have not sought the consent of the Welsh Government.

However, the Welsh Government consider State aid to be devolved, and as such contend that their consent should be sought as these Regulations impact on devolved competence. Failing to request Welsh Government consent in relation to regulations which impact on an area of devolved policy may be considered a contravention of the Intergovernmental Agreement.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – SI laid in Parliament which amends legislation in a devolved area

The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020 – affirmative

Policy Overview of the SI

This SI amends the Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) which were made last year with the consent of the Welsh Ministers as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly. The SI applies to the whole of the UK and is due to come into force immediately before implementation period completion date (11pm 31 December 2020).

The SI amends the 2019 Regulations so as to enable the provisions amended by those Regulations to continue to operate effectively in light of the Northern Ireland Protocol following the implementation period.

The SI also makes some minor additional changes. For example the SI amends the 2019 Regulations to reflect the latest good practice guidelines for blood establishments. In addition the SI amends the 2019 Regulations to allow the standards and requirements applicable to blood establishments to also apply to hospital blood banks if required.

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Law which is being amended

- The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019

The purpose of the amendments

The relevant provisions of the SI are to implement the Northern Ireland Protocol, under which Northern Ireland will be treated both as if it were a Member State (subject to the modifications to EU law made by the Northern Ireland Protocol), and as a constituent part of the UK. The provisions restrict the changes being made by the 2019 Regulations to Great Britain (GB), meaning that the current law remains in place for Northern Ireland.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

[The Blood Safety and Quality \(Amendment\) \(EU Exit\) Regulations 2020](#)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The SI amends an EU Exit SI in relation to blood quality and safety. The SI has no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence. The SI does not involve the transfer of any functions to or from the Welsh Ministers nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on blood safety and quality policy. The SI amends the 2019 Regulations that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

179 - The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 08 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 85
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21 October 2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of the European Union (Withdrawal) Act 2018.

Summary

The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations") amended the Blood Safety and Quality Regulations 2005 ("the 2005 Regulations") to correct deficiencies arising as a result of the UK's withdrawal from the European Union in the field of blood and blood component safety and quality. The 2019 Regulations are due to come into force on IP completion day.

In order to give effect to the Northern Ireland Protocol, the subject Regulations amend the 2019 Regulations to restrict the changes made by the 2019 Regulations to Great Britain only, and make other minor amendments.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 October 2020 regarding the effect of these Regulations:

1. Regulation 13 of the 2019 Regulations inserted a new regulation-making power at Regulation 23A(1)(a) of the 2005 Regulations for the Welsh Ministers (or the Secretary of State acting with the consent of the Welsh Ministers), as the appropriate authority for Wales, to make provision in relation to standards and requirements relating to a quality system for blood establishments.
2. Regulation 13(b)(ii) of the subject Regulations appears to extend that power to also include the ability to make such provision in respect of hospital blood banks.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – SI laid in Parliament which amends legislation in a devolved area

The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 – affirmative

Policy Overview of the SI

This SI amends the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) which were made last year with the consent of the Welsh Ministers as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly. The SI applies to the whole of the UK and is due to come into force immediately before implementation period completion date (11pm 31 December 2020).

The SI amends the 2019 Regulation so as to enable the provisions amended by those Regulations to continue to operate effectively in light of the Northern Ireland Protocol following the implementation period.

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Law which is being amended

- Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019

The purpose of the amendments

The relevant provisions of the SI are to implement the Northern Ireland Protocol, under which Northern Ireland will be treated as though it were a Member State (subject to the

modifications to EU law made by the Northern Ireland Protocol), and as a constituent part of the UK. The provisions restrict the changes being made by the 2019 Regulations to Great Britain (GB), meaning that the current law remains in place for Northern Ireland.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

[The Human Tissue \(Quality and Safety for Human Application\) \(Amendment\) \(EU Exit\) Regulations 2020](#)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The SI amends an EU Exit SI in relation to human tissue quality and safety. The SI has no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence. The SI does not involve the transfer of any functions to or from the Welsh Ministers nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on tissue safety and quality policy. The SI amends the 2019 Regulations that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

181 - The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 8 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 87
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21 October 2020
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	20 October 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

Summary

These Regulations amend the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations"). The 2019 Regulations were made last year with the consent of the Welsh Ministers as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly.

These Regulations implement the Northern Ireland Protocol, under which Northern Ireland will be treated both as if it were a EU Member State (subject to the modifications to EU law made by the Northern Ireland Protocol), and as a constituent part of the UK. The provisions restrict the

changes being made by the 2019 Regulations to Great Britain, meaning that the current law remains in place for Northern Ireland.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 15 October regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations amends the following legislation which apply in Wales:

EU Regulations

- Part C of Directive 2001/18 of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC.
- Regulation (EC) No 1830/2003 of the European Parliament and of the Council deals with the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms.
- Regulation (EC) No 1946/2003 of the European Parliament and of the Council on transboundary movements of genetically modified organisms regulating the export of GMOs from the EU to third (non-EU) countries.
- Commission Decision 94/730/EC sets out special procedures that may be followed for applications to undertake certain types of trials of genetically modified plants.
- Council Decision 2002/812/EC specifies a standard format for summarising applications for consent to market genetically modified organisms.
- Council Decision 2002/813/EC specifies a standard format for summarising applications for consent for trials of genetically modified organisms.
- Council Decision 2003/701/EC specifies a standard format for consent

holders to report on the monitoring and/or outcome of trials with genetically modified organisms conducted under deliberate release legislation.

- Council Decision 2009/770/EC specifies the format of the post-marketing monitoring report that holders of consents to market genetically modified organisms are required to complete.

Subordinate legislation

- The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019
- The Food and Farming (Amendment) (EU Exit) Regulations 2019
- The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019
- The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019
- Genetically Modified Organisms (Amendment) (England) (EU Exit) Regulations 2019

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations relates to areas within devolved competence. The amendments ensure existing functions of the Welsh Ministers are retained as far as possible in relation to retained EU law and that the statute book operates properly following Implementation Period (IP) completion day, at the end of the Transition Period.

The purpose of the amendments

The 2020 Regulations are subject to the procedure and amends retained EU legislation and existing United Kingdom legislation (including legislation previously made under the 2018 Act as set out above) relating to the control and movement, release and marketing of genetically modified organisms. These amendments are needed to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

The 2020 Regulations also makes a minor amendment to one piece of EU legislation which was transferred into UK law, i.e., retained direct EU legislation (as it applies in Great Britain). This formally cancels a provision in that legislation which grants powers to adopt Delegated Acts on the EU Commission and will be of no practical application in Great Britain after the end of the transition period.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/x6J24beo/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

182 – Genetically Modified Organisms (Amendment) (EU Exit) Regulations 202

Laid in the UK Parliament: 12 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 89
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	21/10/20
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2020 (“the Regulations”) are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”).

Summary

The Regulations are subject to the procedure, and amend retained EU legislation and existing United Kingdom legislation (including legislation previously made under the 2018 Act), relating to the control and movement, release and marketing of genetically modified organisms. These amendments are needed to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

Prior to exit day, various secondary legislation made minor and technical changes to ensure that retained EU legislation and domestic UK legislation enforcing it would continue to work effectively. References to the EU, EU institutions and EU administrative processes were changed to UK equivalents and legal references updated to refer to the relevant UK legislation. Since those pieces of secondary legislation were made, the UK and the EU adopted the Withdrawal Agreement including the Protocol. EU legislation on GMOs mentioned above (together with legislation made under it) is included in Annex 2 to the Protocol as follows:

- Regulation (EC) No 1830/2003;
- Regulation (EC) No 1946/2003;
- Part C of Directive 2001/18/EC.

The inclusion of this EU legislation in Annex 2 to the Protocol means further changes are needed to ensure that the UK's obligations under the Protocol are given effect and that retained EU legislation and domestic legislation enforcing it in Great Britain will continue to work effectively. Changes need to be made to references to the UK, UK institutions and UK administrative processes and UK legislation to refer to GB equivalents. For this purpose, the Regulations amend:

- the Genetically Modified Organisms (Amendment) (England) (EU Exit) Regulations 2019 (S.I. 2019/88);
- the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/90);
- the Food and Farming (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/759);
- the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/778).

The Regulations also makes a minor amendment to one piece of EU legislation (Regulation (EC) NO 1830/2003), which was transferred into UK law, that is, retained direct EU legislation (as it applies in Great Britain). This formally cancels a provision in that legislation which grants powers to adopt Delegated Acts on the EU Commission and will be of no practical application in Great Britain after the end of the transition period.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 October 2020 regarding the effect of these Regulations:

- (1) Whilst the following EU instruments clearly form part of the overall regime for the use and control of genetically modified organisms, it is unclear why they are listed in the statement as being amended by

the Regulations having regard to both the Regulations themselves and the accompanying Explanatory Memorandum: Part C of Directive 2001/18; Council Decision 2003/701/EC; Council Decision 2002/813/EC, and Commission Decision 94/730/EC. The other EU instruments listed are amended by the Regulations (albeit indirectly in that the Regulations are amending existing EU exit regulations as listed above).

- (2) Commission Regulation (EC) No 65/2004 is amended (indirectly) by paragraph 4 of the Schedule to the Regulations, but is not listed in the statement as an instrument that is being so amended.
- (3) The statement lists the Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 as being amended by the Regulations, but such amendment cannot be identified from the Regulations themselves or the accompanying Explanatory Memorandum.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020**

DATE **16 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations amends the following legislation which apply in Wales:

EU Regulations

- Commission Regulation (EC) No 889/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control

Subordinate legislation

- The Organic Production and Control (Amendment) (EU Exit) Regulations 2019
- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Organic Products (Amendment) (EU Exit) Regulations 2019

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations relates to areas within devolved competence. The amendments ensure existing functions of the Welsh Ministers are retained as far as possible in relation to retained EU law and that the statute book operates properly following Implementation Period (IP) completion day, at the end of the Transition Period.

The purpose of the amendments

The SI makes amendments to a set of organics legislation, primarily with the purpose of making changes necessitated by the introduction of the Northern Ireland Protocol, as well as correcting references to the European Commission, Member States and the European Union. Other changes have been made to correct typographical errors.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/RlqKi0nf/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

183 - Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 13 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 91
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations ensure that organic rules are updated in preparation for 31 December 2020, which is the end of the EU Exit Transition Period, by amending deficiencies within retained EU legislation. The Regulations also make necessary amendments to ensure that the Regulations adequately reflect the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ("the Protocol").

The Regulations will amend retained EU law relating to organic production and existing domestic secondary legislation which itself amends retained EU Organics legislation. The amendments will ensure alignment with the Protocol and make further operability amendments.

The existing domestic secondary legislation which itself amends retained EU legislation was drafted for the UK on the basis that the UK would leave with EU without an agreement. As the UK withdrew from the EU on 31 January 2020, with an agreement in place, the legislation needs to be updated to reflect this and the provisions of the European Union (Withdrawal) Act 2018, in particular, the Protocol.

Statement by Welsh Government

The Welsh Government's statement dated 16 October 2020 does not identify which legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by this instrument. Legal advisers recommend that clarification is sought on which devolved powers are affected.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020

DATE 16 October 2020

BY Rebecca Evans MS, Minister for Finance and Trefnydd

The subordinate legislation which is being amended

- a. Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019
 - i. Inserting Article 3A to substitute Article 2 of repealed Regulation (EU) No 211/2013 on certification requirements for imports into the Union of sprouts and seeds intended for the production of sprouts with Article 3 of Regulation (EU) No 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products to provide definition for the term consignment.
 - ii. Minor amendments to regulation 4 which contains existing amendments to Article 4 of Regulation (EU) No 208/2013 on traceability requirements for sprouts and seeds intended for the production of sprouts.
 - iii. Omitting regulations 8 to 13 which contain existing amendments to repealed Regulation (EU) No 211/2013.
- b. Contaminants in Food (Amendment) (EU Exit) Regulations 2019
 - i. Minor amendments to regulations 3 and 7 which contain existing amendments to Regulation (EEC) No 315/93 laying down Community procedures for contaminants in food.
 - ii. Minor amendments to regulations 14, 15 and 17 which contain existing amendments to Annex 1 and 2 of Regulation (EC) No 401/2006 laying down the methods of sampling and analysis for the official control of the levels of

mycotoxins in foodstuffs.

- iii. Minor amendments to regulation 20 and omitting regulations 21 and 22 which contain existing amendments to Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs.
- iv. Minor amendments to regulation 27 which contains existing amendments to Regulation (EC) No 1882/2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs.
- v. Minor amendments to regulation 30 which contains existing amendments to Regulation (EC) No 333/2007 laying down the methods of sampling and analysis for the control of the levels of trace elements and processing contaminants in foodstuffs.
- vi. Minor amendments to regulation 35 which contains existing amendments to Regulation (EC) 2015/705 laying down methods of sampling and performance criteria for the methods of analysis for the official control of the levels of erucic acid in foodstuffs.
- vii. Minor amendments to regulation 39 which contains existing amendments to Regulation (EC) 2017/644 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs.

c. Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019

- i. Inserting into Regulation 2 additional definitions of applicable EU regulations.
- ii. Amending regulations 5, 8, 12, 13, 17, 18 and 19 and omitting regulation 10 which contain existing amendments to Regulation (EC) No 853/2004 laying down specific rules for food of animal origin.
- iii. Inserting regulations 19A and 19B which amend Regulation (EC) No 2074/2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 and for the organisation of official controls under Regulation (EC) No 854/2004, derogating from Regulation (EC) No 852/2004 and amending Regulations (EC) No 853/2004 and (EC) No 854/2004.
- iv. Omitting regulations 20 to 49 which contain existing amendments to repealed Regulation (EC) No 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- v. Inserting regulations 51A-51N which amend Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat.
- vi. Inserting regulations 53A-53G which amend Regulation (EU) 2016/759 drawing up lists of third countries, parts of third countries and territories from

which Member States are to authorise the introduction into the Union of certain products of animal origin intended for human consumption, laying down specific requirements, amending Regulation (EC) No 2074/2005 and repealing Decision 2003/812/EC.

- vii. Inserting regulations 53H-53L which amend Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No. 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council.

d. General Food Law (Amendment etc.) (EU Exit) Regulations 2019

- i. Amending regulations 7, 9, 11, 13, 14, 15, 16, 17, 19, 20 and 21 which contain existing amendments to Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.
- ii. Inserting regulation 20A and 20B to retain Article 53 of, and insert a new Article 53a into Regulation (EC) No 178/2002 which consists of emergency measures for food and feed of Community origin or imported from a third country.
- iii. Minor amendment to regulation 21(a) to omit Article 57a of Regulation (EC) No 178/2002 which consists of emergency measures for food and feed of Community origin or imported from a third country.
- iv. Minor amendments to the Schedule which contains existing amendments to specified EU provisions.

e. General Food Hygiene (Amendment) (EU Exit) Regulations 2019

- i. Minor amendments to regulations 3, 4, 5, 7, 13 and 18 which contain existing amendments to Regulation (EC) No 852/2004 on the hygiene of foodstuffs.
- ii. Omitting regulation 22(a) which contains existing amendments to Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs.
- iii. Minor amendments to regulations 28 and 29 which contain existing amendments to Regulation (EU) 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food.

f. Animal Feed (Amendment) (EU Exit) Regulations 2019

- i. Inserting into Regulation 2 an additional definition of applicable EU regulations.

- ii. Minor amendments to regulations 10, 11, 24 and 27 which contain existing amendments to Regulation (EC) No 1831/2003 on additives for use in animal nutrition.
- iii. Inserting regulation 30A which omits Article 21a of Regulation (EC) No 1831/2003 on additives for use in animal nutrition.
- iv. Minor amendments to regulations 36, 50, 51, 55, 56 and 62 which contain existing amendments to Regulation (EC) No 183/2005 laying down requirements for feed hygiene.
- v. Insert regulation 50A which inserts a paragraph at the end of Article 24 of Regulation (EC) No 183/2005 laying down requirements for feed hygiene.
- vi. Minor amendments to regulation 66 which contains existing amendments to Regulation (EC) No 378/2005 on detailed rules for the implementation of Regulation (EC) No 1831/2003.
- vii. Minor amendments to regulations 83 and 84 which contain existing amendments to Regulation (EC) No 429/2008 on detailed rules for the implementation of Regulation (EC) No 1831/2003.
- viii. Minor amendments to regulations 94, 95, 97, 110 and 116 which contain existing amendments to Regulation (EC) No 767/2009 on the placing on the market and use of feed.
- ix. Minor amendments to regulation 137 which contains existing amendments to Regulation (EU) 2015/786 defining acceptability criteria for detoxification processes applied to products intended for animal feed as provided for in Directive 2002/32/EC on undesirable substances in animal feed to provide a definition for authorities.
- x. Inserting regulations 146 to 148 to amend Regulation (EC) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC.

g. Food and Feed Imports (Amendment) (EU Exit) Regulations 2019

- i. Amending regulation 2 to reflect definitions of applicable EU legislation.
- ii. Minor amendments to regulation 4 and 5 which contain existing amendments to the Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011.
- iii. Omitting regulations 7 to 17 which contain existing amendments to repealed Regulation (EC) No 669/2009 implementing repealed Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin.

- iv. Minor amendments to regulations 19, 20 and 26 which contain existing amendments to Regulation (EU) No 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.
 - v. Omitting regulations 27 to 49 which contain existing amendments to repealed Regulation (EU) No 884/2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins.
 - vi. Minor amendments to regulations 51 and 55 which contain existing amendments to Regulation (EU) 2015/949 approving the pre-export checks carried out on certain food by certain third countries as regards the presence of certain mycotoxins.
 - vii. Omitting regulations 56 to 73 which contain existing amendments to repealed Regulation (EU) 2017/186 laying down specific conditions applicable to the introduction into the Union of consignments from certain third countries due to microbiological contamination.
 - viii. Minor amendments to regulations 80 and 81 which contain existing amendments to Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China.
 - ix. Omitting regulations 82 to 84 which contain existing amendments to repealed Decision 2014/88/EU suspending temporarily imports from Bangladesh of foodstuffs containing or consisting of betel leaves.
- h. Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019
- i. Minor amendments to regulations 5, 6 and 8 which contain existing amendments to Regulation (Euratom) 2016/52 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency.
- i. Novel Food (Amendment) (EU Exit) Regulations 2019
- i. Minor amendments to regulations 6, 7, 8, 11, 12, 20, 32, 34 and 38 which contain existing amendments to Regulation (EU) 2015/2283 on novel foods.
 - ii. Minor amendments to regulations 44, 50 and 51 which contain existing amendments to Regulation (EU) 2017/2468 laying down administrative and scientific requirements concerning traditional foods from third countries in accordance with Regulation (EU) 2015/2283.
 - iii. Minor amendments to regulation 60 which contains existing amendments to Regulation (EU) 2017/2469 laying down administrative and scientific

requirements for applications referred to in Article 10 of Regulation (EU) 2015/2283.

- iv. Minor amendments to regulation 62 which contains existing amendments to Regulation (EU) 2017/2470 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283.
 - v. Minor amendments to regulation 76 which contains existing amendments to Regulation (EU) 2018/456 on the procedural steps of the consultation process for determination of novel food status in accordance with Regulation (EU) 2015/2283.
- j. Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019
- i. Minor amendments to regulations 13, 24, 33 which contain existing amendments to Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food.
 - ii. Minor amendments to regulation 44 which contains existing amendments to Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods.
 - iii. Minor amendments to regulations 67 and 68 which contain existing amendments to Regulation (EC) No 10/2011 on plastic materials and articles intended to come into contact with food.
- k. Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019
- i. Minor amendments to regulations 6, 8, 16, 20, 35, 36 and 37 which contain existing amendments to Regulation (EC) No 1829/2003 on genetically modified food and feed.
 - ii. Inserting regulation 36A to amend Article 34 of Regulation (EC) No 1829/2003.
 - iii. Inserting regulation 38A to amend Article 44 of Regulation (EC) No 1829/2003.
 - iv. Minor amendments to regulations 49 and 54 which contain existing amendments to Regulation No. 503/2013 on applications for authorisation of genetically modified food and feed in accordance with Regulation (EC) No 1829/2003.
 - v. Minor amendments to regulation 63, 66, 69, 112, 187, 226, 261, 272, 313, 346 which contain existing amendments to Decision 2007/305/EC, Decision 2007/306/EC, Decision 2007/307/EC, Decision 2009/184/EC, Decision 2013/327/EU, Decision (EU) 2015/686, Decision (EU) 2015/696, Decision (EU) 2015/698, Decision (EU) 2016/1217, Decision (EU) 2017/2448 on the authorisation and withdrawal of various genetically modified products.

- vi. Inserting regulations 390-476 amending Commission Implementing Decisions (EU) 2018/2045, (EU) 2018/2046, (EU) 2019/1302, (EU) 2019/1303, (EU) 2019/1304, (EU) 2019/1305, (EU) 2019/1306, (EU) 2019/1307, (EU) 2019/1308, (EU) 2019/1309, (EU) 2019/2080 (EU) 2019/2081, (EU) 2019/2082, (EU) 2019/2083, (EU) 2019/2084 (EU) 2019/2085, (EU) 2019/2086, (EU) 2019/2087 authorising the placing on the market of various genetically modified products.
- vii. Inserting regulation 477 to revoke Regulation (EC) No 1981/2006 on detailed rules for the implementation of Article 32 of Regulation (EC) No. 1829/2003.
- I. Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019
 - i. Amendments to regulations 12, 16, 22, 26, 27, 28 and 29 which contain existing amendments to Regulation (EC) No 2065/2003 on smoke flavourings used or intended for use in or on foods.
 - ii. Minor amendments to regulations 39 and 52 which contain existing amendments to Regulation (EC) No 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings.
 - iii. Minor amendments to regulations 58, 61 and 72 which contain existing amendments to Regulation (EC) No 1332/2008 on food enzymes.
 - iv. Minor amendments to regulations 82 and 105 which contain existing amendments to Regulation (EC) No 1333/2008 on food additives.
 - v. Minor amendments to regulations 118, 123 and 132 which contain existing amendments to Regulation (EC) No 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods.

The 2020 Regulations also amend certain EU derived domestic law that applies in relation to England only.

The retained direct EU Legislation which is being amended

- m. Minor amendments to Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014.
- n. Minor amendments to Regulation (EU) 2020/1158 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station 6/6.

The secondary legislation that is being revoked

- Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019.

- Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019.
- Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019.

The 2020 Regulations also revoke certain EU derived domestic law that applies in relation to Northern Ireland only.

The retained direct EU legislation that is being revoked

- Regulation (EU) No 415/2013 laying down additional responsibilities and tasks for the EU reference laboratories for rabies, bovine tuberculosis and bee health.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations make technical amendments to subordinate and retained direct EU legislation to ensure the operability of this legislation at the end of the transition period. There is no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence.

The purpose of the amendments

The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") converts and preserves EU law into domestic law ("retained EU law") at the end of the transition period following the UK's withdrawal from the EU.

The 2020 Regulations make amendments to subordinate legislation and retained direct EU legislation and provides for revocations of both defunct secondary legislation and retained direct EU legislation in relation to food and feed hygiene and safety.

The 2020 Regulations' amendments ensure that legislation can operate effectively at the end of the Transition Period to reflect the Withdrawal Agreement, the Northern Ireland Protocol and the UK Government's commitment to unfettered market access.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/5qIVuf1h/SI-2020/>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

184 – Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020

Laid in the UK Parliament: 14 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 93
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8 and 8C of, and paragraph 7 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations:

- implement the Protocol on Ireland/Northern Ireland (“the Protocol”) by amending or revoking 16 of the 17 EU Exit instruments in the field of food and food safety to apply to Great Britain only, and additional instruments made in respect of Northern Ireland;
- address a range of remaining deficiencies in retained EU law in the field of food and feed safety and hygiene to ensure the operability of retained EU law at the end of the Implementation Period, and to take account of EU law that has come into force since the EU Exit instruments were made.

Statement by Welsh Government

The name of these Regulations in the statement has a typographical error (a missing “etc.”). It is noted that there are 2019 Regulations with the same name as that used in the statement, i.e. without “etc.”.

Legal Advisers agree with the statement laid by the Welsh Government dated 16 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020**

DATE **19 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020

The amendments made by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations (“the 2020 Regulations”) are technical operability amendments and do not introduce policy changes. The 2020 Regulations make operability changes and other consequential amendments to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 on protective measures against pests of plants to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

The 2020 Regulations amend the following legislation

European Legislation

Commission Implementing Regulation (EU) 2019/2072.

Any impact the SI may have on the legislative competence of the Senedd and/or the Welsh Ministers’ executive competence

The 2020 Regulations do not impact on the legislative competence of the Senedd but broaden the executive competence of the Welsh Ministers’ by conferring functions on them (in their capacity as the ‘Competent Authority’ for Wales) without encumbrance.

The purpose of the amendments

The purpose of the 2020 Regulations is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the

EU at the end of the Transition Period on 31 December 2020.

The 2020 Regulations set out the lists of GB quarantine pests, provisional GB quarantine pests, Pest Free Area quarantine pests and GB regulated non-quarantine pests, and measures in relation to the introduction of plants, plant products and other objects into GB and the movement of plants, plant products and other objects within GB to reduce the risks in connection with those pests to an acceptable level.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the Regulations, are available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213706/introduction>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

186 - The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 15 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 95
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 make operability changes and other consequential amendments to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implantation of Regulation (EU) 2016/2031 on protective measures against pests of plants to ensure the

continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 19 October 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Control of Mercury (Amendment) (EU Exit) Regulations 2020**

DATE **20 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Control of Mercury (Amendment) (EU Exit) Regulations 2020

The Minamata Convention (“the Convention”) on mercury, to which the UK is a Party, is a United Nations treaty that intends to protect human health and the environment from the adverse effects of exposure to mercury. The Convention aims to achieve this by taking global action to limit releases and emission of mercury across its lifecycle. This includes restricting the supply and trade of elemental mercury; requiring the phasing out of mercury in a number of products and processes; prohibiting small-scale gold mining with mercury; and placing measures on the storage of mercury when used in industrial processes and its management once it becomes waste.

In order to enable the UK and other Member States to ratify the Convention, the EU and its Member States adopted Regulation (EU) 2017/852 on mercury, which came into effect on 1st January 2018. The Control of Mercury (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”) repeals existing legislation on mercury and fills legislative gaps. Whilst it primarily implements the commitments in the Minamata Convention, the EU Regulation does go further in a number of areas, including restrictions of the use of dental amalgam and export of mercury.

European Directly Applicable Instruments amended by the 2020 Regulations

- Regulation EU 2017/852 of the European Parliament and of the Council on mercury and repealing Regulation (EC) No 1102/2008

Subordinate legislation amended

- The Control of Mercury (Enforcement) Regulations 2017

- The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (“the 2019 Regulations”)

Subordinate legislation revoked

- The Control of Mercury (Amendment) (EU Exit) Regulations 2019 are revoked

Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence

There is no impact on the Senedd’s legislative competence. Under the 2020 Regulations, functions of the EU Commission are transferred to Welsh Ministers for areas within competence. Alternatively, the 2020 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make a number of corrections to retained EU law. These relate to legislative functions, which are necessary to preserve the underpinning legislation for the areas set out above and below, and that the EU legislation can continue to work across the UK once the UK leaves the EU. It brings together changes to legislative functions which triggers the affirmative resolution procedure.

The 2020 Regulations make corrections to address deficiencies within the legislation to enable the legislation to function following the end of the transition period. The 2020 Regulations change the identity of bodies carrying out the specified functions of a legislative nature. They also convert EU procedures to GB procedures as appropriate, in the same way as previously achieved by the 2019 regulations which they replace, but this time only in respect of Great Britain.

The 2020 Regulations amend:

In order to enable the UK and other Member States to ratify the Convention, the EU and its Member States adopted Regulation (EU) 2017/852 on mercury, which came into effect on 1st January 2018. This Regulation repeals existing legislation on mercury and fills legislative gaps. Whilst it primarily implements the commitments in the Minamata Convention, the EU

Regulation does go further in a number of areas, including restrictions of the use of dental amalgam and export of mercury.

Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury establishes measures and conditions concerning:

- use and storage of, and trade in, mercury, mercury compounds and mixtures of mercury;
- manufacture and use of, and trade in, mercury-added products
- management of mercury waste, in order to ensure a high level of protection of human health and the environment from anthropogenic emissions; and
- releases of mercury and mercury compounds.

The Commission has the power to specify forms to be used for export and import restrictions; set out technical requirements for environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury; authorise new mercury-added products or manufacturing processes; extend the period allowed for temporary storage of mercury waste; and amend Annexes 1 to 4 to the Regulation in line with international agreements. This instrument allows these functions to be transferred to the Secretary of State, the Welsh Ministers and the Scottish Ministers to exercise in their respective areas. The Secretary of State may exercise the functions on behalf of a Devolved Administration with its consent.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213188>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

189 - The Control of Mercury (Amendment) (EU Exit) Regulations 2020 *Laid in the UK Parliament: 19 October 2020*

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 97
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

Summary

These Regulations repeal existing legislation on mercury and fills legislative gaps. The UK is a Party to the Minamata Convention on mercury, a United Nations treaty that intends to protect human health and the environment from the adverse effects of exposure to mercury. In order to enable the UK and other Member States to ratify the Convention, the EU and its Member States adopted Regulation (EU) 2017/852 ("the EU Regulation") on mercury. The EU Regulation implements the

commitments in the Minamata Convention, and goes further in a number of areas, including restrictions on the use of dental amalgam and export of mercury.

The purpose of these Regulations is to make the necessary corrections to the EU Regulation to enable its continued use as retained EU law after the Implementation Period Completion Date. These regulations also make amendments for the purposes of implementing the Ireland/ Northern Ireland Protocol.

The Control of Mercury (Enforcement) Regulations and the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 are amended by these Regulations. The Control of Mercury (Amendment)(EU Exit) Regulations 2019 are revoked.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 20 October regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020**

DATE **20 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020

The 2020 Regulations amend the following legislation:

EU Legislation

- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals and establishing a European Chemicals Agency (REACH).

Domestic legislation

- The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019;
- The REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019; and
- The REACH Enforcement Regulations 2008 (Northern Ireland only)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations do not impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

The amendments ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement ("the Protocol") and to place the Protocol on a legal footing in relation to the Regulations on the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"), as required at the end of the Implementation Period (IP). The instrument also provides for the continued access of

Northern Ireland (NI) goods to the Great Britain (GB) market.

The purpose of the amendments

The 2020 Regulations makes amendments to the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, the REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 and the REACH Enforcement Regulations 2008 (Northern Ireland only).

The Protocol requires that Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006, concerning REACH and establishing a European Chemicals Agency, continue to apply to NI. Corrections are therefore required in order to correctly define the extent of the new domestic chemicals regime and ensure that GB enforcement agencies have the power to correctly apply a domestic REACH regime at the end of the IP.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213300>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The majority of the amendments are necessary to ensure NI businesses are able to trade within the GB market and to ensure NI is not subject to double regulation. The remaining amendments are to make the new GB REACH regime more manageable for businesses, particularly small businesses trading in lower tonnages of lower-risk chemicals. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the Government's approach to the implementation of the Protocol.

UK MINISTERS ACTING IN DEVOLVED AREAS

190 - The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 19 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 99
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend EU and domestic legislation relating to the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"). The amendments are to help to ensure that the UK meets its obligations under the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement so that the EU REACH regime will continue to operate in Northern Ireland after 31 December 2020.

The Regulations also provide for the continued access of Northern Ireland goods to the Great Britain market, including a notification process for when substances are placed on the GB market and applicable timescales for notifications.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 20 October 2020 regarding the effect of these Regulations:

- The statement contains a limited summary of the Regulations and what they do in practice. The Explanatory Memorandum to the Regulations states:

"These Regulations create two versions of the REACH Enforcement Regulations 2008. One will apply to Great Britain, including to offshore installations other than those in the UK territorial sea adjacent to Northern Ireland. The other will apply to Northern Ireland, including to offshore installations in the UK territorial sea adjacent to Northern Ireland. These Regulations also provide for Northern Irish entities to be able to exercise certain functions under the GB REACH Regulation. Related GB REACH offences will be applied to Northern Ireland by the Northern Irish version of the REACH Enforcement Regulations."

The Explanatory Memorandum goes on to refer to how Northern Ireland will have access to the GB market and to the applicable deadlines for submitting information regarding the importation of chemicals to GB.

No detail is given in the statement regarding the changes which are made by the Regulations relating to the import of chemicals from Northern Ireland to Great Britain following the end of the transition period and what direct or indirect impact, if any, such changes will have on the chemicals industry in Wales. Legal Advisers recommend that clarification be sought from the Welsh Government as to what direct or indirect impact these Regulations will have on Wales.

- The Welsh Government's statement confirms that these Regulations do not impact on the Senedd's legislative competence or the Welsh Minister's executive competence.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Inter-Institutional Relations Agreement between the Senedd and the Welsh Government

Annual Report 2019-2020

In early 2019 the Senedd and the Welsh Government endorsed an inter-institutional relations agreement. The agreement¹ comprises the following:

- keeping the Senedd updated about the formal intergovernmental relations including ministerial forums; and (formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding); and
- the provision of an annual report summarising intergovernmental relations work undertaken during the year.

This annual report covers the period April 2019 to March 2020. The Welsh Government regularly updates the Senedd in plenary and in committee and via statements and correspondence. Our correspondence, which updates Members on inter-governmental meetings and agreements, is available on the Senedd website.²

Summary

The formal machinery for intergovernmental communication is the Joint Ministerial Committee which has not met in plenary form since December 2018.

We enjoy strong relationships with the other devolved governments; and very much welcomed the return of the Northern Ireland Executive in early 2020.

Levels of engagement and involvement with the UK Government are variable.

Inter-Governmental Relations

Constitution

In 2019 we published *Reforming Our Union*³, which contributes to the debate about a viable, dynamic future for the UK.

We have continued to make a robust case for further powers in strategically important areas, including Justice (which was supported by the Commission on Justice in Wales⁴).

A great deal of work was done to influence the intergovernmental relations review and to progress the model of shared governance between the UK administrations⁵.

The British Irish Council (BIC), in its Summits hosted by the UK Government and the Irish Government respectively⁶, and among others the Ministerial meeting on Early

¹ <https://senedd.wales/laid%20documents/cr-ld12097/cr-ld12097-e.pdf>

² <https://business.senedd.wales/mglIssueHistoryHome.aspx?lId=25602>

³ <https://gov.wales/sites/default/files/publications/2019-10/reforming-our-union-shared-governance-in-the-uk.pdf>

⁴ <https://gov.wales/commission-justice-wales-report>

⁵ <https://www.gov.uk/government/publications/draft-principles-for-intergovernmental-relations>

⁶ <https://www.britishirishcouncil.org/bic/summits>

Years policy hosted by the Welsh Government in Cardiff⁷, provided an important forum for discussions and we believe the significance of BIC should grow over time in light of the upcoming changes in the wider political context.

European Transition

The date for the UK leaving the EU was extended three times (29 March, 12 April and 31 October), and was confirmed for 31 January 2020.

The Senedd, as well as the Scottish Parliament and the Northern Ireland Assembly, withheld consent for the European Union (Withdrawal Agreement) Act 2020. The UK Government proceeded with the legislation, citing “singular, specific and exceptional circumstances”.

We continued to advocate Wales’ interests, as set out in our policy documents, most recently in *The future UK/EU relationship: negotiating priorities for Wales*⁸. Our proposals continue to set out what we considered to be the best outcome in the negotiations for Wales within the context the negotiations were taking place – most recently the Political Declaration agreed between the UK Government and the EU.

Through our inter-governmental relations we sought to secure a clear role in negotiations with the European Union, and future trade deals. We were heavily engaged in ensuring an open internal UK market and common frameworks in areas of shared decision making.

We worked to prepare for a no deal outcome. Our preparations included developing the necessary legislation to ensure a functioning statute book on exit day (completing around 50 Welsh Statutory Instruments, and consenting to more than 150 UK Statutory Instruments), working with the UK Government on operational readiness projects, civil contingencies, and Wales-specific projects over and above work on UK-wide measures.

UK/EU and Rest of World Trade Negotiations

There is a complete lack of a formal role for the Welsh Government in the negotiations on the UK/EU future relationship. Meetings of the Joint Ministerial Committee (EU Negotiations) have continued, but the work of that committee is falling a long way short of its terms of reference which included: providing oversight on the negotiations and seeking to reach agreement on negotiation priorities. Despite this, we continue to feed in our priorities and make the case for the kind of future relationship that the evidence shows is in Wales’ best interests.

Unlike the engagement on the UK/EU future relationship, the relationship with the Department for International Trade on Rest of the World negotiations is much more constructive. There have been three meetings of the Ministerial Forum for Trade since it was set up earlier in the year and regular Ministerial bilaterals. We had

⁷<https://www.britishirishcouncil.org/sites/default/files/communiqu%C3%A9s/Early%20Years%20Policy%20Cardiff%20%20Ministerial-%20Communique.pdf>

⁸ <https://gov.wales/the-future-uk-eu-relationship>

opportunity to comment on the mandates in areas of devolved competence and are also sighted on and able to comment on the legal text being tabled in the negotiations.

Finance

Against the backdrop of the UK Government's unpredictable approach to public finances, and a chaotic EU exit, we have persistently sought reassurance in Finance Minister meetings that Wales would not receive a penny less than we would have expected within the EU. We have used the Finance Ministers' Quadrilateral meetings to focus on urgent issues such as flooding where we have pressed the UK Government on the need for additional funding to address the impact on our communities.

The Covid-19 pandemic has intensified relationships with meetings of the Finance Ministers being held more frequently and with a focus on the fiscal response to the pandemic including the UK Government's Coronavirus Job Retention Scheme and Self-Employment package. Throughout the period we have continued to press the UK Government for clarity on its funding announcements, plans for the Budget and the Comprehensive Spending Review including pressing for a strengthened Statement of Funding Policy. This clarity is essential to enable us to plan for the future based on the needs of the people of Wales.

Economy, Energy and Climate Change

With the Department for Business, Energy and Industrial Strategy (BEIS), intergovernmental relations and joint working were not well established, posing problems in respect of ensuring we were fully engaged and involved in developing the economic response, our business resilience, and ensuring we continued to benefit from funding to support businesses, research and innovation. Progress was made through the establishment of Ministerial Quadrilaterals covering business and industry, and energy and climate change respectively, but did not represent a serious approach with meetings often postponed and cancelled. However, there was consistent engagement between officials in relation to the energy and climate change aspects of EU Exit, and close working in particular on the proposed UK Emissions Trading Scheme. We continued to press BEIS Ministers on improved intergovernmental relations and enhanced collaborative working.

Skills and Employability

Concerted effort across the four nations to publicise 'Stay Home, Protect the NHS and Save Lives' enabled the initial response to the Covid 19 pandemic. This included a joint approach to schools, colleges, universities and other learning providers moving to online learning and initial consideration of the summer 2020 examination series. The Welsh Government works closely with the Department for Work and Pensions (DWP) on skills and employability policy as well as at an operational level, to ensure DWP activity aligns with Welsh Government policies and priorities. This has been evidenced in particular by the partnership working in the Communities

Employability Programmes, and the Regional Employment Response Groups which were formed as a rapid response to EU exit related labour market conditions. There is good collaborative working between Job Centre Plus and Working Wales, with the aim of building a customer focussed service which is able to signpost and refer citizens to the most appropriate employability support for their needs. The Covid-19 pandemic intensified the collaborative approach between Welsh Government and DWP, and we are keen to ensure that interventions designed rapidly by the UK Government add value to, rather than displace or duplicate, existing provision.

The Welsh Government currently funds the education and learning provision and prison libraries in Welsh prisons through a joint Memorandum of Understanding with Her Majesty's Prison and Probation Service (HMPPS). These arrangements enable a close and productive working relationship with HMPPS and allows Welsh Government to align the provision of education with several Welsh Government policies, including the Female Offender and Youth Justice Blueprints, and our Reducing Offending Framework 2018-23. We have also delivered against a number of recommendations in the Hanson review of Prisoner Education in Wales, including the establishment of an Offender Learning Stakeholder Group, in collaboration with HMPPS.

Education

Several Ministerial Quadrilateral meetings were held to discuss issues affecting the Minister for Education's portfolio. Topics included the future of structural funds, continued participation/domestic alternative arrangements for EU programme participation (Erasmus, Horizon) student fees and immigration.

These were supplemented by ad hoc telephone calls to establish new relationships with incoming UKG Education Ministers and Universities Ministers.

Environment, Agriculture, Food

At Ministerial level the relationship with the Department for Environment, Food and Rural Affairs (Defra) continued to be positive throughout this period. EFRA Inter-Ministerial Group meetings were put on a more regular footing, and the Retailer Forum, comprising food retailers, Defra and devolved government Ministers, met to discuss UK wide food supply chain and retail issues. Overall the working relationship with Defra on our preparations for departure from the European Union was positive. A collaborative approach was developed early in the process to work on priority areas, although the level of information sharing fluctuated and was lacking or last minute at times. This joint working continued into the transition period.

Health

Discussions at Ministerial level included generally constructive engagement on a range of EU exit-related issues. These included medicines readiness arrangements, medical devices and clinical consumables, freight and import channels, settled status and workforce impacts (which also covered pensions policy in early 2020), legislative

readiness and reciprocal healthcare, and on Wales' contribution to UK Government led arrangements (for example on medicines warehousing and supply).

Behind this, the intergovernmental work for EU exit was mostly operational, through a Supply co-ordination forum of official leads at Director General/Director level, and supported by the detailed work undertaken through NHS relations, particularly between Public Health England and Public Health Wales on public health protection, and between NHS Supply Chain and NHS Wales Shared Services Partnership on buffer stocks and supplier readiness.

Towards the end of March some pressures emerged in relation to the disconnect between trade negotiations (UK reserved) and their policy implications in devolved areas; and as PPE pressures became prominent at the tail end of March, there were challenges in the implementation of the UK-wide assumptions and principles agreed for Brexit readiness.

Priorities and Prospects

The Welsh Government has been at the forefront of constitutional thinking in the UK, making the case for strengthening devolution in publications including 'Securing Wales' Future', 'Brexit and Devolution', and 'Reforming our Union: Shared Governance in the UK'.

Both European Transition and Covid-19 have improved knowledge and understanding of the Senedd and Welsh Government's role in UK governance and highlighted the need for strengthening devolution to secure the future of the Union.

The context of the UK's exit from the EU and Covid-19 pandemic requires a collaborative approach across the governments of the UK based on shared governance, underpinned by mutual respect, parity of esteem, and parity of participation. We will continue to uphold these principles in our engagement with the UK Government.

Through our constitutional affairs and inter-governmental relations work we will continue to seek to protect and strengthen devolution, pursuing a positive outcome to the joint Review of Intergovernmental Relations, deepening our relationships with our British-Irish Council partners, and working with the UK and devolved governments wherever possible to reform our Union.

Mark Drakeford MS

First Minister of Wales

26 October 2020



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Intergovernmental Relations**

DATE **26 October 2020**

BY **Mark Drakeford MS, First Minister**

Today we publish the Welsh Government's first annual report on intergovernmental relations, for the period April 2019 to March 2020.

This report fulfils one of our commitments in the inter-institutional relations agreement between the Senedd and Welsh Government. I was pleased to enter into that agreement which I believe has enhanced the transparency and scrutiny of this work across Ministerial portfolios.

The report covers a turbulent time in our history, with profound consequences for all our futures. It reflects continuing challenges in engaging with the UK Government. It also points to the continued deepening of relationships with our British-Irish Council partners and the other devolved governments of the UK. This includes the very welcome restoration of the Northern Ireland Executive which has benefitted not only the people they serve, but Wales and the UK as a whole.

Our lives have changed dramatically since March, and this statement updates Members on developments since then. The experience of leading Wales through the coronavirus pandemic has confirmed that the analysis we set out in 'Reforming our Union' – published a year ago – is the right one.

We set out twenty propositions which we consider should underpin our constitutional arrangements and the reforms we believe are necessary. We called for a constitutional convention to consider these matters further. The need to make progress on these reforms has grown during the pandemic.

It is telling that throughout the crisis the Joint Ministerial Committee structures have not been used. This is a clear sign that they are not fit for purpose. Engagement has been ad hoc and unpredictable.

During the recent period, the separation between the wide ranging powers and responsibilities we have in respect of public health and public services on the one hand, and the UK Government's responsibilities for justice on the other, continues to display all the disadvantages highlighted in the Thomas Commission report published last year.

We have created criminal offences to protect public health, but they are enforced by police forces and courts which are under the control of the UK Government. The UK Government has had to make decisions about how to tackle the challenges the pandemic has created for prisons. Yet we are responsible for key services delivered to prisoners and to people released from prison.

I pay tribute to the public servants employed by both governments, and our partners. They have worked extremely hard to ensure that our citizens and businesses are not disadvantaged by that jagged edge in the devolution settlement. Our constitution could make it so much easier, if justice was devolved to Wales as it is to Scotland and to Northern Ireland.

We continue to work for a more effective devolution settlement for Wales, within a strong Union. Covid-19 has raised awareness of the respective responsibilities of the UK Government and the Welsh Government. It has shown that Wales can, and should continue to, benefit from the decisions made by our devolved institutions, based on our circumstances, as well as wider measures across the UK. The association of nations in which we have been able to share risk and reward in these unprecedented times has also been to our advantage.

To secure those advantages for the future we need radical reform of the UK, making it authentically a voluntary association of nations where sovereignty is held by each nation and then pooled for common purposes.

Unfortunately, relations with the UK Government are not as we would wish them to be. Sometimes carelessly, and sometimes deliberately, in its desire to centralise power and remove obstacles in all branches of government to exercising that power, the UK Government is undermining devolution. The constitutional settlement that has been supported by the people of Wales in two referendums is under serious threat.

Meanwhile, we are making some progress on the joint Intergovernmental Relations Review. It is essential that the Review is brought to a conclusion and practical proposals for reform set in train.

Our proposals for joint intergovernmental working include a series of regular and predictable meetings at head of government, portfolio Minister and official levels, to consider the UK response to the pandemic. This means co-ordinating decision-making and communications so that the public understand what rules apply to them and why some restrictions are the same across the UK and some are different. We need dialogue with the Prime Minister on why the freedom of movement of people from England is more important, in his view, than the protection of people in Wales from the virus. We should be working together, and with stakeholders, to protect those in the Penally camp. We should be fully

involved in developing the Prime Minister's Integrated Review of Security, Defence, Development and Foreign Policy. That review is vital to our international relationships, as well as our marine economy, exporters and other business sectors, and the resilience of our public services and communities. We should be having a mature conversation about our proposals, allowed for in the Government of Wales Act 2006, for the Senedd to have the option of using taxation to help bring vacant land into productive use.

We should be working together to make sure that the work we have done with our stakeholders is reflected in the UK position for negotiations with the EU. One that is truly representative of Wales's interests – strengthened by our input – but still respects the UK Government's responsibility for the negotiation itself. Equally, we should be sharing all the necessary information to make sure that we can help our stakeholders, as well as the UK Government, prepare for the end of the Transition Period.

We should not be faced with the UK Internal Market Bill, which is unnecessary and represents an assault on devolution. Instead we should be working together rapidly on Common Frameworks to provide businesses and citizens with clarity on what goods and services can be sold in Wales and elsewhere in the UK, on how a professional qualification in one part of the UK should be recognised in another, on a jointly agreed regime for controlling state subsidies, and on joint proposals, co-designed with our public, private and third sector partners, for the Shared Prosperity Fund, to ensure investment reaches those communities with greatest need. Decisions on these matters should be made in Wales not in Whitehall.

Conclusion

Crises require flexibility and inventiveness. Engagement across the UK has not been reliable or regular enough, and has exposed the weakness in the inter-governmental arrangements which are intended to sustain a devolved Union. But it is important to recognise that there have been notable examples of working together. There have been 17 meetings of COBR (M) attended by Ministers of the devolved governments. The Chancellor of the Duchy of Lancaster has convened ad hoc four nations meetings to share experience and insights on the response to the pandemic, and there have been more frequent meetings of the four UK Health Ministers.

This recent engagement has demonstrated the potential for collaboration and co-ordination, but at the same time has served to underline how much more effective such engagement could be, with proper planning and preparation as part of the reformed inter-governmental structure we are seeking.

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.

Elin Jones MS
Y Llywydd and Chair of the Business Committee

22 October 2020

Dear Elin

Scrutiny of Covid-19 regulations

Thank you for your letter of 8 October 2020, which we considered at our meetings on 12 and 19 October 2020.

Your letter sought to ascertain whether it would be appropriate for “the Welsh Government to flag new Regulations where the underlying principle had already been scrutinised, to enable a decision to be taken by the Business Committee about the level of further scrutiny which might be required before the debate.” As a consequence, you asked for our views on whether there was a possibility of enabling certain Covid-related Regulations to be prioritised for debate in such circumstances.

We do not believe the option suggested by the Business Committee to be appropriate for several reasons. In our view, approval for any form of legislation should not be on an ‘in principle’ basis. We do not therefore see ourselves having a role in endorsing (or rejecting) any assessment by the Welsh Government that a particular set of regulations were in principle the same as a previous set. Moreover, the value of such an assessment would in our view be questionable, given that while a new set of regulations may follow a similar policy objective, they could still be subject to reporting points under Standing Orders 21.2 or 21.3.

We believe our scrutiny of all Covid-19 regulations has been efficient and timely. We have reported on most regulations subject to the made affirmative procedure within 14 days of the instrument having been laid. In the majority of cases, this has enabled the Senedd to vote on whether the regulations should remain in force well before the 28 days permitted by the *Public Health (Control of Disease) Act 1984* and the 40 days permitted by the *Coronavirus Act 2020* (which the Senedd consented to in March this year). We



Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddDCC@senedd.cymru

☎ 0300 200 6565

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddLJC@senedd.wales

☎ 0300 200 6565

would also wish to highlight that the majority of made affirmative regulations have been laid on a Friday; this coupled with our Monday morning meeting slot means that there has inevitably been a week's gap between laying and committee scrutiny, irrespective of the work needed to prepare reports for committee consideration. We also draw attention to the comments of the Minister for Health and Social Services, Vaughan Gething MS, in Plenary on 6 October 2020, which we welcome:

"I also welcome the fact that the committee has, from time to time, helped us with consistency in legislative provisions. That's part of the point of the scrutiny. We're making these regulations in a rapid manner because of the fast-changing picture with coronavirus, and I think there's value in having the committee undertaking its scrutiny function before the legislature is then able to exercise its function in determining whether these regulations can continue or not."

Nevertheless, we have considered a range of options to facilitate an even quicker scrutiny process. We discussed whether meeting more than once a week would facilitate the scrutiny of regulations laid by the Welsh Government at different points during the previous working week. Given the Welsh Government's practice of laying the majority of made affirmative regulations on a Friday, we also considered whether it would be feasible to move our Committee's regular meeting slot to a Wednesday morning, in order to consider regulations made on the previous Friday and to lay a report in time for a debate that afternoon. We also discussed whether we could give a formal commitment to report on made affirmative regulations within a 14-day deadline.

However, we concluded that such approaches are very likely to give rise to significant timetabling issues for the Welsh Government and Senedd Members. Furthermore, given the complexity of this legislation, any formalisation of our existing arrangements for the scrutiny of Covid-related legislation needs to be considered alongside the backdrop of an increasing volume of legislation to deal with the UK's exit from the EU, not least because such formalisation could potentially require additional resource or different working patterns. This latter point is particularly relevant given that our remit means that our work programme is currently heavily constrained by the necessary and important scrutiny of subordinate legislation related to EU exit and legislative consent memoranda for UK EU exit related Bills, including the constitutionally significant UK Internal Market Bill.

We recognise that matters related to the pandemic have been prioritised in government time during plenary sessions. We also considered whether the Welsh Government could consider using the draft affirmative procedure if at all possible when making Covid-related legislation under section 45C of the 1984 Act. Although we appreciate that this may not be feasible, we would encourage the Welsh Government to consider whether opportunities do exist for its use.



We will continue to do whatever we can to ensure the scrutiny of Covid-related regulations is conducted in a timely manner. However, we do not believe that our scrutiny function should be compromised in any circumstances.

I am copying this letter to the Chairs of all committees.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English



Julie James MS

Minister for Housing and Local Government

26 October 2020

Dear Julie,

Thank you for your letter, dated 15 October 2020, covering the draft Framework Outline Agreement (FOA) for Hazardous Substances Planning.

The Committee currently has limited capacity to scrutinise the common frameworks, which fall within its remit, that are expected to be published before the end of 2020. While we do not envisage undertaking a substantive piece of work on the provisional FOA for Hazardous Substances Planning, we would welcome a response from you on the following:

Development of the common framework

- 1. Can you explain why you believe a framework is necessary in this policy area?**
- 2. Can you expand on why the UK administrations chose to pursue a non-legislative framework?**
- 3. Can you outline how you have engaged Welsh stakeholders, including industry, Local Planning Authorities and Natural Resources Wales in the development of the framework?**
- 4. Can you outline the key issues raised by Welsh stakeholders and how these been reflected in the framework?**

Interaction with domestic and international law, and international agreements

- 5. Can you clarify whether and how the framework interacts with existing domestic legislation, other than that already listed in Section 1 of the draft FOA?**

6. The UK is signatory to two international agreements relevant to the hazardous substances regime: the Aarhus Convention and the Convention of the Transboundary Effects of Industrial



Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddNHAMG@senedd.cymru

☎ 0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddCCERA@senedd.wales

☎ 0300 200 6565

Accidents. **Can you expand on how the framework will ensure compliance with these Conventions?**

7. Can you clarify whether and how the outcome of the on-going EU-UK negotiations on the Future Relationship will impact on the framework?

8. Can you clarify whether and how the UK Government's Internal Market Bill will impact on the framework?

Scrutiny process and timelines

9. Can you confirm that the framework will comprise the provisional FOA, the Concordat and the updated MOU referred to in the draft FOA?

10. Can you clarify whether the Concordat and the updated MOU will be available for Senedd scrutiny?

11. Can you clarify the timeline for Senedd scrutiny of the provisional FOA and associated documents?

Monitoring and review arrangements for the framework

According to the draft FOA, there are no formal monitoring measures associated with the framework. Instead, policy leads in each administration will hold six-monthly telephone conferences "to discuss any issues and share learning". In addition, a review meeting between the UK administrations will be held two years after the framework comes into effect.

12. Can you explain why the UK administrations have chosen not to establish a more formal mechanism for monitoring the implementation of the framework?

13. Can you clarify whether a report of the review meeting between the UK administrations will be made publicly available?

The draft FOA states that the involvement of stakeholders in the review and amendment process for the framework "would be considered at the time".

14. Can you explain in what circumstances would it not be appropriate to involve stakeholders in the review process for the framework?

15. Can you confirm whether and how the Senedd will be able to contribute to the review process for the framework?

Background to the common framework

16. Can you outline the 'minimum requirements' of the Seveso III Directive in relation to hazardous substances planning, which are common across the UK?



According to the draft FOA there is already considerable scope for divergence under the current hazardous substances planning regime. However, there are a number of restrictions on what the UK administrations can amend based on what has been set at EU level. The 'key restrictions' include changing the definition of what an establishment is and lowering standards on what constitutes a dangerous substance.

17. Can you provide further details on the scope for divergence under the current hazardous substances planning regime?

The post-EU Exit hazardous substances planning regime

18. Can you clarify whether any of the current 'key restrictions' will be maintained at a UK-wide level post-EU Exit? How will this be reflected in the framework?

Under the current hazardous substances planning regime, minimum requirements are common across the UK. This may not necessarily be the case under the post-EU Exit regime, where the UK administrations will have wider scope to use their powers to make changes. These changes could include relaxing requirements on the level of substances that can be held before triggering the consent process, and potentially (in a scenario in which the non-regression principle did not apply), completely removing controls for certain substances.

19. What consideration has been given to maintaining common minimum requirements, including, for example, minimum standards on what constitutes a hazardous substance?

20. What are the potential risks and opportunities associated with not maintaining common minimum requirements and with widening the scope for divergence?

21. To what extent are you satisfied that the chosen approach in this policy area, i.e. a non-legislative framework, will not result in a lowering of standards and a reduction in the levels of protection for human health and the environment?

22. To what extent does the framework align with the Welsh Government's commitment to non-regression of environmental standards?

Proposals for future changes to the hazardous substances planning regime

In responding to its Consultation on transposing the land use planning requirements of the Seveso III Directive on the control of major accident hazards (August 2015), the Welsh Government indicated it would "consider reform of the regime at a later date".

23. Can you clarify whether the Welsh Government has undertaken any work on proposals for the reform of the hazardous substances planning regime since the above consultation?

24. Can you clarify whether the Welsh Government has any immediate or future plans to review the hazardous substances planning regime?



25. In what circumstances would the Welsh Government consider proposals to reduce controls below the current minimum requirements, for example, on the level of substances that can be held, or in relation to the consent process?

26. Can you clarify whether changes to the current minimum requirements would be subject to public consultation and Senedd approval?

27. To what extent are you satisfied that there is sufficient technical expertise at a Wales or UK level to replace that currently available at an EU level in this policy area?

28. In the absence of new or revised EU requirements in relation to hazardous substances planning applying to the UK, what arrangements will be put in place to review domestic requirements, taking account of developments elsewhere?

I should be grateful if you could respond as soon as possible, and by 13 November 2020, at the latest.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee, and the Chair of External Affairs and Additional Legislation Committee.

Regards,



Mike Hedges MS
Chair of Climate Change, Environment and Rural Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Agenda Item 13.3



**Llywodraeth Cymru
Welsh Government**

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw MS, Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

28 October 2020

Dear Mick

Thank you for your letter of 9 October 2020 concerning the drafting of Welsh Bills.

We appreciate the Committee's interest in the points you have raised, recognising that you are seeking to understand the work of the legislative drafters and some of the challenges that are faced in preparing legislation. I will turn in due course to the wider points on accessibility you raise, but wanted to first consider those points in the context of the Curriculum and Assessment (Wales) Bill.

The Government is strongly committed to promoting accessibility in legislation, and the use of the Welsh language. This lies behind the position set out in our drafting guidance that, when a definition or expression is used in a Bill, consideration should always be given to whether it should be set out in full in the Bill concerned (as opposed to including in that Bill a pointer to a pre-existing definition set out elsewhere in legislation). In the context of bi-lingual legislation, this decision (whether to restate a pre-existing definition) is a particularly significant one. This is because the result of not restating a definition or expression given in an existing Act of Parliament is that the definition or expression is available only in English, not in both Welsh and English.

In the context of the Curriculum and Assessment (Wales) Bill, as you have noted, the Bill does not restate definitions used in the Education Act 1996. Instead the Bill provides (in section 77) that expressions in it that are defined in, or given a meaning by, the Education Act 1996 have the same meaning as in that Act. The Bill also includes provision (in section 68) to the effect that it is one of the Education Acts.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

YPCCGB@llyw.cymru PSCGMET@gov.wales

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

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

The “Education Acts” in this context are certain Acts that are listed in the Education Act 1996. These Acts are defined together with the Education Act 1996 itself as being the “Education Acts”. Definitions and expressions used in the Education Act 1996 feed through into the other “Education Acts” unless there is express provision otherwise.

This approach permits a high degree of uniformity and cohesion within the education law system as a whole. It means that definitions and expressions used in any one of the “Education Acts” are likely to build on expressions in the parent Act, i.e. the Education Act 1996, that are also used in other “Education Acts”.

In case it is helpful for the Committee, I attach a list of the expressions used in the Bill that are defined in, or given meaning by, the Education Act 1996.

In the course of drafting the Bill, consideration was given to whether these expressions should be restated in the Bill. The issue was considered from a drafting and legal policy perspective, taking into account our commitment to accessibility and bi-lingual drafting: the advantage of restatement would be to achieve bilingual definitions of terms used in the Bill. Though it is worth noting that where expressions are integral to the new curriculum framework, for instance “the four purposes”, “mandatory elements”, “cross-curricular skills”, they are in any event defined in the Bill. Despite this advantage it was decided on both drafting and legal policy grounds to avoid restatement. The object of this decision was to avoid undermining accessibility and the coherence of the body of education law set out in the Education Acts.

A range of factors were taken into account in reaching the decision that restatement, on this occasion, would undermine accessibility and coherence. It may be helpful to the Committee if I set these out in more detail:

- The starting point in considering the issue was the complex nature of the expressions that would need to be restated, given their relationship with other defined expressions. Restatement of an expression defined in the Education Act 1996 would involve restatement not only of expressions defined in that Act, but of expressions and definitions feeding into those definitions, and even of expressions and definitions feeding into those subsidiary expressions and definitions.
- Say for instance the Bill was to restate the definition of “school” given in the Education Act 1996, rather than relying on the definition given in the 1996 Act. In order to achieve this, the Bill of course would need to restate the definition of “school” set out in section 4 of the Education Act 1996. But this would just be a starting point. The Bill would also need to restate certain expressions (defined in the 1996 Act and elsewhere) that feed into the definition of “school” in section 4: for instance, “further education sector”, “higher education sector”, “primary education”, “secondary education”, “further education”, “early years provision”, “maintained nursery school”, “further education corporation”, and “sixth form college”.
- In addition to this, the Bill would need to restate any expressions and definitions themselves feeding into the subsidiary terms mentioned in paragraph 15. For example, in order to restate the definition of “primary education” (which would be needed in order to restate the definition of “school”) the Bill would also need to restate the definitions of “pupil”, “junior pupil”, “compulsory school age”, and “governing body”.

- It is important to note the above example relates to the potential restatement of only one expression: “school”. If the Bill pursued a policy of restatement of all of the expression and definitions incorporated from the 1996 Act (see Annex), the same issue would arise in relation to each expression restated. For each, the question would be the extent to which restatement also required complex and lengthy restatement of subsidiary definitions without direct relationship to the subject matter of the Bill.
- The result would be likely to be lengthy provision in the Bill, not simply restating expressions of direct relevance to the Bill, but restating provision relating to the educational system more generally, and the various institutions comprised within the educational system. So a Bill about the curriculum would contain lengthy and often complex provision about matters extraneous to the curriculum.
- This would render the actual subject matter of the Bill less obvious and in this sense decrease accessibility. It would also significantly alter the scope of the Bill.
- It would also considerably increase the potential for misalignment of provisions at a future date. The body of education law is not fixed. Definitions and expressions in the Education Act 1996, and definitions and expressions in other Education Acts that are treated as being included in that Act, may be added to and revised by primary legislation. If the Bill restated these definitions and expressions, the danger of accidental divergence would inevitably increase. (It is worth noting that the approach adopted in existing law, revolving around a parent Act and a body of “Education Acts” is presumably designed deliberately to minimise the risk of this type of divergence.)
- In addition this approach would mean a significant divergence from that adopted across education law as a whole. Obviously consistency is only one of a range of factors to be taken into account: but in the context of an extensive body of law that is widely accepted by practitioners as operating on the basis of a shared cohort of definitions, this divergence is considered to have the potential in itself to undermine accessibility.

This situation is far from ideal but reflects the current state of the body of education law and in particular the interconnected nature of the various statutes and the expressions used in them, given the general and widely applied concept of “Education Acts”. I am therefore content that definitions used in the Education Acts (including in the Education Act 1996) should not have been restated in the Bill, as adopting such an approach in the context I have set out would have adverse effects in terms of accessibility, consistency and coherence across the body of education law.

Turning to your other main point on definitions, I agree there can be a value in using alternative approaches to restating them within legislation. This is something we considered as part of the consultation on *The Future of Welsh Law* last year, and I believe it will need to continue to be an area that is considered and developed further under the first formal programme to be brought forward in the next Senedd. For that reason and the for the reasons I have outlined above, I have asked for the Explanatory Notes for this Bill to be updated, at the first suitable opportunity, to include a copy of the list I have attached to this letter. It may not be an appropriate approach for other Bills, but on this occasion I consider it a sensible alternative.

Your letter also touches on issues of partial consolidation, dealing with spent provisions and restatement. I have discussed some of these matters with the Committee before, but I think it is helpful to again think about these in the context of the Curriculum and Assessment (Wales) Bill. The object of the Bill is to establish a new curriculum framework, and it is not a consolidation Bill. However the effect of the establishment of the new framework for 3 to 16 year olds is to bring that framework within one statute.

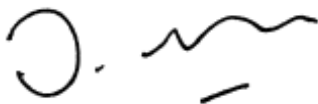
Under existing statutory provision that is not the case: the existing curricular provision for 3 to 16 year olds is currently scattered across four Acts – the Education Act 1996, the Education Act 2002, the School Standards and Framework Act 1998, and the Learning and Skills (Wales) Measure 2009. The effect of the Bill however is that the curriculum framework for this age group will now fall within a single Act. This bringing together of existing legislation with new legislative provision, so that a single substantive Act becomes the key source of legislation on a topic has been an approach we have sought to follow wherever possible since 2011. It of course forms the cornerstone of our thinking for codification. Where we can we will continue to use law reform Bills in this way, as we believe it improves accessibility for the end user and increases the amount of bilingual legislation on the statute book.

The Curriculum and Assessment (Wales) Bill is also not a statute law repeals Bill (in other words, a Bill that has as its sole purpose to remove spent and obsolete provision from the statute book). However, in producing consequential amendments opportunities have, where appropriate, been taken to remove provisions associated with the curriculum framework that are obsolete or spent, and to ensure that provisions amended are left in a form that facilitates accessibility and do not include obsolete or spent provision for Wales.

Again this is not a new approach, it is one that we have sought to use where we can. I am keen to see efforts made to tackle obsolete or spent provisions, as I consider they can be a source of confusion for readers of the legislation and do not aid clarity and certainty. A prime method for doing this will be through the consolidation Bills that we will be bringing forward, but clearly that will be insufficient in itself in dealing with this issue. We will continue to use law reform Bills where appropriate to do so, but I am also interested in considering whether opportunities could be taken to bring forward stand alone legislation aimed at dealing with particular areas of the law. Again it is something I hope will be considered as part of future programmes to improve the accessibility of Welsh law.

I am grateful to the Committee for their continuing interest in these matters. I am copying this letter to the Minister for Education.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a series of loops and a horizontal line at the end.

Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Agenda Item 13.4



**Llywodraeth Cymru
Welsh Government**

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

29 October 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement, that this afternoon, Thursday 29 October, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually. The meeting will discuss the negotiations between the UK-EU, including the Withdrawal Agreement Joint Committee and Specialised Committees and the Northern Ireland Protocol; an update on transition matters including UK Readiness, and a discussion on the UK Internal Market.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).

Yours sincerely,

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for
European Transition**

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSCGBM@gov.wales / YPCCGB@llyw.cymru

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

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

Agenda Item 15

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

Document is Restricted

Document is Restricted

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

Document is Restricted



Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

16 September 2020

Dear Mick

I am writing in response to your letter regarding scrutiny of regulations arising from the UK's exit from the European Union and the Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru.

As you have highlighted in your letter, the Protocol that was agreed in October 2018 between your Committee and the Welsh Government ceased to have effect on 31 January 2020 according to its agreed terms. The Protocol has positively contributed to effective working between the Welsh Government and the Senedd, and I agree that in light of the transition period and in expectation of further EU exit related legislation, the Protocol should continue to apply, as originally drafted, to regulations made by the Welsh Ministers under the European Union (Withdrawal) Act 2018 while at the same time expanding its terms to apply to relevant regulations made under the European Union (Withdrawal Agreement) Act 2020 or the 2018 Act as amended by the 2020 Act, and also to regulations made by the Welsh Ministers under the Agriculture, Fisheries, Environment and Trade Bills once enacted.

Regarding the operation of the Standing Order 30C process, I also agree that the resurrected Protocol could be a vehicle for the Welsh Government to commit to following the principle of the Standing Order 30C process when Welsh Ministers consent to relevant regulations under the 2020 Act, the 2018 Act as amended by the 2020 Act and, following further review, the Agriculture, Fisheries, Environment and Trade Bills once enacted.

This agreement will need to be kept under review, and any further amendments to the Protocol will need to be discussed and agreed when necessary. This expanded Protocol should have effect until the end of the Fifth Senedd.

Best Wishes

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

Back Page 842
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Rt Hon Mark Drakeford MS
First Minister of Wales

23 July 2020

Dear Mark

Scrutiny of regulations arising from the UK's exit from the European Union - Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

I am writing to you with regards to the **Protocol** that was agreed in October 2018 with our Committee and the Welsh Government. You will know that the Protocol was agreed within the context of the United Kingdom's exit from the European Union and the Welsh Ministers' powers to make regulations under the *European Union (Withdrawal) Act 2018* (the 2018 Act).

We recognise that under the terms of the Protocol it ceased to exist on 31 January 2020. However, in light of the transition period and in expectation of further EU exit related legislation, we believe there is merit in resurrecting the Protocol so that it continues to apply to regulations made under the 2018 Act while at the same time expanding its terms as set out below.

The Protocol set out an understanding between our Committee and the Welsh Government of the administrative arrangements for the scrutiny of regulations that are to be made by the Welsh Ministers under the powers conferred by Part 1 of Schedule 2 to the 2018 Act. At the time the Protocol was drafted and agreed, there was recognition that there would be a need to keep the Protocol under review, particularly as regards its application to the scrutiny of regulations made or to be made under other relevant EU exist related Acts (paragraph 18).

At our meeting on 6 July 2020, we discussed our forward work plans for the autumn term. We are mindful of the comments made to date, by both yourself and the Counsel General, about the potential for a significant volume of EU exit related subordinate legislation to be made before the end of this calendar year. This will, inevitably, have implications for our Committee's workload during the autumn term, and I am writing



Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddDCC@senedd.cymru
☎ 0300 200 6565

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddLJC@senedd.wales
☎ 0300 200 6565

separately to the Trefnydd and Counsel General to request an update on the likely volume of such subordinate legislation.

While that update will be beneficial to our work planning, we appreciate that the programme of EU exit legislation will be subject to change, as was the case with the initial tranche of subordinate legislation that was made to ensure the continued effectiveness of retained EU law after exit day. As such, we would now like to ask that a resurrected Protocol be expanded to apply to relevant regulations made under the *European Union (Withdrawal Agreement) Act 2020* (the 2020 Act). Further, we ask that you give consideration as to whether a resurrected Protocol should also apply in the future to relevant regulations made under other key EU exit related primary legislation, particularly the Agriculture, Fisheries, Environment and Trade Bills once enacted.

In addition to the matter of extending the application of a resurrected Protocol to other EU exit related legislation, we would also like to raise with you the operation of the Standing Order 30C process.

As you are aware Standing Order 30C applies only to regulations made under the 2018 Act. During our scrutiny of legislative consent memoranda for each subsequent EU exit related Bill, where appropriate we have considered and made recommendations regarding how the Senedd should be notified when relevant regulations are made by UK Ministers in devolved areas with the consent of the Welsh Ministers.

To date we have received inconsistent responses from the Welsh Ministers in relation to our recommendations. For example, with regards to relevant regulations that may be made under the Fisheries [Act], the Minister for Environment, Energy and Rural Affairs said that she would not follow the principle of the Standing Order 30C process but would write to our Committee. However, with regards to relevant regulations that may be made under the Environment [Act], the Minister told us that she would formally notify the Senedd as per the Standing Order 30C process.

We are, as ever, mindful of the pressures placed on the Welsh Government, and none more so than at a time of a global health emergency. However, the issue of the Welsh Ministers consenting to another government to act on its behalf in a devolved area is a significant constitutional matter, and one which all Senedd Members should be made aware of in timely fashion. It is for this reason we have in our reports recommended the extension of the Standing Order 30C process where it has been appropriate to do so.

We would like to suggest that the Protocol be used as a vehicle for the Welsh Government to commit to abide by the principle of Standing Order 30C when making relevant regulations under the 2020 Act, and the Agriculture, Fisheries, Environment and Trade Bills once enacted. This could be kept under review, and any further amendments to the Protocol could be discussed and agreed when necessary.

This approach would avoid the need to amend the Senedd's Standing Orders in the short term, while also providing an opportunity for further reflection on the suitability of Standing Order 30C in the long term.



We suggest that a resurrected and expanded Protocol should have effect until the end of the Fifth Senedd. It would then be a matter for our successor Committee to discuss with the next Welsh Government in the Sixth Senedd.

I look forward to receiving your response at the earliest opportunity, and preferably before the start of the Senedd's autumn term.

Yours sincerely,

A handwritten signature in dark ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

