

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 14 December 2020	Committee Clerk
Meeting time: 09.30	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 (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest**
09.30
 - 2 Proposed Order in Council – The Government of Wales Act 2006
(Amendment) Order 2021: Evidence session**
09.30–10.15 (Pages 1 – 26)
Jeremy Miles MS, Counsel General
Christopher Warner, Deputy Director, Constitution and Justice, Welsh
Government
Anna Hind, Lawyer, Welsh Government
- CLA(5)–37–20 – Briefing
CLA(5)–37–20 – Paper 1 – Proposed Order
CLA(5)–37–20 – Paper 2 – Explanatory Memorandum (Welsh Government)
CLA(5)–37–20 – Paper 3 – Explanatory Memorandum (UK Government)



3 Instruments previously considered for sifting and now subject to scrutiny under Standing Orders 21.2 and 21.3

10.15–10.20

Negative Resolution Instruments

3.1 SL(5)677 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020

(Pages 27 – 53)

CLA(5)–37–20 – Paper 4 – Report

CLA(5)–37–20 – Paper 5 – Regulations

CLA(5)–37–20 – Paper 6 – Explanatory Memorandum

3.2 SL(5)684 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

(Pages 54 – 67)

CLA(5)–37–20 – Paper 7 – Report

CLA(5)–37–20 – Paper 8 – Regulations

CLA(5)–37–20 – Paper 9 – Explanatory Memorandum

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

10.20–10.25

(Pages 68 – 70)

CLA(5)–37–20 – Paper 10 – Statutory Instruments with clear reports

Negative Resolution Instruments

4.1 SL(5)679 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2020

4.2 SL(5)680 – The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020

4.3 SL(5)687 – The Producer Responsibility Obligations (Packaging Waste) (Amendment) (Wales) Regulations 2020

Affirmative Resolution Instruments

4.4 SL(5)688 – The Senedd Cymru (Representation of the People) (Amendment) Order 2020

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

10.25–10.35

Negative Resolution Instruments

5.1 SL(5)681 – The Rating Lists (Valuation Date) (Wales) Order 2020

(Pages 71 – 79)

CLA(5)–37–20 – Paper 11 – Report

CLA(5)–37–20 – Paper 12 – Regulations

CLA(5)–37–20 – Paper 13 – Explanatory Memorandum

5.2 SL(5)683 – The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020

(Pages 80 – 91)

CLA(5)–37–20 – Paper 14 – Report

CLA(5)–37–20 – Paper 15 – Regulations

CLA(5)–37–20 – Paper 16 – Explanatory Memorandum

5.3 SL(5)686 – The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020

(Pages 92 – 116)

CLA(5)–37–20 – Paper 17 – Report

CLA(5)–37–20 – Paper 18 – Regulations

CLA(5)–37–20 – Paper 19 – Explanatory Memorandum

CLA(5)–37–20 – Paper 20 – Letter from the Minister for Finance and

Trefnydd, 3 December 2020

Affirmative Resolution Instruments

5.4 SL(5)670 – The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020

(Pages 117 – 155)

CLA(5)–37–20 – Paper 21 – Report

CLA(5)–37–20 – Paper 22 – Regulations

CLA(5)–37–20 – Paper 23 – Explanatory Memorandum

5.5 SL(5)672 – The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020

(Pages 156 – 184)

CLA(5)–37–20 – Paper 24 – Report

CLA(5)–37–20 – Paper 25 – Regulations

CLA(5)–37–20 – Paper 26 – Explanatory Memorandum

5.6 SL(5)673 – The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

(Pages 185 – 222)

CLA(5)–37–20 – Paper 27 – Report

CLA(5)–37–20 – Paper 28 – Regulations

CLA(5)–37–20 – Paper 29 – Explanatory Memorandum

5.7 SL(5)682 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2021

(Pages 223 – 245)

CLA(5)–37–20 – Paper 30 – Report

CLA(5)–37–20 – Paper 31 – Regulations

CLA(5)–37–20 – Paper 32 – Explanatory Memorandum

CLA(5)–37–20 – Paper 33 – Written statement, 1 December 2020

Made Affirmative Resolution Instruments

5.8 SL(5)685 – The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

(Pages 246 – 269)

CLA(5)–37–20 – Paper 34 – Report

CLA(5)–37–20 – Paper 35 – Regulations

CLA(5)–37–20 – Paper 36 – Explanatory Memorandum

CLA(5)–37–20 – Paper 37 – Letter from the First Minister, 3 December 2020

CLA(5)–37–20 – Paper 38 – Written statement, 3 December 2020

CLA(5)–37–20 – Paper 39 – Written statement, 30 November 2020

5.9 SL(5)690 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020

(Pages 270 – 286)

CLA(5)–37–20 – Paper 40 – Report

CLA(5)–37–20 – Paper 41 – Regulations

CLA(5)–37–20 – Paper 42 – Explanatory Memorandum

CLA(5)–37–20 – Paper 43 – Letter from the Minister for Health and Social Services, 8 December 2020

CLA(5)–37–20 – Paper 44 – Written statement, 9 December 2020

5.10 SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

(Pages 287 – 301)

CLA(5)–37–20 – Paper 45 – Report

CLA(5)–37–20 – Paper 46 – Regulations

CLA(5)–37–20 – Paper 47 – Explanatory Memorandum

CLA(5)–37–20 – Paper 48 – Letter from the Minister for Housing and Local Government, 9 December 2020

CLA(5)–37–20 – Paper 49 – Written statement, 10 December 2020

6 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

10.35–10.40

6.1 SL(5)674 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020

(Pages 302 – 334)

CLA(5)–37–20 – Paper 50 – Report

CLA(5)–37–20 – Paper 51 – Regulations

CLA(5)–37–20 – Paper 52 – Explanatory Memorandum

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

10.40–10.45

7.1 SL(5)662 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 335 – 337)

CLA(5)–37–20 – Paper 53 – Report

CLA(5)–37–20 – Paper 54 – Welsh Government response

8 Written Statements under Standing Order 30C

10.45–10.50

8.1 WS–30C(5)207 – The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020

(Pages 338 – 342)

CLA(5)–37–20 – Paper 55 – Written statement

CLA(5)–37–20 – Paper 56 – Commentary

8.2 WS–30C(5)208 – The Food and Drink (Amendment) (EU Exit) Regulations 2020

(Pages 343 – 346)

CLA(5)–37–20 – Paper 57 – Written statement

CLA(5)–37–20 – Paper 58 – Commentary

9 Papers to note

10.50–10.55

9.1 Letter from the Counsel General: Ministerial Forum for Trade

(Page 347)

CLA(5)–37–20 – Paper 59 – Letter from the Counsel General, 7 December 2020

9.2 Letter from the Minister for Finance and Trefnydd: Consultation on a revised Regulatory Impact Assessment Code for Subordinate Legislation

(Pages 348 – 352)

CLA(5)–37–20 – Paper 60 – Letter from the Minister for Finance and Trefnydd, 8 December 2020

CLA(5)–37–20 – Paper 61 – Letter to the Minister for Finance and Trefnydd, 5 December 2019

CLA(5)–37–20 – Paper 62 – Letter from the Minister for Finance and Trefnydd, 21 November 2020

CLA(5)–37–20 – Paper 63 – Letter to the Minister for Finance and Trefnydd, 31 October 2019

9.3 Letter from the Minister for Education: Curriculum and Assessment (Wales) Bill

(Page 353)

CLA(5)–37–20 – Paper 64 – Letter from the Minister for Education, 9 December 2020

9.4 Letter from the Minister for Housing and Local Government: The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

(Pages 354 – 355)

CLA(5)–37–20 – Paper 65 – Letter from the Minister for Housing and Local Government, 10 December 2020

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

10.55

11 Proposed Order in Council – consideration of evidence

10.55–11.10

12 Supplementary Legislative Consent Memorandum on the Medicines and Medical Devices Bill – consideration of draft report

11.10–11.20

(Pages 356 – 360)

CLA(5)–37–20 – Paper 66 – Draft report

13 Supplementary Legislative Consent Memorandum on the Environment Bill

11.20–11.30

(Pages 361 – 364)

CLA(5)–37–20 – Paper 67 – Supplementary Legislative Consent Memorandum

14 UK Internal Market Bill – update

11.30–11.40

(Pages 365 – 376)

CLA(5)–37–20 – Paper 68 – Research Service briefing

15 Scrutiny of regulations made under the EU (Withdrawal) Act 2018 – update

11.40–11.45

(Pages 377 – 378)

CLA(5)–37–20 – Paper 69 – Letter from the Minister for Finance and
Trefnydd, 10 December 2020

16 Forward Work Programme – Spring 2021

11.45–12.15

(Pages 379 – 384)

CLA(5)–37–20 – Paper 70 – Forward Work Programme

Date of the next meeting – 11 January 2021

Document is Restricted

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

2021 No.

EXITING THE EUROPEAN UNION

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The Government of Wales Act 2006 (Amendment) Order 2021

Made - - - - - ***

Coming into force - - - - - ***

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

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament and Senedd Cymru in accordance with section 109(4) of the Government of Wales Act 2006(a).

Her Majesty, in exercise of the powers conferred by section 109 of that Act, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Amendment) Order 2021 and comes into force on the day after the day on which it is made.

(2) In this Order, “the 2006 Act” means the Government of Wales Act 2006.

Amendment of Schedule 7A to the 2006 Act

2.—(1) Schedule 7A (reserved matters) to the 2006 Act is amended as follows.

(2) In paragraph 10(3)(a) of Schedule 7A to the 2006 Act(b)—

(a) for the comma after “international obligations”, substitute “and”; and

(a) 2006 c. 32. Section 109 was amended by paragraphs 1 and 3 of Schedule 6 to the Wales Act 2017 (c. 4) (“the 2017 Act”) and paragraph 2(1) and (19) of Schedule 1 to the Senedd and Elections (Wales) Act 2020 (anaw 1).

(b) Schedule 7A was inserted by Schedule 1 to the 2017 Act.

- (b) omit “and obligations under EU law”.
- (3) In the heading of paragraph 20, omit “and the European Parliament”.
- (4) In paragraph 20, omit “and the European Parliament”.
- (5) In paragraph 26(b), omit “or the European Parliament”.
- (6) In the definition of “Existing elections Acts” that follows paragraph 27, omit sub-paragraph (f).
- (7) Omit paragraph 30.
- (8) In the definition of “psychoactive substances” that follows paragraph 54, for “2015” substitute “2016”.

Amendment of paragraph 7 of Schedule 7B to the 2006 Act

3.—(1) Paragraph 7 (restrictions on modifications of provisions of the 2006 Act) of Schedule 7B (general restrictions)(a) to the 2006 Act is amended as follows.

- (2) In sub-paragraph (2)—
 - (a) in paragraph (a), omit sub-paragraph (xviii); and
 - (b) in paragraph (b)(i), after “sections” insert “51,”.

Amendment of paragraph 9 of Schedule 7B to the 2006 Act

4.—(1) Paragraph 9 (exceptions to the restrictions in paragraph 8) of Schedule 7B to the 2006 Act is amended as follows.

- (2) After sub-paragraph (2)(h), insert—
 - “;
 - (i) the Controller of Plant Variety Rights**(b)**”.
- (3) In sub-paragraph (4)(a), omit “(within the meaning of paragraph 6 of Schedule 7A)”.
- (4) After sub-paragraph (4), insert—

“(4A) In sub-paragraph (4)(a), a “devolved function” is a function involving deciding an application or an appeal in relation to a matter that is not a reserved matter, but this does not include the function of deciding an appeal from a court or from a tribunal to which paragraph 9 of Schedule 7A applies (tribunals other than devolved tribunals).”.
- (5) After sub-paragraph (7), insert—

“(8) Paragraph 8(1)(c) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, a function specifically exercisable in relation to a Minister of the Crown where that function is the giving of consent by the Welsh Ministers and that function—

 - (a) exists to any extent by virtue of regulations made under sections 8 to 8C of the European Union (Withdrawal) Act 2018**(c)**; or
 - (b) is conferred by, or by regulations made under—
 - (i) the European Union (Withdrawal Agreement) Act 2020**(d)**;
 - (ii) the Direct Payments to Farmers (Legislative Continuity) Act 2020**(e)**;
 - (iii) the Coronavirus Act 2020**(f)**;

(a) Schedule 7B was inserted by Schedule 2 to the 2017 Act.
 (b) See section 2 of the Plant Varieties Act 1997 (c. 66).
 (c) 2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). Section 8A was inserted by section 3 of the 2020 Act, section 8B was inserted by section 18 of the 2020 Act and section 8C was inserted by section 21 of the 2020 Act.
 (d) 2020 c. 1.
 (e) 2020 c. 2.
 (f) 2020 c. 7.

- (iv) the Agriculture Act 2020^(a);
- (v) the Fisheries Act 2020^(b); or
- (vi) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(9) Paragraph 8(1)(c) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, a function specifically exercisable in relation to a Minister of the Crown where that function is the seeking of consent, or consultation, by the Welsh Ministers, in relation to the exercise by the Welsh Ministers of a function that is to any extent exercisable concurrently with a Minister of the Crown, and is conferred by, or by regulations made under—

- (a) the European Union (Withdrawal Agreement) Act 2020;
- (b) the Fisheries Act 2020; or
- (c) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.”.

Amendment of paragraph 10 of Schedule 7B to the 2006 Act

5.—(1) Paragraph 10 (removal or modification of functions of a public authority) of Schedule 7B to the 2006 Act is amended as follows.

- (2) After sub-paragraph (2)(m), insert—

“(n) the Controller of Plant Variety Rights.”.

- (3) In sub-paragraph (4)(a), omit “(within the meaning of paragraph 6 of Schedule 7A)”.

- (4) After sub-paragraph (6), insert—

“(7) In this paragraph “devolved function” has the same meaning as in paragraph 9(4A).”.

Amendment of paragraph 11 of Schedule 7B to the 2006 Act

6.—(1) Paragraph 11 (removal or modification of Minister of the Crown functions) of Schedule 7B to the 2006 Act is amended as follows.

- (2) After sub-paragraph (2), insert—

“(2A) Where sub-paragraph (1)(a) does not apply by virtue of sub-paragraph (6) or (7), a provision of an Act of the Senedd cannot remove, or confer power by subordinate legislation to remove, any function unless the Welsh Ministers have consulted the appropriate Minister about the provision.”.

- (3) After sub-paragraph (5), insert—

“(6) Sub-paragraph (1)(a) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, any function of a Minister of the Crown that is to any extent exercisable concurrently where that function—

- (a) exists to any extent by virtue of regulations made under sections 8 to 8C of the European Union (Withdrawal) Act 2018; or
- (b) is conferred by, or by regulations made under—
 - (i) the European Union (Withdrawal Agreement) Act 2020;
 - (ii) the Direct Payments to Farmers (Legislative Continuity) Act 2020;
 - (iii) the Coronavirus Act 2020;
 - (iv) the Agriculture Act 2020;
 - (v) the Fisheries Act 2020; or

(a) 2020 c. 21.
(b) 2020 c. 22.

(vi) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(7) Sub-paragraph (1)(a) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, any function of a Minister of the Crown, where that function concerns consent or agreement to, or consultation about, the exercise of a function that is to any extent exercisable concurrently with a Minister of the Crown and is conferred by, or by regulations made under—

- (a) the European Union (Withdrawal Agreement) Act 2020; or
- (b) the Fisheries Act 2020; or
- (c) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(8) Sub-paragraphs (6) and (7) do not have effect in relation to a function of a Minister of the Crown to regulate British fishing boats in the Welsh zone.

(9) In sub-paragraph (8), the reference to British fishing boats does not include Welsh fishing boats; and “British fishing boat” and “Welsh fishing boat” have the same meaning as in section 52 of the Fisheries Act 2020.”.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedules 7A and 7B to the Government of Wales Act 2006 (c. 32) (“the 2006 Act”). It comes into force on the day after the day on which the Order is made. The provisions fall into three categories.

The first category of amendments corrects deficiencies that arise as a result of leaving the EU (see article 2(2) to (7)).

The second category of amendments corrects errors in the 2006 Act (see articles 2(8), 3, 4(2) to (4) and 5).

The third category of amendments disapplies some of the restrictions in paragraphs 8 and 11 of Schedule 7B to the 2006 Act in relation to concurrent functions that exist as a result of certain specified legislation (see articles 4(5) and 6).

An 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
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2021
2021 No. [XXXX]

Introduction

1. This explanatory memorandum has been prepared by the Welsh Government in accordance with Standing Order 25.5. It should be read in conjunction with the Explanatory Memorandum prepared by the Office of the Secretary of State for Wales.

Summary of this proposed Order

2. The proposed Order is to be made under section 109 of the Government of Wales Act 2006 (GoWA). It will:
 - correct a number of deficiencies in Schedules 7A and 7B to GoWA arising from the UK's exit from the European Union;
 - correct drafting errors that were inserted into GoWA by the Wales Act 2017; and
 - provide a carve out from the consent requirements in Schedule 7B in respect of concurrent and concurrent plus functions created by EU exit legislation and the Coronavirus Act 2020.

Legislative context

3. The whole Order will come into force on the day after it is made as set out in Article 1(1).

Amendment of Schedule 7A to the 2006 Act

4. The amendments in Article 2(2) to paragraph 10(3)(a) of Schedule 7A remove references to obligations under EU law, which will be unnecessary as a result of the UK leaving the European Union.
5. The amendments in Article 2(3) – (7) to section B1 (Elections) of Schedule 7A remove references to the European Parliament and remove the European Parliamentary Elections Act 2002 from the definition of “existing elections acts”. The reservation at paragraph 30 of Schedule 7A, concerning “free movement of persons within the European Economic Area”, is also removed.
6. The amendment in Article 2(8) after paragraph 54, the reservation concerning the “Misuse of and dealing in drugs or psychoactive substances”, corrects the reference to the Psychoactive Substances Act 2016, which is erroneously dated as 2015.

Amendment of paragraph 7 of Schedule 7B to the 2006 Act

7. The amendments in Article 3 to paragraph 7 of Schedule 7B correct an error that was inserted by the Wales Act 2017. They reflect the fact that section 51 of GoWA is in Part 2, rather than in Part 1, where it had been incorrectly listed.

Amendment of paragraph 9 of Schedule 7B to the 2006 Act

8. The amendments in Article 4(2) to paragraph 9 of Schedule 7B, insert the Controller of Plant Variety Rights into the list of cross border bodies in paragraph 9(2). The bodies listed in those paragraphs are exempt from the requirements in paragraph 8(1)(a) to obtain UK Government consent to Senedd legislation which includes provisions that confer functions on or remove functions of reserved authorities.
9. Article 5(2) makes the same amendment in relation to paragraph 10 of Schedule 7B.
10. Amendments in Article 4(3) and (4) correct a drafting error inserted by the Wales Act 2017 and inserts an amendment providing a missing definition of “devolved function” in relation to the exemption of conferring and imposing functions on courts from Minister of the Crown consent requirements.
11. Article 4(5) also inserts paragraphs 9(8) and (9) into Schedule 7B. These paragraphs provide carve outs from the consent requirements of 8(1)(c), where a function of the Welsh Ministers is exercisable specifically in relation to a reserved authority.
12. New sub-paragraph (8) provides the carve out from the consent requirement in paragraph 8(1)(c), in so far as it would be engaged if an Act of Senedd Cymru sought to remove a “concurrent plus” function (where the function can be exercised by the UK Government in relation to Wales, but only with the consent of the Welsh Ministers). The carve out applies only to relevant functions which exist by virtue of any enactments which are specified, by description or by name in sub-paragraph (8). These are:
 - functions created by regulations made under s.8 of the European Union (Withdrawal) Act 2018. This will cover the number of new functions created in regulations made under this Act as part of the EU Exit SI programme;
 - functions conferred by, or in regulations made under
 - (a) the European Union (Withdrawal Agreement) Act 2020;
 - (b) the Direct Payments to Farmers (Legislative Continuity) Act 2020;
 - (c) the Coronavirus Act 2020;
 - (d) the Agriculture Act 2020;
 - (e) the Fisheries Act 2020; and
 - (f) the Trade Bill.
13. New sub-paragraph (9) provides an additional carve out where there is a Welsh Minister function of obtaining consent from, or consulting the Secretary of State, in connection with a substantive function that is to any extent exercisable concurrently. The carve applies to functions conferred by, or in regulations made under:
 - (a) the European Union (Withdrawal Agreement) Act 2020;
 - (b) the Fisheries Act 2020; and

(c) the Trade Bill.

Amendment of paragraph 10 of Schedule 7B to the 2006 Act

14. Article 5 amends paragraph 10 of Schedule 7B (removal or modification of Minister of the Crown functions). This mirrors the amendments made under Article 4 paragraphs (2) and (3).

Amendment of paragraph 11 of Schedule 7B to the 2006 Act

15. Article 6 amends paragraph 11 of Schedule 7B and inserts a new sub-paragraph (2A). This ensures that where the removal of a relevant Minister of the Crown function does not require consent in consequence of the amendments made to paragraph 11 by this Order, there is nonetheless a requirement to consult the UK Government.

16. Article 6(3) inserts new sub-paragraphs (6) to (9) into paragraph 11 of Schedule 7B. This new text disapplies, in part, the consent requirement relating to the removal of Minister of the Crown functions that relate to qualified devolved functions.

17. The new sub-paragraph (6) will only disapply the consent requirement in paragraph 11(1)(a) in respect of Minister of the Crown functions that are to any extent exercisable concurrently with the Welsh Ministers. Again, the carve out will only apply to the removal of the relevant Minister of the Crown functions that exist by virtue of the following list of enactments:

- functions created by regulations made under s.8 of the European Union (Withdrawal) Act 2018. This will cover the number of new functions created in regulations made under this Act as part of the EU Exit SI programme;
- functions conferred by, or in regulations made under
 - (a) the European Union (Withdrawal Agreement) Act 2020;
 - (b) the Direct Payments to Farmers (Legislative Continuity) Act 2020;
 - (c) the Coronavirus Act 2020;
 - (d) the Agriculture Act 2020; and
 - (e) the Fisheries Act 2020.(f) the Trade Bill.

18. The new sub-paragraph (7) disapplies the consent requirement of 11(1)(a) where the Minister of the Crown function being removed relates to Welsh Minister functions that are only exercisable after obtaining the consent or agreement of, or after consultation with the Minister of the Crown. This will ensure that in addition to being able to remove the relevant substantive Minister of the Crown functions without consent, the Senedd can also remove the incidental functions of the Minister of the Crown that relate to the extra restrictions imposed on the Welsh Ministers' exercise of the relevant functions.

19. New sub-paragraph (8) provides an exception to the previous carve out such that it does not have effect where the Minister of the Crown function to be removed is a function of regulating British fishing boats, except Welsh fishing boats, in the

Welsh zone. New sub-paragraph (9) cross-refers to the relevant definitions in the Fisheries Act 2020.

Policy context

There are three main purposes of the amendments to Schedule 7A and Schedule 7B to GoWA. The first category of amendments correct deficiencies that arise as a result of the United Kingdom leaving the EU. The second category is to correct drafting errors in GoWA. The third category removes some of the Minister of the Crown consent requirements in relation to concurrent and concurrent plus functions created by EU exit legislation and by a number of listed enactments. This final category is important in terms of protecting the Senedd's legislative competence. The carve outs from consent requirements negate the potential restrictions on competence that would have arisen as a result of the number of concurrent and concurrent plus functions that were created in consequence of the EU Exit SI programme, EU Exit Bills and the Coronavirus Act 2020.

There are no future policy obligations arising from this Order. Orders made under this power are made subject to the affirmative procedure in both Houses of Parliament as well as the Senedd. Officials from the Welsh Government and Office of the Secretary of State of Wales have worked in conjunction to develop and negotiate the content of the Order.

Consultation

There has been no consultation on this Order, but the Welsh Government and the Office of the Secretary of State for Wales have worked together to develop it.

Financial Implications

There are no financial implications associated with this Order.

Jeremy Miles MS

Counsel General and Minister for European Transition

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2021
[Year] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Wales and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order made under section 109 of the Government of Wales Act 2006 (GoWA) amends Schedules 7A and 7B to that Act in light of the United Kingdom's exit from the European Union. The Order removes references in the list of reservations in Schedule 7A that are no longer relevant outside of the EU. It also modifies the consenting arrangements in Schedule 7B in relation to the removal of Minister of the Crown functions that are exercised concurrently with Welsh Ministers. The Order makes a small number of corrections to both Schedules.

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 This entire instrument applies to England and Wales only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the Senedd Cymru / Welsh Parliament if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is UK wide.
- 4.2 The territorial application of this instrument is set out in Section 3 under "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)".

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Wales David Davies MP has made the following statement regarding Human Rights:

"In my view the provisions of the Government of Wales Act 2006 (Amendment) Order 2021 are compatible with the Convention rights."

6. Legislative Context

Consent Requirements

- 6.1 Section 8 of the European Union (Withdrawal) Act 2018 (EUWA) provides a power for Ministers of the Crown to fix deficiencies in retained EU law that would arise on exit day. In correcting deficiencies, a number of SIs made under this power have provided for functions currently exercised in the context of the UK's membership of the EU to be exercised concurrently by Ministers of the Crown and devolved administrations after exit. A number of new concurrent functions are also being established through the UK Government's primary legislative programme subject to the Senedd's consent.
- 6.2 Many of the concurrent functions created by EU exit SIs and recent primary legislation are within the Senedd's legislative competence and the Secretary of State can exercise those functions in relation to Wales only with the consent of Welsh Ministers. A number also require the Welsh Ministers to consult or seek the consent of a Minister of the Crown before exercising them.
- 6.3 Paragraph 11 of Schedule 7B to GoWA places restrictions on the Senedd's ability to remove or modify Minister of the Crown functions in devolved areas. Paragraph 11(1)(a) provides that an Act of the Senedd cannot, without the consent of the appropriate Minister of the Crown, remove or modify, or confer a power by subordinate legislation to remove or modify any function of a Minister of the Crown that relates to a qualified devolved function. A qualified devolved function is defined in paragraph 11(3) as a function that is conferred or imposed on, or transferred to, the Welsh Ministers, the First Minister or Counsel General by any Act or statutory instrument and is exercisable concurrently or jointly with a Minister of the Crown or only with the consent or agreement after consultation with a Minister of the Crown.
- 6.4 Were a Senedd Bill to seek to amend these concurrent functions so that they are exercised solely by Welsh Ministers, the Welsh Government would need to seek the UK Government's consent. This restriction is intended to protect those concurrent or joint powers set out in Schedule 3A to GoWA. This Schedule was inserted into GoWA by the Wales Act 2017 and at this point it was not envisaged that a significant number of additional concurrent functions would be created. The consent requirements are not considered to be appropriate in relation to the legislation referred to within this order.
- 6.5 Furthermore paragraph 8(1)(c) of Schedule 7B provides that the Senedd cannot, without the consent of the appropriate Minister of the Crown, confer, impose, modify, or remove¹ functions specifically exercisable in relation to a reserved authority. Paragraph 8(3) of Schedule 7B provides that a reserved authority means a Minister of the Crown or government department or any other public authority apart from a devolved Welsh authority. Section 157A of GoWA defines a devolved Welsh authority as a public authority whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.
- 6.6 The Welsh Ministers' ability to give consent to the Secretary of State, or requirements on them to consult or seek the consent of a Minister of the Crown constitute a function in relation to a reserved authority. The Senedd could remove a function's concurrency

¹ The Senedd also cannot, without consent, confer a power by subordinate legislation to confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority.

- so as to provide that Welsh Ministers exercise the function solely - only with the consent of the appropriate Minister of the Crown (because doing so would remove a function of a Minister of the Crown (a reserved authority) and therefore engage the restriction at paragraph 8(1)(c).

- 6.7 This Order provides carve-outs from the consent requirements as described above. Article 6(3) inserts new sub-paragraphs (6) to (9) into paragraph 11. The new sub-paragraph (6) provides that the consent requirements do not apply to a provision of an Act of the Senedd which removes, or confers a power to remove, any devolved function of a Minister of the Crown that is to any extent exercisable concurrently where that function exists to any extent by virtue of regulations made under sections 8 to 8C of EUWA; is conferred by, or by regulations made under, the European Union (Withdrawal Agreement) Act 2020, the Direct Payments to Farmers (Legislative Continuity) Act 2020, the Coronavirus Act 2020, the Agriculture Act 2020, the Fisheries Act 2020 or an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19 March.
- 6.8 The new sub-paragraph (7) removes the consent requirements in relation to a Minister of the Crown function concerning consent or agreement to, or consultation about, the exercise of a function where that function is to any extent exercisable concurrently with a Minister of the Crown. This applies to a subset of enactments listed in sub-paragraph (6) that contain concurrent functions which require Welsh Ministers to consult or seek the consent of a Minister of the Crown before exercising them.
- 6.9 In accordance with new sub-paragraph (8), the new sub-paragraphs (6) and (7) do not have effect in relation to the removal of a Minister of the Crown function to regulate British fishing boats in the Welsh zone. For these purposes, British fishing boats do not include Welsh fishing boats, and those terms have the same meaning as in the Fisheries Act 2020. This is consistent with other devolution legislation under which the Secretary of State retains concurrent powers, in certain cases, to regulate fishing boats of a devolved administration fishing outside that administration's waters.
- 6.10 The new paragraph 11(2A), inserted by article 6(2) of this Order, provides that the Welsh Ministers must consult the appropriate Minister of the Crown before removal of a function to which the consent requirements have been disapplied by the new sub-paragraphs (6) and (7).
- 6.11 Article 4(5) of this Order provides that the restriction in paragraph 8(1)(c) of Schedule 7B does not apply to an Act of the Senedd which removes, or confers a power to remove, a function that is exercisable in relation to a Minister of the Crown in two circumstances. Firstly, where the function is the giving of consent by the Welsh Ministers and that function exists to any extent by virtue of regulations made under sections 8 to 8C of the European Union (Withdrawal) Act 2018 or is conferred by any of the legislation listed in the new paragraph 9(8)(b) of Schedule 7B. This is the same list of legislation as is included in the new paragraph 11(6), which is mentioned above at paragraph 6.7. The second circumstance is where the function is the seeking of consent, or consultation, by the Welsh Ministers in relation to their exercise of a function that is to any extent exercisable concurrently with a Minister of the Crown where it was conferred by a subset of that legislation – the same subset as is relevant to the new paragraph 11(7).

Controller of Plant Variety Rights

- 6.12 This Order also provides a carve out from the consent requirements in Schedule 7B in respect of the Controller of Plant Variety Rights.
- 6.13 Paragraph 8(1)(a) and (b) of Schedule 7B to GoWA places restrictions on the ability of the Senedd to confer or impose functions on a reserved authority or modify the constitution of a reserved authority without the consent of a Minister of the Crown. Paragraph 10(1) places a similar restriction on the ability of the Senedd to remove or modify the functions of a reserved authority.
- 6.14 Paragraph 9 of Schedule 7B to GoWA includes a number of carve outs to the consent requirements in paragraph 8 in respect of specified reserved authorities that exercise a mix of devolved and reserved functions in relation to Wales. Paragraph 9(6) sets out a list of reserved authorities that are excepted from the consent requirements in paragraph 8(1). Paragraph 10(2) provides an equivalent list of bodies that are excepted from the consent requirements at paragraph 10(1). This Order adds the Controller of Plant Variety Rights to these lists so the Senedd can modify their functions within devolved competence without needing the consent of a UK Government Minister.

Modifications to Schedule 7A in light of EU exit

- 6.15 Schedule 7A to GoWA sets out the subject matters that are reserved to the UK Parliament. Paragraph 10(1) of this Schedule reserves international relations, the regulation of trade and international development assistance and co-operation.
- 6.16 Paragraph 10(3) provides exceptions to this reservation including for observing and implementing obligations under EU law. Paragraph 20 reserves elections for membership of the European Parliament, including the subject matter of existing elections Acts so far as they may be applied in respect of such membership. These Acts are listed in the interpretation section that follows Paragraph 27 and includes the European Parliamentary Elections Act 2002. Paragraph 26 reserves campaign expenditure by political parties and donations to third parties where a regulated period for elections to the Senedd Cymru or local government elections in Wales overlaps with the regulated period for elections to the House of Commons or the European Parliament.

Other modifications to GoWA

- 6.17 Paragraph 54 of Schedule 7A to GoWA reserves the ‘misuse of and dealing in drugs or psychoactive substances’. The interpretation section defines psychoactive substances as having “the meaning given in section 2 of the Psychoactive Substances Act 2015”. This is a drafting error in that the Psychoactive Substances Act gained Royal Assent in 2016. This Order corrects the error.
- 6.18 Paragraph 7(1) of Schedule 7B to GoWA provides that an Act of the Senedd cannot modify, or confer a power to modify, provisions contained in GoWA. This restriction however does not apply to the sections listed in sub-paragraphs 7(2)(a)-(e). Paragraph 7(2)(a) lists those sections which are in Part 1 of GoWA. In error however it includes section 51 which is in Part 2 and should instead be included within the equivalent list for Part 2 at paragraph 7(2)(b). This Order therefore moves the reference to section 51 at 7(2)(a)(xviii) to the list at paragraph 7(2)(b).
- 6.19 Paragraph 8(1) of Schedule 7B sets out the restrictions on Acts of the Senedd from conferring functions on, or modifying the functions of, a reserved authority without consent of the appropriate Minister. Paragraph 9 contains exceptions to this, including

at 9(4)(a) that the consent requirement does not apply to “the conferral or imposition on a court of a devolved function (within the meaning of paragraph 6 of Schedule 7A)”. Paragraph 6 reserves the registration, funding and accounting requirements on political parties and is therefore referenced in error. This error also appears in paragraph 10(4)(a) of Schedule 7B that sets out the exceptions to the consent requirement at paragraph 10(1).

- 6.20 On introduction of the then Wales Bill paragraph 6 described the reservation of the single legal jurisdiction which included a definition of devolved function. This reservation was amended during the Bill’s parliamentary passage and now appears at paragraph 8 but does not use the term devolved function. This term is not defined elsewhere in GoWA.
- 6.21 Article 4(4) of this Order inserts a new paragraph 9(4A) which defines ‘devolved function’ as one that involves deciding an application or appeal in relation to a matter that is not reserved, but this does not include the function of deciding an appeal from a court or tribunal to which paragraph 9 of Schedule 7A applies (this paragraph describes the reservation for tribunals other than devolved tribunals).

7. Policy background

What is being done and why?

Consent Requirements

- 7.1 In November 2018 the First Minister of Wales wrote to the Secretary of State for Wales to highlight an issue in respect of deficiency correcting SIs made under the European Union (Withdrawal) Act 2018 (the EUWA), that create functions exercisable concurrently by Ministers of the Crown and Welsh Ministers. Restrictions in GoWA prevent the Senedd from modifying concurrent functions without the consent of the appropriate UK Government Minister. New concurrent functions are also being established in the UK Government’s current legislation programme for the first session.
- 7.2 The UK Government agreed that the Senedd should be able to provide for Welsh Ministers to be able to exercise such a power solely, without needing the consent of a Minister of the Crown to make the change. This Order therefore provides carve-outs from the consent requirements in Schedule 7B to GoWA to allow the Senedd to remove such a function created either in an SI under the EUWA or in a small set of named Acts of Parliament.

Controller of Plant Variety Rights

- 7.3 The Plant Varieties Rights Office is a UK wide body established under the Plant Varieties and Seeds Act 1964 to administer UK plant breeders’ rights. The office was subsequently continued by the Plant Varieties Act 1997 under the Controller of Plant Variety Rights. Intellectual property with respect to plant varieties and seeds is devolved and the Controller acts under the direction of, and is appointed by, the Secretary of State, the Welsh Ministers, the Scottish Ministers, and the Northern Ireland Department. As such it is not appropriate that the consent of a Minister of the Crown is required should the Senedd seek to modify its devolved functions in future. This Order provides the necessary carve outs from the consent requirements in line with other reserved authorities that have a mix of devolved and reserved functions.

Modifications to Schedule 7A in light of EU exit

- 7.4 The UK’s exit from the EU means we need to disentangle the UK’s statute book from the EU’s laws and processes. This includes correcting references to the EU, its institutions, regulations and processes where they appear in the statute book. There are references to the EU throughout GoWA, many of which result in deficiencies that need to be corrected.
- 7.5 The majority of these references in GoWA are corrected in EUWA, and will be removed when Schedule 3 to the Act is commenced at the end of the transition period. EUWA only corrects one reference in Schedule 7A to GoWA, to the reservation at Section C7 for ‘technical standards and requirements in relation to products in pursuance of an obligation under EU law’. This was because of the direct read-across to amendments to the equivalent reservation in Schedule 3 of the Northern Ireland Act 1998. More widely, as the reservations define the competence of the Senedd, the Government committed to correcting these references via secondary legislation under section 109 of GoWA, to enable the Senedd to approve the corrections².
- 7.6 The key policy aim for corrections made to reservations is that they are “devolution neutral” i.e. the boundary between the competence of the Senedd and the competence of Parliament is not altered by these amendments.

Other modifications to GoWA

- 7.7 The Wales Act 2017 received Royal Assent on 30 January 2017 and inserted Schedules 7A and 7B into GoWA. A small number of minor errors within these schedules have since been brought to our attention. This Order provides an appropriate opportunity to correct them.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it removes references in Schedule 7A that are no longer relevant outside the EU.

9. Consolidation

- 9.1 This Order amends Schedules 7A and 7B to GoWA; consolidation is therefore unnecessary.

10. Consultation outcome

- 10.1 No formal consultation has been undertaken on this Order. We have engaged closely with the Welsh Government in its preparation. In line with the requirements in section 109 of GoWA this Order must also be approved by the Senedd Cymru.

11. Guidance

- 11.1 No formal guidance has been, or will be, issued in relation to this Order.

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.

² Orders under section 109 of GoWA need the approval of both Houses of Parliament and Senedd Cymru.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There will be no monitoring of the effect of this Order.

15. Contact

15.1 David Harries at the Office of the Secretary of State for Wales Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.

15.2 Geth Williams, Deputy Director for Constitution and Corporate Services, at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Davies MP, Parliamentary Under-Secretary of State for Wales at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

SL(5)677 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020

Background and Purpose

These Regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

EU law lays down rules and frameworks for the management of waste. These rules are implemented in Wales primarily via domestic legislation. The 2019 Regulations amend that existing domestic legislation to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU.

As a result of implementation of EU legislation since the 2019 Regulations were made, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

The minor and technical changes made by the instrument are necessary to ensure that retained EU legislation and the domestic EU legislation enforcing it continue to operate effectively.

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

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

These Regulations modify Article 6 of Directive 2008/98/EC to be read as if after paragraph 1, the following text was 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 (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) 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 Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article."

Further, Article 6 of Directive 2008/98/EC is modified to read as if "Those detailed criteria" is substituted with "Any detailed criteria set out in guidance as referred to in paragraph 1A".

The Directive is modified by regulations 2(2)(c), 2(3)(c), 2(4)(a) and 2(5)(b) of these Regulations.

Further explanation is sought as to whether, given the express reference to detailed criteria in (a) but not (b), the substituted wording "Any detailed criteria set out in guidance" should be to "Any detailed criteria set out in regulations or retained direct EU legislation".

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 2(3)(a) omits "(as substituted by regulation 4(2))" from the definition of "waste facility" contained in regulation 2(1) of the Landfill Allowances Scheme (Wales) Regulations 2004. Regulation 2(3)(a) substitutes the amendment contained in regulation 7(2) of the 2019 Regulations. Although the omitted wording is contained in regulation 7(2) of the 2019 Regulations, it is not contained in the Landfill Allowances Scheme (Wales) Regulations 2004.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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.

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for 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.

We note that the subject heading of these Regulations is "Environmental Protection, Wales". The 2019 Regulations, which are amended by these Regulations, additionally include "Exiting the European Union, Wales" and "Waste, Wales" as subject headings. As subject headings help the reader to quickly identify the area effected by the instrument, it would have been helpful if the Regulations had included "Exiting the European Union, Wales" and "Waste, Wales".



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.

In the second paragraph of Part 5 of the Explanatory Memorandum, there is a reference to the “Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020”. This reference also appears in the Welsh language version of the Explanatory Memorandum. It is assumed that this reference should be to these Regulations.

Implications arising from exiting the European Union

Save for those set out above, no other implications are identified for reporting under Standing Order 21.3 in respect of these Regulations.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

9 November 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. 1339 (W. 296)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste (Wales) (Miscellaneous
Amendments) (EU Exit)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers of the Welsh Ministers in paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

In particular, these regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414 (W. 96)) (“the 2019 Regulations”).

The 2019 Regulations, which come into force on IP completion day, make modifications to the Waste (Wales) Measure 2010 (nawm 8), the Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)), the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)) and the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 152)).

As a result of implementation of EU legislation since the 2019 Regulations were made, including amendments to various EU Directives made under the EU Circular Economy Package, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

Regulation 2 of these Regulations, which has effect immediately before IP completion day, makes amendments to the 2019 Regulations, in order to

ensure that when they come into force, the instruments they amend, will function effectively on IP completion day.

Regulation 3 revokes certain minor provisions in the Hazardous Waste (Wales) Regulations 2005 which will cease to function effectively after IP completion day.

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

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. 1339 (W. 296)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Waste (Wales) (Miscellaneous
Amendments) (EU Exit)
Regulations 2020**

Sift requirements satisfied 16 November 2020

Made 23 November 2020

Laid before Senedd Cymru 25 November 2020

*Coming into force in accordance with
regulation 1(3) and (4)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1 of Schedule 2, to the European Union (Withdrawal) Act 2018(1).

The requirements of paragraph 4 of Schedule 2 and paragraph 4(2) of Schedule 7 to that Act have been satisfied.

Title and commencement

1.—(1) The title of these Regulations is the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

(2) These Regulations come into force in accordance with paragraphs (3) and (4).

(3) This regulation and regulation 2 come into force immediately before IP completion day.

(4) Regulation 3 comes into force on IP completion day.

(1) 2018 c.16, amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1).

Amendment of the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

2.—(1) The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019⁽¹⁾ are amended as follows.

(2) In regulation 6—

(a) for paragraph (2) substitute—

“(2) In section 9(3) at the end insert “, and read as if—

(a) in Article 2—

(i) in point (a) the reference to the definition of ‘waste’ were omitted;

(ii) after point (a) there were inserted—

“(aa) ‘Waste’ has the meaning given in Article 3(1) of Directive 2008/98/EC (“the Waste Framework Directive”), as read with Articles 5 and 6 of that Directive.”;

(b) in Article 3—

(i) in paragraph (2) for “Without prejudice to existing Community legislation the” there were substituted “The”;

(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 (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.”;

(b) omit paragraph (3);

(c) in paragraph (4)—

(i) in sub-paragraph (a), omit “(as amended by regulation 3(3))”;

(ii) in sub-paragraph (b)—

(aa) in the inserted subsection (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union

(1) S.I. 2019/414 (W. 96).

(Withdrawal Agreement) Act 2020”;

- (bb) for the inserted subsections (5) to (7) substitute—

“(5) Article 5 is to be read as if—

- (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a”, there were substituted “A”;

- (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 Welsh Ministers or the Natural Resources Body for Wales 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 for “Member States shall take appropriate measures to ensure that waste”, there were substituted “Waste”;

- (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 (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) 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 Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;

- (c) in paragraph 2—

- (i) the first sub-paragraph were omitted;

- (ii) in the second sub-paragraph, 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 sub-paragraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first sub-paragraph—
 - (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 Natural Resources Body for Wales”;
 - (bb) the second sentence were omitted;
 - (ii) in the second sub-paragraph—
 - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
 - (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 Wales.”;
 - (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.”
- (3) In regulation 7—
- (a) for paragraph (2) substitute —

“(2) In regulation 2(1)—

- (a) in the definition of “waste facility (“*cyfleuster gwastraff*”)", omit “(as substituted by regulation 4(2))”;
- (b) after the definition of “waste facility” insert—

““the Waste Framework Directive” (“*y Gyfarwydddeb Fframwaith Gwastraff*”) 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 in accordance with paragraphs (3) to (9).”;
- (b) omit paragraph (3);
- (c) in paragraph (4)—
 - (i) for “After paragraph (2)” substitute “After regulation 2(2)”;
 - (ii) in the inserted paragraph (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;
 - (iii) for the inserted paragraphs (5) to (7) substitute—

“(5) Article 5 is to be read as if—

 - (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a”, there were substituted “A”;
 - (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 Welsh Ministers or the Natural Resources Body for Wales 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, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;
 - (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 (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) 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 Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first sub-paragraph were omitted;
 - (ii) in the second sub-paragraph, 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 sub-paragraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first sub-paragraph—
 - (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 Natural Resources Body for Wales”;
 - (bb) the second sentence were omitted;
 - (ii) in the second sub-paragraph—
 - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
 - (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 Wales.”;

(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 (6) omit “(as amended by regulation 4(3))”;

(e) for paragraph 7 substitute—

“(7) After regulation 7(10) insert—

“(11) For the purposes of regulation 7(10) Directive 1999/31/EC is to be read as if—

(a) in Article 2—

- (i) in point (a), the reference to the definition of ‘waste’ were omitted;
- (ii) after point (a) there were inserted—

“(aa) ‘Waste’ has the meaning given in Article 3(1) of Directive 2008/98/EC (“the Waste Framework Directive”), as read with Articles 5 and 6 of that Directive”;

(b) in Article 3—

- (i) in paragraph (2) for “Without prejudice to existing Community legislation the” there were substituted “The”;
- (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 (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.””

(4) In regulation 8—

(a) in paragraph (3)—

(i) in the inserted regulation 2A—

(aa) in paragraph (2), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;

(bb) omit paragraph (4);

(cc) for paragraphs (5) to (7) substitute—

“(5) Article 5 is to be read as if—

(a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a” there were substituted “A”;

(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 Welsh Ministers or the Natural Resources Body for Wales 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, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;

(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 (within the meaning given to that expression in the European Union (Withdrawal)

- Act 2018) 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 Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.”;
 - (c) in paragraph 2—
 - (i) the first sub-paragraph were omitted;
 - (ii) in the second sub-paragraph 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 sub-paragraphs were omitted;
 - (d) paragraph 3 were omitted;
 - (e) in paragraph 4—
 - (i) in the first sub-paragraph—
 - (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 Natural Resources Body for Wales”;
 - (bb) the second sentence were omitted;
 - (ii) in the second sub-paragraph—
 - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
 - (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 Wales.”;
 - (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 wastewhich is to be considered as hazardous waste or non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (ii) in the inserted regulation 2B—
 - (aa) in the heading omit “and Industrial Emissions Directive”;
 - (bb) omit paragraphs (4), (5) and (6);
- (b) in paragraph 4(b), for the inserted definition of “Landfill Directive”, substitute—
 - ““the Landfill Directive” (“*y Gyfarwyddeb Dirlenwi*”) means Council Directive 1999/31/EC on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if—
 - (a) in Article 2—
 - (i) in point (a)—
 - (aa) the reference to the definition of ‘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 (Wales) Regulations 2005”;
 - (b) in Article 3—
 - (i) in paragraph 2, for “Without prejudice to existing Community legislation the” there were substituted “The”;
 - (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.””;

- (c) in paragraph (7) omit “(as amended by regulation 5(2) and 5(3)).

(5) In regulation 9—

- (a) in paragraph (2), omit “(“y Gyfarwyddeb Fframwaith Gwastraff”) (as substituted by regulation 6)”;

- (b) in paragraph (3)—

- (i) for “After paragraph (2)” substitute “after regulation 2(2)”;

- (ii) in the inserted paragraph (3), for “exit day” substitute “IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)”;

- (iii) for the inserted paragraphs (5) to (7), substitute—

“(5) Article 5 is to be read as if—

- (a) in paragraph 1, for “Member States shall take appropriate measures to ensure that a” there were substituted “A”;

- (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 Welsh Ministers or the Natural Resources Body for Wales 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, for “Member States shall take appropriate measures to ensure that waste” there were substituted “Waste”;

- (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 (within the meaning given to that expression in the European Union (Withdrawal)

Act 2018 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 Welsh Ministers or the Natural resources Body for Wales for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first sub-paragraph were omitted;
 - (ii) in the second sub-paragraph, 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 sub-paragraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first sub-paragraph—
 - (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 Natural Resources Body for Wales”;
 - (bb) the second sentence were omitted;
 - (ii) in the second sub-paragraph—
 - (aa) for “Member States” there were substituted “The Natural Resources Body for Wales”;
 - (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 Wales.”;

- (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.”

Amendment of the Hazardous Waste (Wales) Regulations 2005

3.—(1) The Hazardous Waste (Wales) Regulations 2005(1) are amended as follows.

(2) Omit regulations 6(b), 8(1)(b) and 9(1)(b).

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

23 November 2020

(1) S.I. 2005/1806 (W. 138) amended by S.I. 2009/2861 (W. 250), 2011/971 (W. 141), 2013/755 (W. 90), 2018/721 (W. 140) and 2019/414 (W. 96). There are other amendments not relevant to these Regulations.

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

This Explanatory Memorandum has been prepared by Resource Efficiency and Circular Economy Division within the Economy, Skills and Natural Resources Department and is laid before the 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 Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs
25 November 2020

PART 1

1. Description

These Regulations are made under powers of the Welsh Ministers in paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

In particular, these regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414 (W. 96)) (“the 2019 Regulations”).

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

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”).

The Legislation, Justice and Constitution Committee (LJCC) considered a draft of these regulations on 16 November 2020, and agreed that the negative procedure is appropriate for these regulations. A copy of the published LJCC’s report can be accessed via the following link:

<https://senedd.wales/laid%20documents/cr-ld13815/cr-ld13815-e.pdf>

3. Legislative background

- a) This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The SI Instrument amends The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019. EU law lays down rules and frameworks for the management of waste. These rules are implemented in Wales primarily via domestic legislation. The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (the “2019 Regulations”) amend that existing domestic legislation under powers in the Withdrawal Act (except Part 2 see para 5.10 below) to make the necessary technical changes to ensure that it will continue

to operate effectively after the UK has left the EU, as set out below. These come into force on IP completion day and make modifications to the Waste (Wales) Measure 2010 (nawm 8), the Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)), the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)) and the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 154)).

Why is it being changed?

As a result of implementation of EU legislation since the 2019 Regulations were made, including amendments to various EU Directives made under the EU Circular Economy Package, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

The minor and technical changes made by the instrument are necessary to ensure that retained EU legislation and the domestic EU legislation enforcing it continues to operate effectively.

What will it now do?

Directives are not being incorporated into domestic law under the Withdrawal Act and will not form part of Retained EU Law. Therefore, the 2019 Regulations made provision so that the domestic legislation that cross-refer to the various directives are amended (e.g. the directives are modified, where necessary, for the purpose of that legislation) to ensure that it continues to operate as intended after EU Exit. The minor and technical changes made by this instrument are necessary to ensure that the legislation it amends continues to operate effectively following the UK's withdrawal from the European Union.

Regulation 2 of these Regulations, which has effect immediately before IP completion day, makes amendments to the 2019 Regulations, in order to ensure that when they come into force, the instruments they amend, will function effectively on IP completion day.

Regulation 3 revokes certain minor provisions in the Hazardous Waste (Wales) Regulations 2005 which will cease to function effectively after IP completion day.

There is no change in policy and no change in environmental standards.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

The Secretary of State has been consulted on the Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 fulfilling the requirement in paragraph 4, Schedule 2 of the EU (Withdrawal Act) 2018. The SoS replied on 17 November, has noted the provisions being brought forward and has confirmed that they have no concerns over the approach to this amendment.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex 2

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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste (Wales)(Miscellaneous Amendments)(EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to waste law in Wales”.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste (Wales)(Miscellaneous Amendments)(EU Exit) Regulations 2020 does no more than is appropriate”. This is the case because the instrument makes technical amendments only which are designed to address failures of retained EU law to operate effectively after exit day”.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, 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”. This is because the provisions ensure that protections provided by the Welsh legislation being amended continue to be operable after the UK leaves the European Union.

4. Equalities

- 4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, 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.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 “In relation to the instrument, I, Lesley Griffiths MS have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”].

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 3.2

SL(5)684 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

Background and Purpose

The Regulations make amendments to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004. In line with the Withdrawal Agreement, the amendments change references from “Exit Day” to “IP Completion Day” with regard to the right of specified patients from EU/EEA States and Switzerland, who were receiving specified prescriptions for erectile dysfunction since 14th September 1998, to continue to receive those prescriptions post IP Completion Day.

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

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

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

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law at the end of the transition period on 31 December 2020.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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

2020 No. 1396 (W. 309)

**EXITING THE EUROPEAN
UNION, WALES**

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(General Medical Services
Contracts) (Prescription of Drugs
etc.) (Wales) (Amendment) (EU
Exit) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations make amendments to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004.

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

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. 1396 (W. 309)

**EXITING THE EUROPEAN
UNION, WALES**

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(General Medical Services
Contracts) (Prescription of Drugs
etc.) (Wales) (Amendment) (EU
Exit) Regulations 2020

Sift requirements satisfied 16 November 2020

Made 1 December 2020

Laid before Senedd Cymru 2 December 2020

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(1).

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate scrutiny procedure for these Regulations) have been satisfied.

As required by paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018, the Secretary of State has been consulted during the preparation of these Regulations.

(1) 2018 c. 16. Schedule 2 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

Title, commencement and application

1.—(1) The title of these Regulations is the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020.

(2) These Regulations come into force immediately before IP completion day.

(3) These Regulations apply in relation to Wales.

Amendment of the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004

2.—(1) The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004(1) are amended as follows.

(2) In Schedule 2 (drugs or medicines to be ordered only in certain circumstances), in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(a) for paragraph (1)(b) (including the “or” at the end) substitute—

“(b) a man who is a national of an EEA State who—

(i) immediately before IP completion day was entitled to treatment by virtue of Article 7(2) of Council Regulation 1612/68 as extended by the EEA Agreement or was entitled to treatment by virtue of any other enforceable EU right,

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment under a national health insurance system of an EEA State for that condition with any of the drugs listed in subparagraph (a), and

(iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the

(1) S.I. 2004/1022 (W. 119); relevant amendments were made by S.I. 2011/1043, S.I. 2014/109 (W. 09) and S.I. 2019/777.

condition mentioned in paragraph (ii) of this subparagraph with any of the drugs listed in subparagraph (a), or”; and

- (b) for paragraph (c) (including the “or” at the end) substitute –

“(c) a man who is not a national of an EEA State but who is the member of the family of such a national and who—

- (i) immediately before IP completion day had an enforceable EU right to be treated no less favourably than the national in the provision of medical treatment,
- (ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment for that condition with any of the drugs listed in subparagraph (a), and
- (iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this subparagraph with any of the drugs listed in subparagraph (a), or”.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
1 December 2020

Explanatory Memorandum to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by Health and Social Services Group 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 National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. The statements can be found in Part 2 of the annex to this memorandum.

Vaughan Gething AS/MS

Minister for Health and Social Services

2 December 2020

PART 1

1. Description

These Regulations amend the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004 (SI 2004/1022 (W)119) (the Principal Regulations).

The Principal Regulations make provision as to the drugs, medicines or other substances that may be ordered for patients in the provision of medical services under a general medical services contract within the meaning of section 42 of the National Health Service (Wales) Act 2006.

These Regulations are being made in consequence of the UK's withdrawal from the European Union (EU). Amendments to the Principal Regulations are required to correct EU references to ensure the SI remains operable at the end of the transition period following the UK's exit from the EU.

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

This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed that this instrument be subject to negative resolution procedure. This instrument makes minor and technical amendments and therefore should be subject to annulment.

The instrument has been subject to scrutiny by the Legislation, Justice and Constitution Committee (LJCC). Sifting took place on 16 November 2020, whereby the LJCC agreed the appropriate procedure for the instrument is the negative resolution procedure. The report laid by the LJCC can be found at: <https://senedd.wales/laid%20documents/cr-ld13815/cr-ld13815-e.pdf>

3. Legislative background

The Regulations are made in exercise of the powers in paragraph 1(1) of Schedule 2 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 arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and intended effect of the legislation

The Regulations make amendments to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004. In line with the Withdrawal Agreement, the amendments change references from "Exit Day" to "IP Completion Day" with regard to the right of specified patients from EU/EEA States and Switzerland, who were receiving

specified prescriptions for erectile dysfunction since 14th September 1998, to continue to receive those prescriptions post IP Completion Day.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy approach to remain unchanged by the withdrawal of the UK from the EU.

As required by paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018, the Secretary of State has been consulted during the preparation of these Regulations. No comments or objections were received from the Secretary of State for Health.

No amendments to this Instrument were made as a consequence of the consultation.

6. Regulatory Impact Assessment

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation ("the Code") was considered in relation to these Regulations.

The Regulations make minor technical amendments in line with the Withdrawal Agreement. The amendments have no, or no significant, impact on business, charities or voluntary bodies, and have no significant impact on the public sector.

They are of a technical nature to ensure an updated and functioning statute book and do not introduce new novel or contentious policy.

In accordance with Section 4.2 of the Code, it was therefore not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Annex 1

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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

The Minister for Health and Social Services, Vaughan Gething has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure)”. This is the case because the changes being made are minor and technical in nature. There is no change to policy.

2. Appropriateness statement

The Minister for Health and Social Services, Vaughan Gething has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”. This is the case because the changes being made are solely in order to address inoperabilities arising from EU exit. There is no change to policy.

3. Good reasons

The Minister for Health and Social Services, Vaughan Gething, 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”. These are that it ensure that the law is operable and clear following implementation completion day.

4. Equalities

The Minister for Health and Social Services, Vaughan Gething has made the following statement(s) “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

The Minister for Health and Social Services, Vaughan Gething has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Vaughan Gething have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4

Statutory Instruments with Clear Reports **14 December 2020**

SL(5)679 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2020

Procedure: Negative

These Regulations amend the Non-Domestic Rating Contributions (Wales) Regulations 1992 (“the 1992 Regulations”).

Under Part 2 of Schedule 8 to the Local Government Finance Act 1988, billing authorities (in Wales, county and county borough councils) are required to pay amounts (called non-domestic rating contributions) to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities.

These Regulations amend the 1992 Regulations by substituting a new Schedule 4 (Adult Population Figures).

Parent Act: Local Government Finance Act 1988

Date Made: 27 November 2020

Date Laid: 30 November 2020

Coming into force date: 31 December 2020

SL(5)680 – The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020

Procedure: Negative

These Regulations are made under section 56 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”) and they make provision in relation to the inclusion of an independent special post-16 institution within the list published by the Welsh Ministers under section 56(2) of the Act.

Parent Act: Additional Learning Needs and Education Tribunal (Wales) Act 2018

Date Made: 26 November 2020

Date Laid: 30 November 2020

Coming into force date: 04 January 2021



SL(5)687 – The Producer Responsibility Obligations (Packaging Waste) (Amendment) (Wales) Regulations 2020

Procedure: Negative

The Producer Responsibility Obligations (Packaging Waste) (Amendment) (Wales) Regulations 2020 (“the Regulations”) amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (“the 2007 Regulations”) in relation to Wales. Those Regulations impose on producers the obligation to recover and recycle packaging waste in order to attain the recovery and recycling targets set out in Article 6(1) of European Parliament and Council Directive 94/62/EC on packaging and packaging waste.

The Regulations are made in exercise of the powers conferred in sections 93 and 94 of the Environment Act 1995 (“the 1995 Act”), which provide Welsh Ministers the power to make regulations in relation to setting minimum recycling and recovery packaging targets for obligated businesses in Wales. The relevant functions of the Secretary of State in the 1995 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The Regulations are subject to annulment procedure in accordance with section 93(11) and (12) of the 1995 Act.

These Regulations replace the EU recovery and recycling targets with recycling only targets on producers. They also vary the material specific recycling targets on obligated producers for paper, plastic, glass, aluminium, steel and wood as well as the specific re-melt target for glass. The recycling allocation for small producers for 2018 to 2020 is changed for 2021 and 2022.

No recovery targets are being set on this occasion, meaning producers only have to meet recycling targets for packaging waste in order to meet their producer responsibility obligations. This is intended to move the management of waste up the waste hierarchy and on recycling targets as a means of evidencing the producer responsibility obligations are met. This is considered to have a better environmental outcome and removes an incentive for material going to activities which are lower down the waste hierarchy. The removal of the recovery target also involves consequential amendments throughout the 2007 Regulations.

Parent Act: Environment Act 1995

Date Made: 01 December 2020

Date Laid: 03 December 2020

Coming into force date: 01 January 2021



SL(5)688 – The Senedd Cymru (Representation of the People) (Amendment) Order 2020

Procedure: Affirmative

The National Assembly for Wales (Representation of the People) Order 2007 (“the 2007 Order”) sets out detailed rules for the conduct of elections to Senedd Cymru.

This Order amends the 2007 Order to reflect policy and legislative changes which have taken place since the 2016 Senedd general election in preparation for the 2021 Senedd general election.

In particular, this Order:

- implements changes arising as a result of the name change, extension of the franchise and disqualification criteria introduced by the Senedd and Elections (Wales) Act 2020,
- gives candidates the option of not publishing their home address at Senedd elections, and
- makes changes to the manner in which payment is made to returning officers for services rendered.

Parent Act: Government of Wales Act 2006, Welsh Language Act 1993

Date Made:

Date Laid:

Coming into force date: 17 December 2020



SL(5)681 – The Rating Lists (Valuation Date) (Wales) Order 2020

Background and Purpose

This Order is made by the Welsh Ministers under paragraph 2(3)(b) of Schedule 6 to the Local Government Finance Act 1988 and comes into force on 23 December 2020.

The Order sets 1 April 2021 as the reference date for the next revaluation of non-domestic rates (known as business rates) in Wales, which is scheduled to take place on 1 April 2023.

The revaluation will therefore be based on an assessment of the rateable value of non-domestic properties as at 1 April 2021.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.

The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was 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 point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

The UK Government's Non-Domestic Rating (Lists) (No. 2) Bill will, if enacted, postpone the forthcoming revaluations of non-domestic rates in England and Wales to 1 April 2023 (from 1 April 2022 in relation to Wales).

In a written statement on 11 August 2020, Rebecca Evans MS, Minister for Finance and Trefnydd, noted that:

"Postponing the revaluation to 2023 will mean that the rateable values on which rates bills are based will better reflect the impact of COVID-19. The change will also mean that the next revaluation in Wales takes effect at the same time as that in England, ensuring businesses and other ratepayers in Wales are not placed at a disadvantage compared to those elsewhere."



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

4 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

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. 1378 (W. 305)

**RATING AND VALUATION,
WALES**

**The Rating Lists (Valuation Date)
(Wales) Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 41(2) and 52(2) of the Local Government Finance Act 1988 (“the 1988 Act”), read in conjunction with the Rating Lists (Postponement of Compilation) (Wales) Order 2014 (S.I. 2014/1370 (W. 139)) made under section 54A of the 1988 Act, provide that non-domestic rating lists for Wales are to be compiled on 1 April 2017 and every fifth year afterwards.

Paragraph 2(3)(b) of Schedule 6 to the 1988 Act provides that for the purposes of compiling such lists, the rateable value of a non-domestic hereditament is to be determined by reference to the day on which the lists must be compiled or on such day preceding that day as may be specified by order.

Article 2 of this Order specifies 1 April 2021 as that day for the purposes of the next local and central non-domestic rating lists to be compiled once this Order has come into force.

Article 3 of this Order revokes the Rating Lists (Valuation Date) (Wales) Order 2018 (S.I. 2018/1001 (W. 204)) (“the 2018 Order”), which had specified 1 April 2019 as the day for the purposes of the next local and central non-domestic ratings lists to be compiled after the 2018 Order came into force.

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

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. 1378 (W. 305)

**RATING AND VALUATION,
WALES**

**The Rating Lists (Valuation Date)
(Wales) Order 2020**

Made 27 November 2020

Laid before Senedd Cymru 1 December 2020

Coming into force 23 December 2020

The Welsh Ministers make the following Order in exercise of the power conferred on the Secretary of State by paragraph 2(3)(b) of Schedule 6 to the Local Government Finance Act 1988(1), and now vested in them(2).

Title and commencement

1. The title of this Order is the Rating Lists (Valuation Date) (Wales) Order 2020 and it comes into force on 23 December 2020.

Valuation date

2. 1 April 2021 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists when they are next compiled for Wales after this Order comes into force.

(1) 1988 c. 41.

(2) The power of the Secretary of State was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

Revocation

3. The Rating Lists (Valuation Date) (Wales) Order 2018(1) is revoked.

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh Ministers

27 November 2020

(1) S.I. 2018/1001 (W. 204).

Explanatory Memorandum to The Rating Lists (Valuation Date) (Wales) Order 2020

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the 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 Rating Lists (Valuation Date) (Wales) Order 2020.

Rebecca Evans MS
Minister for Finance and Trefnydd
1 December 2020

Description

1. The Rating Lists (Valuation Date) (Wales) Order 2020 (the Order) is a technical piece of legislation which sets 1 April 2021, as the reference date for the next revaluation of non-domestic properties in Wales.
2. The next revaluation of Non-Domestic Rates (NDR) in Wales is currently scheduled to take place on 1 April 2023. A Written Statement on 11 August 2020 confirmed the intention to postpone the revaluation from 1 April 2022 until 1 April 2023:
<https://gov.wales/written-statement-non-domestic-rates-revaluation-wales>
3. In compiling the rating lists to take effect in 2023, the Valuation Office Agency (VOA) will assess the rateable value of non-domestic properties in Wales based on their market rental value by reference to a specific date, the Antecedent Valuation Date (AVD). Setting the AVD at a point before the rating lists come into effect allows the VOA to consider market performance retrospectively at the valuation date based on evidence and market intelligence to ensure a property's rental value at the AVD is accurately represented.
4. For all previous revaluations since 1990, the AVD has been set two years ahead of the new lists coming into effect, for example 1 April 2015 for the 2017 list.
5. The making of the Order to set the AVD is required to enable the VOA to undertake the necessary preparatory work for the revaluation which will take effect on 1 April 2023.

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

6. There are no matters of special interest to bring to the attention of the Committee.

Legislative background

7. Sections 41 and 52 of the Local Government Finance Act 1988 (the 1988 Act) make provision for the VOA to compile non-domestic rating lists. Previously, new lists had to be compiled every five years starting on 1 April 1990. However, section 54A of the 1988 Act (inserted by section 30 of the Growth and Infrastructure Act 2013) provides that the Welsh Ministers may, by order, provide that the local and central lists must be compiled on a date specified in that order rather than on 1 April 2015. Section 54A(4) further provides orders taking effect under that section, apply sections 41 and 52 as if they required a list to be compiled on the specified date and on 1 April in every fifth year afterwards. The

Rating Lists (Postponement of Compilation) (Wales) Order 2014¹, changed the date of the following revaluation to 1 April 2017 (rather than 1 April 2015), consequently, the next revaluation in Wales would be scheduled for 1 April 2022.

8. Primary legislation will therefore be required to change the date of the next revaluation. The Non-Domestic Rating (Lists) (No.2) Bill covering England and Wales was introduced into Parliament on 8 September, and contains provision to set the next revaluation date as 1 April 2023.
9. Sections 42(4) and 53(3) of the 1988 Act provide that non-domestic rating lists must also contain the rateable values (RV) of the properties listed. Schedule 6 to the 1988 Act contains provisions setting out how RV is to be determined. Paragraph 2(3) of that Schedule provides, that for the purposes of compiling a list, the RV should be determined by reference to the day on which the list is to be compiled or on a preceding day specified by the Secretary of State in an order. That date is known as the AVD.
10. The power of the Secretary of State under paragraph 2(3)(b) of Schedule 6 to the 1988 Act, so far as it is exercisable in relation to Wales, was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
11. Section 143(3) of the 1988 Act provides that an order setting the AVD under paragraph 2(3)(b) of Schedule 6 to the 1988 Act, is to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

12. During a rates revaluation, the VOA assesses each non-domestic property to determine its RV and compiles the rating lists (central and local lists). For most non-domestic properties, the RV is based on the estimated open market rental value on a specific date, the AVD. The AVD is set by the Welsh Ministers making an order under paragraph 2(3)(b) of Schedule 6 to the 1988 Act.
13. The purpose of the AVD is (a) to ensure all properties are valued on the same basis, so the distribution of the rates liability is fair between different properties, and (b) to allow valuation officers to collect all available rental and other information so they can accurately assess RV for the purposes of compiling lists.
14. The AVD is normally set at two years prior to the new list taking effect. For the next revaluation, the lists take effect on 1 April 2023. Therefore, an order under

¹ (S.I. 2014/1370 (W. 139) <http://www.legislation.gov.uk/wsi/2014/1370/contents/made>

Schedule 6 to the 1988 Act should specify 1 April 2021 as the day by reference to which, the RV of a non-domestic hereditament is to be determined for the purposes of the local and central rating lists taking effect on 1 April 2023.

15. The AVD order is a technical piece of legislation required to enable the VOA to undertake the necessary preparatory work for the revaluation. A similar order has already been made in England and it is a routine consequence of the decision to postpone the revaluation until 2023.

16. The Order also revokes the Rating Lists (Valuation Date) (Wales) Order 2018 which set the AVD for the planned, but cancelled 2021 revaluation as 1 April 2019.

Consultation

17. An AVD has been set for each previous revaluation since 1990 and, as with these previous exercises, the date has been agreed with the VOA without further consultation on what is a technical piece of legislation. In each case, all previous AVDs have been set two years before the date each respective list has come into force. The Order follows the same established practice.

Regulatory Impact Assessment

18. The Order only makes a necessary technical change resulting from the policy decision to carry out a non-domestic rates revaluation on 1 April 2023. As such, no regulatory impact assessment has been prepared.

Agenda Item 5.2

SL(5)683 – The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments)(Wales) Regulations 2020

Background and Purpose

These Regulations make amendments to the legislation in the field of feed safety and hygiene to provide for the execution and enforcement of Commission Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC, which will take effect on 25th December 2020 in parallel with the coming into force of this instrument.

In particular, these Regulations make amendments to the Animal Feed (Marketing, Composition and Use) (Wales) Regulations 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016, which provide for the enforcement in Wales (including offences) of the EU legislation in this area. This instrument substitutes provisions for enforcement of Regulation (EU) 2020/354 for the current provisions that implement Directive 2008/38/EC, which is repealed as of 25th December 2020.

All feed businesses that produce, supply or use animal feed, for particular nutritional purposes are covered by this instrument.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

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

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

The Committee notes the comments in the Explanatory Memorandum concerning the FSA's assessment for not producing a Regulatory Impact Assessment in respect of these Regulations.



“The FSA considers the impact on both businesses and enforcement authorities of this instrument will be negligible. The FSA has identified no significant change to the requirements for business, or in the regulatory approach undertaken. Regulation (EU) 2020/354 contains transitional measures that will allow existing stocks of product labelled before 25 March 2022 under the present rules to be used up. Therefore, an impact assessment has not been produced.”

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

7 December 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. 1381 (W. 307)

AGRICULTURE, WALES

**The Animal Feed (Particular
Nutritional Purposes and
Miscellaneous Amendments)
(Wales) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to legislation in the field of feed safety and hygiene to provide for the execution and enforcement of Commission Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC (OJ No. L67, 5.3.2020, p.1.).

Regulation 2 amends the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 (S.I. 2016/386 (W.120)), removing references to the repealed Directive 2008/38/EC and providing for enforcement of the new Regulation (EU) 2020/354. Regulation 2(2)(c) updates the references in those Regulations to specified EU instruments.

Regulation 3 amends the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387 (W. 121)), to add Regulation (EU) 2020/354 to the list of legislation that is defined as “specified feed law” for the purposes of those Regulations. Regulation 3(2) updates references in those Regulations to specified EU instruments.

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

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. 1381 (W. 307)

AGRICULTURE, WALES

**The Animal Feed (Particular
Nutritional Purposes and
Miscellaneous Amendments)
(Wales) Regulations 2020**

Made 30 November 2020

Laid before Senedd Cymru 2 December 2020

Coming into force 25 December 2020

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

The Welsh Ministers are designated for the purposes of measures relating to feed produced for or fed to food producing animals⁽²⁾, measures in the veterinary

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- (1) 1972 c.68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”). “IP completion day” is defined in section 1A as being 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was also previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
- (2) S.I. 2005/1971, amended by S.I. 2005/2766. The functions conferred on the National Assembly for Wales by this designation are transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). The designation does not extend to measures concerning feed containing medicinal products (including growth regulators)

and phytosanitary fields for the protection of public health⁽¹⁾, and measures in relation to the common agricultural policy of the European Union⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for references to the EU instruments mentioned in regulation 2(3) of the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016⁽³⁾ (as amended by these Regulations) and regulation 2(5) of the Animal Feed (Hygiene, Sampling etc and Enforcement) (Wales) Regulations 2016⁽⁴⁾ (as amended by these Regulations) to be construed as references to those EU instruments as amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations in accordance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council 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⁽⁵⁾.

Title and commencement

1. The title of these Regulations is the Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020 and they come into force on 25 December 2020.

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

2.—(1) The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016⁽⁶⁾ are amended as follows.

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- or medicinal products when destined for use in feed except provision concerning digestibility enhancers, gut flora stabilisers, or substances which favourably affect the environment. S.I. 2005/1971 is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
- (1) S.I. 2008/1792, which is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
 - (2) S.I. 2010/2690. The designation does not extend to making provision in respect of feed that contains medicinal products destined for use in feed, except provision concerning substances that favourably affect the environment, digestibility enhancers, or gut flora stabilisers. S.I. 2010/2690 is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
 - (3) S.I. 2016/386, amended by S.I. 2018/806.
 - (4) S.I. 2016/387, amended by S.I. 2019/1482.
 - (5) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L198, 25.7.2019, p.241).
 - (6) S.I. 2016/386 (W.120), amended by S.I. 2018/806 (W.162).

(2) In regulation 2 (interpretation and scope)—

(a) in paragraph (1)—

(i) omit the definition of “Directive 2008/38”;

(ii) in the appropriate place insert—

““Regulation 2020/354” (*“Rheoliad 2020/354”*) means Commission Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC(1);”

(b) for paragraph (3) substitute—

“(3) Any reference in these Regulations to an EU instrument defined in paragraph (1) is a reference to that EU instrument as it may be amended from time to time.”

(3) For Part 7 (implementation of Directive 2008/38) substitute—

“Part 7

Enforcement of Regulation 2020/354

Interpretation of this Part

16. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 2020/354.

Offence of failing to comply with Article 1 of Regulation 2020/354

17. A person who contravenes or fails to comply with Article 1 (conditions on marketing), as read with Article 2 (derogation for feed which complies with the provisions of Directive 2008/38/EC) and Article 3 (transitional provision for feed labelled before 25 March 2022 in accordance with the rules applicable before 25 March 2020) commits an offence.”

(4) In regulation 18 (penalties for offences under these regulations), in paragraph (1), for “17(1)” substitute “17”.

(5) In regulation 19 (duties to enforce), after “Regulation 767/2009” insert “, Regulation 2020/354”.

(1) OJ No. L67, 5.3.2020, p.1.

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016

3.—(1) The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation and scope), for paragraph (5) substitute—

“(5) Any reference in these Regulations to an EU Regulation specified in Schedule 1 is a reference to that EU Regulation as it may be amended from time to time.”

(3) In Schedule 1 (specified feed law), in the table, in the appropriate place add the following entry—

“Commission Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC⁽²⁾”.

Eluned Morgan

Minister for Mental Health, Wellbeing and Welsh

Language, one of the Welsh Ministers

30 November 2020

(1) S.I. 2016/387 (W. 121), amended by S.I. 2018/40 (W. 12), 2018/806 (W. 162) and 2019/1482 (W. 266).

(2) OJ No. L67, 5.3.2020, p.1.

Explanatory Memorandum to The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020.

This Explanatory Memorandum has been prepared by Food Standards Agency 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 Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020

Eluned Morgan MS
Minister for Mental Health, Wellbeing and Welsh Language
2 December 2020

PART 1

Description

1. The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020 amend the Animal Feed (Marketing, Composition and Use) (Wales) Regulations 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (together “the 2016 Regulations”) to provide for the enforcement in Wales (including offences) of Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes. This instrument substitutes provisions for enforcement of Regulation (EU) 2020/354 for the current provisions that implement Directive 2008/38/EC, which is repealed as of 25th December 2020.
2. This instrument also updates the references in the 2016 Regulations to other EU instruments.
3. Regulation (EU) 2020/354:
 - (a) Replaces the general provisions of Directive 2008/38/EC with those noted in Regulation (EU) 2020/354
 - (b) Updates the list of intended uses for particular nutritional purposes by; adding and removing intended uses, updating the essential nutritional characteristics column, the labelling declarations, the time provisions and the requirements in the ‘other provisions’ column.
 - (c) Allows for a transitional period for feed intended for particular nutritional purposes which have been labelled before 25 March 2022 in accordance with the rules applicable before 25 March 2020 (i.e. compliant with Directive 2008/38/EC). This stock may continue to be placed on the market and used until exhausted.

Matters of special interest to the Legislative, Justice and Constitution Committee

4. None

Legislative background

5. The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers are designated in relation to:
 - a. measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
 - b. measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
 - c. measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).
6. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day. Despite that repeal, section 2(2) of the 1972 Act continues to have effect with modifications until implementation period completion day by virtue of section 1A of EUWA.
7. These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to EU instruments within the 2016 Regulations to be construed as references to those instruments as amended from time to time.
8. Section 2(2) of the European Communities Act 1972 (as read with section 59(3) of the Government of Wales Act 2006) offers a choice between negative and affirmative procedures. This instrument makes limited provision, which is technical in nature and which gives effect to EU law (including updating references to EU legislation), in relation to which the Welsh Ministers have limited discretion. As such, these Regulations are being made under the negative resolution procedure

Purpose and intended effect of the legislation

9. The purpose of this Instrument is to implement Regulation (EU) 2020/354 and to remove references to the repealed Directive 2008/38/EC. This instrument also updates the references in the 2016 Regulations to other EU instruments

10. Commission Regulation (EU) 2020/354 will take effect on 25th December 2020. An amendment is therefore required to the Animal Feed (Marketing, Composition and Use) (Wales) Regulations 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016, which provide for the enforcement in Wales (including offences) of the EU legislation in this area. This instrument substitutes provisions for enforcement of Regulation (EU) 2020/354 for the current provisions that implement Directive 2008/38/EC, which is repealed as of 25th December 2020.
11. All feed businesses that produce, supply or use animal feed, for particular nutritional purposes are covered by this Instrument.
12. Corresponding implementing legislation is being made in relation to England, Scotland and Northern Ireland.

Consultation

13. A six-week consultation ran from 2 October 2020 to 13 November 2020 on the proposal to draft domestic legislation to provide for the enforcement in Wales of Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC. The consultation was drawn to the attention of key stakeholders including feed business operators and local authorities.
14. One response was received from an industry group which was supportive of the plan to draft domestic legislation enforcing Reg (EU) 2020/354 in Wales. No amendments were considered necessary to the draft Regulations.
15. A summary of the consultation responses will be published on the Food Standard's Agency website within three months of the Regulations being laid.

Regulatory Impact Assessment (RIA)

16. The FSA considers the impact on both businesses and enforcement authorities of this instrument will be negligible. The FSA has identified no significant change to the requirements for business, or in the regulatory approach undertaken. Regulation (EU) 2020/354 contains transitional measures that will allow existing stocks of product labelled before 25

March 2022 under the present rules to be used up. Therefore, an impact assessment has not been produced.

17. The FSA envisages minimal one-off familiarisation costs for Local Authorities in Wales to read and familiarise themselves with the EU Regulations and then disseminate to enforcement officers.

18. The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020 have no impact on the statutory duties or statutory partners of the Government of Wales Act 2006.

Agenda Item 5.3

SL(5)686 – The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020

Background and Purpose

The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 postponed by-elections for principal and community councils that were due to take place during the period of 16th March 2020 to 31st January 2021 and required them to be held between 1st February 2021 and 16th April 2021.

These Regulations provide for supplementary issues to ensure that the postponed by-elections are conducted in accordance with electoral law and good practice, and that Returning Officers are able to carry out their duties.

Regulation 4 provides that any postal ballot cast in relation to a postponed by-election is not to count for the purposes of a byelection that has been re-arranged, and provides that a postal voter is not prevented from casting another postal ballot at a re-arranged by-election.

Regulation 5 makes provision on how the returning officer has to deal with the documentation which may have been created in advance of a postponed byelection.

Regulation 6 requires the registration officer to retain such documents for a year before destroying them (subject to a court order).

Regulation 7 makes provision in relation to persons who were candidates at a postponed by-election. It provides that a person who was a candidate is no longer a candidate, and is treated generally as not having been one.

Regulation 8 provides applicants with additional grounds for applying for emergency proxy votes in respect of certain local government by-elections.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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



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

We note the breach of the 21-day rule (i.e. the rule under section 11A(4) of the Statutory Instruments Act 1946 that a negative procedure statutory instrument should be laid before the Senedd at least 21 days before that instrument comes into force), and the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd in a letter to the Llywydd dated 3 December 2020.

In particular, we note the following paragraph of the letter:

"Not adhering to the 21 day convention allows the Regulations to come into force on 4 December 2020. This is necessary in order to ensure ROs have enough time to prepare for the first postponed by-elections which are scheduled to take place in early February. An RO must publish a notice of election no later than 25 working days before the date of the election. Therefore, if a by-election was to be held at the earliest opportunity, on 4 February 2021, the election notice would need to be published no later than 31 December 2020. If the 21 day rule was observed for these Regulations, they would not be in force by the time an RO would need to lay the notice of election in order to have the by-election."

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 two footnotes in regulation 7(5) make reference to amendments made by the Political Parties and Elections Act 2009. However, the relevant provisions in the 2009 Act have not yet been brought into force and a date has yet to be appointed as to when they will be. Therefore the current position is that the provisions referred to in regulation 7(5) have not (yet) been amended in the manner described in the footnotes.

It is accepted that a footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the references could be updated to reflect the current position.

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 paragraph in the Explanatory Memorandum:

"Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Views have been sought from stakeholders such as the Electoral Commission, the Wales Electoral Coordination Board (WECB) and the Association of Electoral Administrators (AEA)."



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.

The Explanatory Note provides that the Welsh Ministers considered the Code of Practice on the carrying out of Regulatory Impact Assessments and concluded:

"it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations."

However, a Regulatory Impact Assessment is included on page 6 of the Explanatory Memorandum.

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

8 December 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. 1399 (W. 310)

**LOCAL GOVERNMENT,
WALES**

**REPRESENTATION OF THE
PEOPLE, WALES**

The Local Government
(Coronavirus) (Postponement of
Elections) (Wales) (No. 2)
Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to certain local government by-elections which were postponed as a result of the Covid-19 pandemic. These local government by-elections were postponed by the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 (“the 2020 Regulations”).

Regulation 4 provides that any postal ballot cast in relation to a by-election postponed by the 2020 Regulations is not to count for the purposes of a by-election that has been re-arranged. It also provides that a postal voter is not prevented from casting another postal ballot at a re-arranged by-election.

Regulation 5 makes provision on how the returning officer has to deal with the documentation which may have been created in advance of a postponed by-election, including forwarding it to the registration officer.

Regulation 6 requires the registration officer to retain such documents for a year before destroying them (subject to a court order). It also makes provision about court orders for access to those documents in respect of a prosecution.

Regulation 7 makes provision in relation to persons who were candidates at a postponed by-election. It provides that a person who was a candidate is no

longer a candidate, and is treated generally as not having been one. The effects of this include that the person is not required to complete certain returns relating to candidate expenses and donations under the Representation of the People Act 1983. Certain donations to regulated donees instead fall to be dealt with under the rules in the Political Parties, Elections and Referendums Act 2000, although the deadlines for complying with those rules are extended.

Regulation 8 amends the Representation of the People (England and Wales) Regulations 2001, so as to provide applicants with additional grounds for applying for emergency proxy votes in respect of certain local government by-elections. These additional grounds relate to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the Covid-19 pandemic. .

Regulation 9 modifies the effect of the Local Government (Wales) Measure 2011 in relation to the requirement to give public notice where a person is co-opted on to the membership of a community council in Wales. As a result of the Covid-19 pandemic, such public notices need only be given electronically.

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

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. 1399 (W. 310)

**LOCAL GOVERNMENT,
WALES**

**REPRESENTATION OF THE
PEOPLE, WALES**

The Local Government
(Coronavirus) (Postponement of
Elections) (Wales) (No. 2)
Regulations 2020

Made 1 December 2020

Laid before Senedd Cymru 3 December 2020

Coming into force 4 December 2020

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 68 of the Coronavirus Act 2020⁽¹⁾

Title and commencement

1. The title of these Regulations is The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020.

2. These Regulations come into force on 4 December 2020.

Interpretation

3. In these Regulations—

“the 1983 Act” means the Representation of the People Act 1983⁽²⁾;

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000⁽³⁾;

⁽¹⁾ 2020 c. 7.

⁽²⁾ 1983 c. 2.

⁽³⁾ 2000 c. 41.

“the 2020 Act” means the Coronavirus Act 2020;
“the 2001 Regulations” means the Representation of the People (England and Wales) Regulations 2001(1);

“the 2020 Regulations” means the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020(2);

“ballot paper envelope”, “covering envelope”, “postal voter”, “receptacle for ballot paper envelopes” and other references to specified receptacles have the same meanings as in Part 5 of the 2001 Regulations;

“candidate” has the meaning given by section 118A of the 1983 Act(3);

“electoral area” has the same meaning as in section 203(1) of the 1983 Act;

“opened relevant envelope” means—

- (a) a covering envelope that has been opened, or
- (b) an envelope (other than a covering envelope) which is received by the returning officer or counting officer and which, when opened, contains a ballot paper envelope, postal voting statement or ballot paper;

“a postponed poll” means any poll which as a result of the 2020 Regulations will replace a relevant by-election and be held within the period commencing on 1 February 2021 and ending on 16 April 2021;

“postal voters list” and “proxy postal voters list” have the same meaning as in section 202(1) of the 1983 Act(4);

“principal area” has the same meaning as in section 270(1) of the Local Government Act 1972 (general provisions as to interpretation)(5);

“regulated donee” has the same meaning as in paragraph 1 of Schedule 7 to the 2000 Act;

“relevant by-election” means —

- (a) an election of a councillor to fill a casual vacancy in the office of councillor for any principal area in Wales; or
- (b) the election of a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales,

(1) S.I. 2001/341; relevant amending instruments are S.I. 2006/752, 2006/2910 and 2013/3198.

(2) S.I. 2020/461 (W.105)

(3) Section 118A was inserted by the Political Parties, Elections and Referendums Act 2000 (c. 41), section 135.

(4) Section 202(1) was amended by the Electoral Administration Act 2006 (c. 22), Schedule 1, paragraph 128.

(5) 1972 c. 70; section 270(1) was amended by the Local Government Act 1985 (c. 51), Schedule 16, paragraph 8.

where the poll for any such election was due to be held during the relevant period and was not held during that period as a result of the 2020 Regulations;

“the relevant period” (“*y cyfnod perthnasol*”) means the period beginning on 16 March 2020 and ending on 31 January 2021;

“relevant registration officer”—

(a) in the case of a relevant by-election—

- (i) where the election was for a councillor to fill a casual vacancy in the office of councillor for any principal area in Wales, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006(1);
- (ii) where the election was for a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(2).

Postal ballots: general

4.—(1) A postal ballot paper which was returned by a postal voter in relation to a relevant by-election has no effect for the purposes of a postponed poll.

(2) The fact that a postal voter cast a postal ballot paper in respect of a relevant by-election does not prevent that person from casting a postal ballot paper in respect of a postponed poll.

(3) Where any list has been created under regulation 87(3) of the 2001 Regulations in relation to a relevant by-election, regulation 61C(4) of those Regulations (notification of rejected postal voting statement) does not apply in respect of an absent voter who appears on that list.

(4) Regulation 84A(5) of the 2001 Regulations (confirming receipt of postal voting statements) does not apply in relation to any postal ballots issued in relation to a relevant by-election.

(1) S.I. 2006/3304, to which there are amendments not relevant to these Regulations.

(2) S.I. 2006/3305, to which there are amendments not relevant to these Regulations.

(3) Regulation 87 was amended by S.I. 2006/2910 and S.I. 2013/3198.

(4) Regulation 61C was inserted by S.I. 2013/3198, regulation 28.

(5) Regulation 84A was inserted by S.I. 2006/2910, regulation 52.

Postal ballots: disposal of documents by the returning or counting officer

5.—(1) The returning officer for a relevant by-election—

- (a) subject to paragraph (2), must not take any steps or further steps to open a covering envelope, or deal with the contents of an opened relevant envelope, in accordance with Part 5 of the 2001 Regulations;
- (b) must treat as if it were a counted ballot paper—
 - (i) any unopened covering envelope;
 - (ii) the contents of any opened relevant envelope; and
 - (iii) any contents of the postal ballot box.

(2) Where the polls for one or more relevant by-elections were due to be taken together—

- (a) the returning officer may open any covering envelopes or ballot paper envelopes in order to separate the contents by election for the purposes of paragraph (4);
- (b) the requirements of Part 5 of the 2001 Regulations do not apply to any such opening of envelopes.

(3) The returning officer—

- (a) must seal up in packets—
 - (i) any contents of the receptacle for rejected votes;
 - (ii) any contents of the receptacle for ballot paper envelopes;
 - (iii) any contents of the receptacle for rejected ballot paper envelopes;
 - (iv) any lists of spoilt, lost or cancelled postal ballot papers kept in accordance with regulations 77(8), 78(4) or 78A(3) of the 2001 Regulations;
 - (v) any contents of the receptacle for rejected votes (verification procedure);
 - (vi) any contents of the receptacle for postal voting statements (verification procedure);
 - (vii) anything treated as if it were a counted ballot paper under paragraph (1)(b) which would not otherwise be contained in a packet in accordance with subparagraphs (i) to (vi);
 - (viii) the marked copies of the postal voters list and the proxy postal voters list;
- (b) must forward those packets to the relevant registration officer, together with—

- (i) any sealed packets described in regulations 75(1), 77(6), 78(2C) and 78A(2)(c) of the 2001 Regulations (completed corresponding number lists and spoilt, lost and cancelled postal ballot papers);
- (ii) any list required to be compiled in accordance with regulation 87(4) of the 2001 Regulations (lists of rejected ballot papers).

(4) The returning officer must endorse each packet described in paragraph (4) with—

- (a) a description of its contents;
- (b) the date of the poll for the relevant by-election; and
- (c) the name of the electoral area (or areas) to which the relevant by-election relates.

(5) Section 36(4) or (5A) of the 1983 Act (local elections in England and Wales: payment of expenditure)⁽¹⁾ applies to all expenditure properly incurred by a returning officer in relation to the exercise of the officer's functions under this regulation as it applies to expenditure properly incurred in relation to the holding of an election.

Postal ballots: retention, production and destruction of documents by the relevant registration officer

6.—(1) The relevant registration officer must—

- (a) retain the documents forwarded to the officer in accordance with regulation 5(3)(b) for the period of one year; and
- (b) after that period, cause those documents to be destroyed, unless otherwise directed by an order of a county court, a Crown Court or a magistrates' court.

(2) A person must not be allowed to inspect any of the documents described in regulation 5(3)(a)(i) to (iii), (v) to (vii) and (b)(ii) which are in the possession of the relevant registration officer, except in accordance with an order made by a court for the inspection or production of any document for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers.

(3) In relation to an order described in paragraph (2)—

- (a) where it relates to an election for a councillor to fill a casual vacancy in the office of

⁽¹⁾ Section 36(4) and (5A) was amended by the Local Government Act 1985 (c. 51), Schedule 17; by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraphs 68(9) and (10).

councillor for any principal area in Wales, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006(1) apply in accordance with paragraph (4); and

(b) where it relates to an election for a councillor to fill a casual vacancy in the office of community councillor, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(2) apply in accordance with paragraph (4).

(4) The provisions referred to in paragraph (3) apply to an order described in paragraph (2) in the same way as they apply to an order made under those provisions, save that references in those provisions to “counted ballot papers” should be read as references to the documents described in regulation 5(3)(a)(i) to (iii), (v) to (vii) and (b)(ii).

(5) Section 176 of the 1983 Act (time limit for prosecutions)(3) applies in respect of documents retained by the relevant registration officer under paragraph (1) and references to “rule 57 of the parliamentary elections rules” in subsections (2C) and (2D) should be read as a reference to regulation 6(1) of these Regulations.

(6) Section 54 of the 1983 Act (payments of expenses of registration)(4) applies to the exercise of functions of the relevant registration officer under this regulation as it applies to the exercise of functions of the registration officer under the 1983 Act.

Candidates at relevant by-elections

7.—(1) A person (“P”) who was a candidate at a relevant by-election is no longer to be regarded as a candidate, and is treated as not having been a candidate before the coming into force of this regulation.

(2) A person (including P) is not liable in respect of any act or omission (whenever occurring) in relation to P’s candidacy at a relevant by-election before the coming into force of this regulation (disregarding paragraph (1)), under—

(1) S.I. 2006/3304.
(2) S.I. 2006/3305.
(3) Section 176 was amended by the Representation of the People Act 1985 (c. 50), sections 24 and 28, Schedule 4, paragraph 61 and Schedule 5.
(4) Section 54 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 14; and by the Electoral Registration and Administration Act 2013 (c.6), Schedule 4, paragraphs 1 and 17.

- (a) section 71A of, and Schedule 2A to, the 1983 Act (control of donations to candidates)(1); and
- (b) sections 73 to 90D, and Schedule 4 to the 1983 Act (provisions about candidate election expenses)(2) including the application of

(1) Section 71A was inserted by the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”), section 130. Schedule 2A was inserted by Schedule 16 to the 2000 Act.

(2) Sections 73 and 74 were amended by the Representation of the People Act 1985 (“RPA 1985”), section 14; by the Greater London Authority Act 1999 (c. 29) (“GLAA 1999”), Schedule 3, paragraphs 1, 17 and 18; by the 2000 Act, Schedule 18, paragraphs 1, 3 and 4; and section 73 was also amended by the Electoral Administration Act 2006 (c. 22) (“EAA 2006”), Schedule 1, paragraphs 104, 111 and 133. Section 74A was inserted by the 2000 Act, Schedule 18 paragraphs 1 and 5, and was amended by EAA 2006, Schedule 1, paragraphs 104, 112 and 133. Section 75 was amended by RPA 1985, Schedule 4, paragraph 24; by GLAA 1999, Schedule 3 paragraphs 1 and 19; by the 2000 Act, section 131; by EAA 2006, section 25 and Schedule 1, paragraphs 104 and 113; and by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (c. 4) (“the 2014 Act”), section 36(1). Sections 75ZA and 75ZB were inserted by the 2014 Act, section 36(2). Section 76 was amended by RPA 1985, Schedule 4, paragraph 25; by the Local Government Act 1985 (c. 51), Schedule 17; by the Education Reform Act 1988 (c. 40), Schedule 13, Part 1; by the Representation of the People Act 1989 (c. 28), section 6(1); by GLAA 1999, Schedule 3, paragraphs 1 and 20; by the Representation of the People Act 2000 (c. 2), Schedule 1, paragraphs 1 and 18; by the 2000 Act, section 132; by EAA 2006, Schedule 1, paragraphs 69 and 71; by the 2014 Act, section 37(1), and by S.I. 2014/1870. Section 76ZA was inserted by the Political Parties and Elections Act 2009 (c. 12) (“PPE 2009”), section 21(1), and was amended by the Fixed-term Parliaments Act 2011 (c. 14), Schedule, paragraphs 6 and 7, and by S.I. 2014/1870. Section 76A was inserted by RPA 1985, section 14, and was amended by the 2000 Act, section 133(1), and by PPE 2009, Schedule 6, paragraph 6. Section 77 was amended by GLAA 1999, Schedule 3, paragraphs 1 and 22. Sections 78 and 79 were amended by RPA 1985, Schedule 4, paragraph 26; by the 2000 Act, Schedule 18, paragraphs 1, 6 and 18, and section 78 was also amended by the Crime and Courts Act 2013 (c. 22), Schedule 9, paragraph 52(1)(b) and (2). Sections 81, 82 and 85 were amended by RPA 1985, Schedule 4, paragraphs 27 to 29; by GLAA 1999, Schedule 3, paragraphs 1 and 23 to 25; and by the 2000 Act, Schedule 18, paragraphs 1, 7, 8 and 19, and section 81 was also amended by EAA 2006, section 26 and Schedule 1, paragraphs 104, 114 and 133. Section 85A was inserted by GLAA 1999, Schedule 3, paragraphs 1 and 26. Section 86 was amended by RPA 1985, Schedule 4, paragraph 30; by the 2000 Act, Schedule 18, paragraphs 1 and 18; by the Legal Services Act 2007 (c. 29), Schedule 21, paragraphs 48 and 49, and by the Crime and Courts Act 2013, Schedule 9, paragraph 52. Section 87 was amended by RPA 1985, Schedule 4, paragraph 31, and by S.I. 2015/664. Section 87A was inserted by the 2000 Act, Schedule 18, paragraphs 1 and 9. Section 88 was amended by RPA 1985, Schedule 4, paragraph 32, and by GLAA 1999, Schedule 3, paragraphs 1 and 27. Section 89 was amended by RPA 1985, Schedule 4, paragraph 33; by the 2000 Act, Schedule 18, paragraphs 1 and 10; and by EAA 2006, Schedule 1, paragraphs 104 and 115. Section 90 was amended by the 2000 Act, Schedule 18, paragraphs 1 and 11, and by EAA 2006, Schedule 1, paragraphs 104 and 116. Section 90ZA was inserted by EAA 2006, section 27(1) and (2), and was amended by PPE 2009, Schedule 6, paragraph 7. Sections 90A to 90D were inserted by the 2000 Act, section 134. Sections 90A and 90B were repealed by EAA 2006, section 27(1), (3) and (4). Sections 90C and 90D were amended by EAA 2006, Schedule 1, paragraphs 104, 117, 118 and 133.

those provisions to the election of community councillors in Wales by section 90 of that Act.

(3) Paragraphs (4) to (6) apply in relation to a donation which would have fallen to be included in a return as to election expenses in respect of P in accordance with Part 3 of Schedule 2A to the 1983 Act⁽¹⁾ if the relevant by-election had taken place (disregarding paragraph (2)).

(4) For the purposes of paragraph 4(3)(a) of Schedule 7 to the 2000 Act (donations: disregard for candidate donations) a donation to which this paragraph applies is not to be treated as falling to be included in a return as to election expenses in respect of P.

(5) Where a regulated donee is required to take action in respect of a donation to which this paragraph applies under section 56(2) of the 2000 Act (acceptance or return of donations)⁽²⁾, as applied by paragraph 8 of Schedule 7 to that Act⁽³⁾, that provision is to be read as if it required that action to be taken by 31 January 2021 (instead of within the period specified in the provision).

(6) Where, in relation to a donation to which this paragraph applies, a regulated donee is required to prepare a report under paragraph 10(1) or 11(1)(a) of Schedule 7 to the 2000 Act (donation reports: permissible and impermissible donors)⁽⁴⁾, paragraph 10(2) or 11(1)(b) (as the case may be) of that Schedule⁽⁵⁾ is to be read as if it required the report to be delivered to the Electoral Commission by 31 January 2021 (instead of within the period specified in the provision).

(7) A person is not liable for any failure to comply with a requirement referred to in paragraphs (5) or (6) between the time for compliance set out in relation to the requirement (prior to the modifications made by paragraphs (5) and (6) taking effect) and the coming into force of this regulation.

(8) Nothing in this regulation affects whether P is a candidate in respect of a postponed poll or any requirements which would apply in relation to P as a candidate in respect of a postponed poll.

-
- (1) Schedule 2A was inserted by the Political Parties Elections and Referendums Act 2000 (c.41.), Schedule 16.
- (2) Section 56(2) was amended by PPE 2009, section 9.
- (3) Paragraph 8 was amended by PPE 2009, Schedule 4, paragraph 2 and Schedule 6, paragraph 28.
- (4) Paragraph 10(1) was amended by EAA 2006, Schedule 1, paragraphs 138 and 154, and by PPE 2009, Schedule 3, paragraph 2. Paragraph 11(1) was amended by PPE 2009, Schedule 3, paragraph 3.
- (5) Paragraph 10(2) was amended by PPE 2009, section 20.

Amendment of the 2001 Regulations

8.—(1) The 2001 Regulations are amended in accordance with this regulation.

(2) In regulation 56 (closing date for applications)⁽¹⁾—

- (a) in paragraph (3) for the words “Subject to paragraph (3A),” substitute “Subject to paragraphs (3A) and (3B),”;
- (b) after paragraph (3A) insert—

“(3B) Where an application is made under paragraph 4(2) of Schedule 4 in relation to a relevant Welsh by-election—

- (a) on the ground that the applicant cannot reasonably be expected to vote in person at a polling station as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus; or
- (b) on the ground that any person appointed as a proxy to vote for an applicant under paragraph 6 of Schedule 4 is unable to attend a polling station and vote for that applicant as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus,

the application, or an application under paragraph 6(8) of that Schedule made by virtue of that application, shall be refused if it is received after 5pm on the day of the poll at the election for which it is made.

(3C) In paragraph (3B) the term relevant Welsh by-election means—

- (a) an election of a councillor to fill a casual vacancy in the office of councillor for any county council or county borough council in Wales; or
- (b) the election of a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales,

where the poll for such an election was postponed as a result of the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020”.

(1) Regulation 56 was amended by S.I. 2001/1700, S.I. 2006/752, S.I. 2006/2910 and S.I. 2013/3198.

(3) The Welsh Ministers must review the amendments made to the 2001 Regulations by this regulation at least once every year, with the first review being carried out by 1 October 2021.

(4) This regulation will cease to have effect at the end of the period of 2 years beginning with the day on which this regulation comes into force.

Notices required for co-option of community councillors for casual vacancies

9.—(1) This regulation applies in relation to a public notice required by virtue of section 116(2) of the Local Government (Wales) Measure 2011⁽¹⁾ (“the 2011 Measure”) in respect of a vacancy or vacancies arising between 16 March 2020 and 31 January 2021.

(2) Section 232 of the Local Government Act 1972⁽²⁾ does not apply.

(3) The notice must be published electronically.

(4) The reference to functions in section 117(1) of the 2011 Measure includes a reference to functions under this regulation in relation to a notice required to be given under section 116(2) of the Measure.

Julie James

Minister for Housing and Local Government, one of the Welsh Ministers

1 December 2020

(1) 2011 nawm 4.

(2) 1972 c.70. Relevant amendments were made by the Local Government (Democracy) (Wales) Act 2013 (2013 anaw 4), section 56.

**Explanatory Memorandum to The Local Government (Coronavirus)
(Postponement of Elections) (Wales) (No. 2) Regulations 2020.**

This Explanatory Memorandum has been prepared by Education and Public Services and is laid before the 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 Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
3 December 2020

PART 1

1. Description

- 1.1. Under The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020, postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16th March 2020 and ending on 31st January 2021 are required to be held between 1st February 2021 and 16th April 2021.
- 1.2. These No. 2 Regulations provide for supplementary issues to ensure that the postponed by-elections are conducted in accordance with electoral law and good practice, and that Returning Officers (RO) are able to carry out their duties. They make provision about postal ballots already cast, people who were candidates and their expenses and donations, proxy voting for those following Government advice, and allowing public notices for vacancies to be published electronically.

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

- 2.1. In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.2. The Regulations will come into force on 4th December. This is necessary in order to ensure Returning Officers (ROs) have enough time to prepare for the first postponed by-elections which are scheduled to take place in early February. An RO must publish a notice of election not later than 25 working days before the date of the election. Many ROs have expressed a preference for holding their by-elections early in February 2021 to avoid overlapping with the regulatory period for the Senedd election in May 2021. Therefore, if a by-election were to be held at the earliest opportunity, on 4 February 2021, the election notice would need to be published no later than 31 December 2020. If the 21 day rule was observed for these Regulations, they would not be in force by the time a RO would need to lay the notice of election in order to have the by-election. In view of these circumstances, the reduced period is thought necessary and justifiable in this case.
- 2.3. These Regulations have partial retrospective effect as they change the status of candidates who were due to stand in by-elections postponed by the previous regulations as a result of Coronavirus pandemic. They provide that candidates should no longer be regarded as having stood at such a by-election, and that they should not held liable for any act or omission in respect of donations or expenses claims arising from their candidacy. Section 68 of the Coronavirus Act 2020, which provides the power to make these Regulations, expressly enables retrospective provision to be made.

3. Legislative background

- 3.1. The powers to make these Regulations are in section 68 of the Coronavirus Act 2020 (CA 2020). The Act enables the Governments of the UK to respond to an emergency situation and manage the effects of the COVID-19 pandemic.
- 3.2. In relation to elections, Section 68 of the Coronavirus Act 2020 provides Welsh Ministers with the power to make by regulations any consequential, supplementary, incidental, transitional or saving provisions in connection with section 66 or regulations made under section 67 of the Act. The provision which may be made includes provision about electoral activity prior to the postponement of a poll, the conduct of elections, the manner of voting in elections that have been postponed, the terms of office of incumbent officer holders, nominations of candidates, expenses incurred in relation to the election by those other than local authorities, and compensation for local authorities or candidates as a result of the provisions within the Act.

4. Purpose and intended effect of the legislation

- 4.1. The Coronavirus Act 2020 enables the Governments of the UK to respond to an emergency situation and manage the effects of a COVID-19 pandemic.
- 4.2. The Act contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts. The provisions are time limited for two years. The Act contains a number of provisions around elections and a regulation making powers for Welsh Ministers.
- 4.3. The postponement of elections as a result of COVID-19 created uncertainties and gaps in electoral law. Electoral law does not provide for scenarios where elections are postponed in the way they have been this year. Therefore the Welsh Government must amend the legislative framework for the polls which have been postponed to address the administrative consequences. This SI makes provision in four areas:

Postal ballots already cast

- 4.4. This instrument makes provision about postal ballots issued to electors for certain county or county borough and community council by-elections which were postponed by regulations made under the CA 2020. These are the only polls where postal ballots could have been issued because of the timing of the postponement. These postal ballot papers will have been sent out and some may have been completed and returned.
- 4.5. The instrument provides that a postal ballot paper which was returned by a postal voter has no effect for the purpose of the postponed poll for the local by-election when it eventually takes place. This means the voter will need

to cast a new vote at the postponed poll. The instrument then makes provision about what a RO has to do with returned postal votes and other documentation that may have been created before the poll was postponed.

- 4.6. The instrument makes provision which follows closely the existing rules for when a poll is not held due to the death of a candidate. The RO is not required to open or otherwise process any returned postal vote that has not already been dealt with in accordance with the relevant statutory rules. Instead, the Regulations require the RO to seal and forward any returned postal votes and other documentation, such as the marked copies of the postal voters list and the proxy postal voters list, to the electoral registration officer (ERO), who will retain the documents for a year before destroying them. The Regulations also make provision allowing a court (by order) to allow the inspection of such documents in respect of a prosecution.

People who were candidates and their expenses and donations,

- 4.7. Some of the by-elections that were due to take place were postponed after the point at which individuals whose intention to stand as candidates was declared and they became candidates under electoral law. The application of a number of rules relating to the candidacy of these individuals is unclear due to the unusual circumstances of the postponed polls. These regulations ensure the rules are clear and appropriate for those circumstances.
- 4.8. These Regulations ensure that candidates do not remain as candidates in respect of a postponed by-election; though it does not of course prevent them standing again for the rescheduled election in the usual way should they wish to. The Regulations ensure that they are no longer candidates and are treated as though they had never been candidates for the postponed polls. Otherwise, they would be subject to spending and donations controls for a much longer period of time than usual.
- 4.9. The Regulations also deal with the rules on donations to candidates. Normally these would have to be dealt with in candidate returns, but the provision discussed above removes the requirement for returns (as individuals are no longer treated as candidates in respect of postponed by-elections). As a result, any donations received will instead be covered by the rules for donations to 'regulated donees' under Schedule 7 to the Political Parties, Elections and Referendum Act 2000, meaning they may need to be reported to the Electoral Commission. This will be the case where the recipient of the donation is already a holder of elected office.
- 4.10. When those donations are reported to the Electoral Commission, the recipients will likely have missed their deadlines under the regulated donee regime. This is as a result of the delays caused by the postponed by-elections. This instrument extends the deadlines for reporting these donations to 31 January 2020 to ensure no one commits an offence as a result of the elections postponement.

Proxy voting for those shielding

- 4.11. Paragraph 4 of Schedule 4 of the Representation of the People Act 2000 makes provision for absent voting at a particular election. Paragraph 4(2)(a) specifically provides that the RO shall grant an application to vote by proxy where they are satisfied that the applicant's circumstances on the date of the poll will be, or are likely to be, such that the applicant cannot reasonably be expected to vote in person at a relevant polling station. The circumstances of individuals self-isolating would fall into this category.
- 4.12. These Regulations amend regulation 56 of the Representation of the People (England and Wales) Regulations 2001, with the effect that the categories of people that can apply for an emergency proxy are extended to include individuals who cannot vote in person because they are following relevant legislation, Welsh Government guidance or medical advice in relation to coronavirus and self-isolating.
- 4.13. The changes are temporary and will only apply to elections postponed by the previous The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020.
- 4.14. An application for an emergency proxy on medical grounds must be accompanied by attestation from a relevant professional. These Regulations do not place an attestation requirement on individuals who cannot vote in person because they are following Welsh Government or medical advice to self-isolate. This reflects the difficulty that someone self-isolating or shielding may have in getting an attestation from a suitable independent person.

Allowing public notices for vacancies to be published electronically

- 4.15. Section 116 of the Local Government (Wales) Measure 2011 states that if members of a community council seek to fill a vacancy by way of co-opting they must give public notice in accordance with section 232 (public notices) of the Local Government Act 1972. This states that "Save as otherwise expressly provided, a public notice required to be given by a local authority shall be given— (a) by posting the notice in some conspicuous place or places within the area of the local authority; and (b) in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice."
- 4.16. In light of social distancing measures, it would not be practicable for community council officials to post notices in conspicuous places and so these Regulations amend sections 116 and 117 of the Local Government (Wales) Measure 2011 to allow for public notices given in relation to a decision to co-opt a member of a town or community council due to insufficient nominations or a casual vacancy to be posted electronically to a community council's website. This regulation will only relate to vacancies which arise on community councils during the period caught by the initial postponement Regulations (16th March 2020 – 31st January 2021).

5. Consultation

- 5.1. Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Views have been sought from stakeholders such as the Electoral Commission, the Wales Electoral Coordination Board (WECB) and the Association of Electoral Administrators (AEA).

6. Regulatory Impact Assessment (RIA)

Introduction

In relation to these Regulations and the postponed by-elections, Welsh Government will consider requests for the reimbursement of reasonable costs incurred by a Returning Officer on actual expenditure prior to the enactment of the Coronavirus Act 2020 in relation to a postponed by-election.

Such payments for re-imbursement are not referenced in these Regulations as they could be made under existing Welsh Ministers' powers under section 58A of the Government of Wales Act 2006, or in combination with other local government elections' powers. The Welsh Government intends to write to local authorities with details of the eligible criteria for reimbursement, inviting appropriate applications.

Option 1 – Do nothing. Returning Officers would not be reimbursed any costs

Option 2 – Reimburse Returning Officers for actual costs incurred at postponed elections. This is the preferred option.

Cost and benefit analysis

Option 1 – Do Nothing

County and county borough councils are required to appoint a Returning Officer to conduct elections on their behalf. The Returning Officer is then personally responsible for the management of elections. Each county or county borough council is required to place the services of its staff at the disposal of the Returning Officer to help run the election. The cost of running local elections falls entirely on county and county borough councils and community Councils.

The Representation of the People Act 1983 (the 1983 Act) section 36(4) requires councils to cover all expenditure incurred by the returning officer in holding of an election for all or any seats on it. The Council may set scales of expenditure which the returning officer must not exceed.

In the case of the costs of community Council elections the 1983 Act also prescribes under Section 36(5A) that all expenditure properly incurred by a

returning officer in relation to the holding of an election of a community councillor be paid by the principal council; and if the principal council so require, any expenditure so incurred shall be repaid to them by the community council.

The costs of running an election result from having to meet a range of fees, charges and expenses incurred in paying staff, the expenses of printing notices and (for contested elections), ballot papers, postal voting forms etc. hiring polling stations and conducting the counts.

When the coronavirus pandemic began in March 2020 some local authorities had issued notices for by-elections to fill casual vacancies on county and county borough councils and community councils.

These by-elections were duly postponed by the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020. The Regulations postponed by-elections which were due to be held during the period from 16 March 2020 to 31 January 2021.

Preparation for holding some by-elections would have commenced prior to the postponement. This would have resulted in some costs being incurred such as the printing of notices, printing poll cards and ballot papers and hiring of polling stations.

Doing nothing would mean that the local authority would have incurred costs in the preparation of a poll which was subsequently postponed. The same costs will be incurred again when the poll is rescheduled.

Option 2 – Reimburse Returning Officers for Actual Expenditure

At least five local authorities have been identified as having to begun preparation for by-elections in March and April 2020 which were subsequently postponed.

Principal councils are already under financial pressure due to the coronavirus. Returning officers are also likely to face higher costs for conducting the postponed poll due to health and safety requirements in light of the ongoing situation to ensure the safety of polling station staff and voters.

Reimbursing the actual costs incurred for postponed polls would support councils during this difficult financial period.

The costs which are likely to have been incurred and which will be reimbursed include the printing and posting of poll cards, ballot paper and postal voter packs. It is not proposed to include staff costs as county and county borough councils are required to make staff available to the returning officer for elections. Also there is no provision in existing legislation for returning officers to be paid a personal fee for the conduct of local elections. The costs of notices is likely to be insignificant as most would have been prepared in house.

Based on data from the five local authorities identified as having elections postponed in March and April, the total costs incurred in preparing for the poll is in the region of £16,302.

However, there may be other county or county borough councils, not yet identified, which also postponed by-elections therefore the maximum amount likely to be required to be reimbursed is in the region of £25,000

Reimbursement will be on the basis of actual expenses incurred. It will be expected that receipts or evidence of costs incurred will be produced.

Competition Assessment

The Regulations are not expected to impact on the level of competition in Wales or the competitiveness of Welsh firms.



Ein cyf/Our ref: MA.JJ.3927.20

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1NA

3 December 2020

Dear Llywydd,

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that the *Local Government (Coronavirus) (Postponement of Elections) (Wales) (No.2) Regulations* will come into force less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information.

The Coronavirus Act 2020 was introduced to Parliament on 19 March and contained a number of miscellaneous provisions relating to elections. The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations which came in to force on 5 May 2020 postponed any by-elections due in the immediate future, setting a new date for these by-elections to be held no later than 16 April 2021 and not before 1 February 2021.

Electoral law does not provide for elections being postponed in the way they were earlier this year and legislative provision is necessary to deal with supplementary issues such as the status of candidates, how to handle postal votes already cast, ensure that the postponed by-elections are conducted in accordance with electoral law and good practice, and that Returning Officers (ROs) are able to carry out their duties. The Minister for Housing and Local Government wrote to the Electoral Commission and the Wales Electoral Co-ordination Board to seek their views on the approach being taken. Their views were taken into consideration in the drafting of the Regulations.

Not adhering to the 21 day convention allows the Regulations to come into force on 4 December 2020. This is necessary in order to ensure ROs have enough time to prepare for the first postponed by-elections which are scheduled to take place in early February. An RO must publish a notice of election no later than 25 working days before the date of the election. Therefore, if a by-election was to be held at the earliest opportunity, on 4 February 2021, the election notice would need to be published no later than 31 December 2020. If the

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

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

21 day rule was observed for these Regulations, they would not be in force by the time an RO would need to lay the notice of election in order to have the by-election. Before arranging the postponed by-election, the Returning Officer will first wish to ensure that any outstanding issues which arose from the postponement are dealt with as will candidates who wish to stand again.

In view of these circumstances, the reduced period is therefore thought necessary and justifiable in this case. An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, 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 signature is written in a cursive, flowing style.

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

SL(5)670 – The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of plant health. Part 2 amends domestic legislation relating to plant health. Part 3 contains a revocation.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

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

Merits Scrutiny

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

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

There is a requirement under paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018 for the Welsh Ministers to consult the Secretary of State regarding regulations that are due to come into force prior to Implementation Period (IP) completion day. Parts 1 and 3 of these regulations will come into force immediately before IP completion day.

In accordance with this requirement, the Secretary of State has been consulted through a separate letter on 20 November 2020.

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

These Regulations set out and amend complex and intricate rules on plant health. We have been unable to work out the reasoning behind some of the changes, in particular changes to various fees under regulations 2(7) and 2(8). We would be grateful if the Welsh Government



could briefly explain why these specific fees are being omitted from the Plant Health etc. (Fees) (Wales) Regulations 2018.

Implications arising from exiting the European Union

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020, which give effect to Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, and the plant health aspects of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls. They also amend the Plant Health etc. (Fees) (Wales) Regulations 2018.

These Regulations and the EU Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

Merits Scrutiny

Point 2

The Committee seeks clarification of the reason for the omissions of regulation 6A (Potatoes originating in Lebanon: fee) and entries relating to Citrus, Mangifera and Passiflora in the table in Schedule 2 (Import inspection fees: reduced rates) to the Plant Health etc. (Fees) (Wales) Regulations 2018 ('the Fees Regulations') made by regulations 2(7) and 2(8) of the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020.

Regulation 6A of the Fees Regulations reflects Commission Implementing Decision (EU) 2019/1614 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon. Due to the higher level of potato protections in the UK the derogation has not been used and, as such, is not being retained.

Entries relating to Citrus, Mangifera and Passiflora in the table in Schedule 2 to the Fees Regulations reflect the protection of crops grown in and relevant to the EU. Their omission reflects that domestic legislation is being amended to adjust its focus toward risks to crops grown in and relevant to Great Britain.

Equivalent provisions are proposed by the UK Government and are found in regulation 4 of the draft Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (a link to which is provided below for the Committee's ease of reference).

<https://www.legislation.gov.uk/ukdsi/2020/9780348214949/regulation/4>

Legal Advisers

Legislation, Justice and Constitution Committee
9 December 2020



Regulations laid before Senedd Cymru under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

PLANT HEALTH, WALES

The Plant Health (Amendment etc.)
(Wales) (EU Exit) Regulations 2020

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 contains a revocation.

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

Regulations laid before Senedd Cymru under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

PLANT HEALTH, WALES

**The Plant Health (Amendment etc.)
(Wales) (EU Exit) Regulations 2020**

Made

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 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 Senedd Cymru in accordance with paragraph 1(8) of Schedule 7 to that Act(2).

In accordance with paragraph 4(a) of Schedule 2 to that Act, the Welsh Ministers have consulted the Secretary of State with regard to the provisions in these Regulations that come into force before implementation period completion day.

-
- (1) 2018 c. 16; see section 20(1) for the definition of “devolved authority”. Paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53(2) of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).
- (2) The reference in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

PART 1

Introductory

Title and commencement

1.—(1) The title of these Regulations is the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020.

(2) They come into force as follows—

- (a) as regards this Part and Part 3, immediately before implementation period completion day;
- (b) as regards Part 2, on implementation period completion day.

PART 2

Amendment of secondary legislation

The Plant Health etc. (Fees) (Wales) Regulations 2018

2.—(1) The Plant Health etc. (Fees) (Wales) Regulations 2018⁽¹⁾ 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)—
 - (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).

⁽¹⁾ S.I. 2018/1179 (W. 238), amended by S.I. 2019/1378 (W. 244), S.I. 2020/44 (W. 5) and S.I. 2020/69 (W. 10); there are other amending instruments but none are relevant.

(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 “, for” 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) (Wales) Regulations 2020

3. The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020(1) are amended in accordance with regulations 4 to 22.

Part 1

4.—(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) in paragraph (a)(i), omit “EU”;

(cc) omit paragraph (a)(ii);

(dd) 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”;

(1) S.I. 2020/206 (W. 48), amended by S.I. 2020/1134 (W. 259), there is another amending instrument but it is not relevant.

- (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”;
- (vii) at the appropriate place insert—
 - ““Plant Health Regulation” (*“Rheoliad Iechyd Planhigion”*) means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants⁽¹⁾”;
 - ““plant health rule” (*“rheol iechyd planhigion”*) 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

5.—(1) Part 2 is amended as follows.

(2) In regulation 6(2), in the definition of “forestry professional operator”—

- (a) in the words before paragraph (a), omit “EU” ;
- (b) in paragraph (b), for “the Union territory”, in both places where it occurs, substitute “Great Britain or a CD territory”;
- (c) after paragraph (c) insert—
 - “(ca) the introduction of forestry material into Northern Ireland from Wales”;

(1) EUR 2016/2031.

Part 3

6.—(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 Wales”;

(b) in paragraph (4)—

(i) in the definition of “responsible operator”, for “the Union” substitute “Great Britain”;

(ii) at the appropriate place insert—

““RoRo port” (“*porthladd RoRo*”) means a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018(1);”.

(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”.

(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”.

Part 4

7.—(1) Part 4 is amended as follows.

(2) In regulation 14(2), in the definition of “prohibited material”—

(a) in paragraph (b)—

(i) for “the Union territory or Wales” substitute “Great Britain”;

(ii) for “an EU” substitute “a”;

(b) in paragraph (c)—

(i) omit “within the Union territory, or”;

(ii) for “an EU” substitute “a”.

(3) In regulation 16(4), omit “(including representatives of the European Commission)”.

Part 5

8. Omit regulation 18.

(1) S.I. 2018/1248, to which there are amendments not relevant to these Regulations.

Part 6

- 9.—(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), in the definition of “relevant activity”—
 - (i) omit “EU”, in the first place where it occurs;
 - (ii) omit “, an EU emergency decision”;
 - (iii) omit “EU”, in the last 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) in paragraph (a), omit “EU”, in both places where it occurs;
 - (bb) in paragraph (a), for “an implementing or delegated act adopted by the European Commission” substitute “retained EU law or regulations made”;
 - (cc) omit 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 “Controls Regulation or” insert “for the purposes of, or under,”.

Part 8

- 10.**—(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 Wales” insert “any solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply”;
 - (iii) 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) in the English language text, 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.”

Part 9

- 11.**—(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) for “another part of the Union territory” substitute “the United Kingdom or to a CD authority”;
 - (b) omit “EU”.

Part 11

12.—(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.”

Schedule 1

13. Omit Schedule 1.

Schedule 2

14. Schedule 2 is amended in accordance with regulations 15 to 20.

Part 1

15.—(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) at the appropriate place insert—

““EPPO PM 7/21” (“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(1);

“EPPO PM 7/40” (“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(2);

“EPPO PM 7/59” (“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(3);

(1) 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.

(2) 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.

(3) 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.

“EPPO PM 7/119” (“*EPPO PM 7/119*”) means the standard describing the procedures for nematode extraction approved by the European and Mediterranean Plant Protection Organization(1);”.

Part 2

16.—(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

17.—(1) Part 4 is amended as follows.

(2) In paragraph 7—

- (a) in the definition of “field”, for “Article 3 of Directive 2007/33/EC” substitute “this Part”;
- (b) at the appropriate place insert—
 - ““specified measures” (*mesurau penodedig*) means—
 - (a) for the purposes of paragraph 9(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

(1) 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.

nematodes were found or potatoes were last grown in the field;

(b) for the purposes of paragraphs 11(3) and 15—

(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 7 insert—

“Official testing

7A. 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 8—

(a) in sub-paragraph (a), for “Articles 4 and 5 of Directive 2007/33/EC” substitute “this Part”;

(b) in sub-paragraph (b), for “Article 6 of Directive 2007/33/EC” substitute “this Part”.

(5) Paragraph 8 becomes paragraph 8(1) and after that sub-paragraph insert—

“(2) An official investigation of a field for the purposes of paragraph 8(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 8(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 8(1)(a) must include—

- (a) soil sampling of the field at the appropriate sampling rate and official testing of the samples, or
- (b) 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 8(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 8(1)(a) does not apply where the Welsh Ministers have established that there is no risk of Potato cyst nematodes spreading and—

- (a) 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,
- (b) seed potatoes are to be used within the same place of production situated within an officially defined area, or
- (c) 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)—

- (a) “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 hectares	1,500 ml of soil per hectare
		Each additional hectare	400 ml of soil per hectare
	Field ≤ 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 hectares	400 ml of soil per hectare
Each additional hectare		200 ml of soil per hectare	
(5)	Field ≤ 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 9(2), for the words from “officially” to “2007/33/EC” substitute “relevant specified measures”.

(7) In paragraphs 11(3) and 15, 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

18.—(1) Part 5 is amended as follows.

(2) In paragraph 17—

- (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 19(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 19(1)(b)”.

(3) In paragraph 18—

- (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”, in the first place it occurs, to “93/85/EEC”, in the second place it occurs, substitute “EPPO PM 7/59”.

(4) In paragraph 19(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 20—

(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 21—

(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 23(7)(b), for “Article 2 of Directive 93/85/EEC” substitute “EPPO PM 7/59”.

Part 6

19.—(1) Part 6 is amended as follows.

(2) In paragraph 24—

(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 26(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/EEC” substitute “pursuant to paragraph 26(2)(d)”.

(3) In paragraph 25—

(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 26—

(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) after sub-paragraph (4) 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 27—
- (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 28, 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 30—
- (a) in sub-paragraph (7)—
 - (i) in paragraph (a), for “Article 5(1)(a)(iv) of Directive 98/57/EC” substitute “paragraph 26(3)(d)”;
 - (ii) in paragraph (b), for “Article 5(1)(c)(iii) of Directive 98/57/EC” substitute “paragraph 26(4)(d)”;
 - (b) in sub-paragraph (8)(b), for “Article 2 of Directive 98/57/EC” substitute “EPPO PM 7/21”.

Part 7

- 20.** In paragraph 31—
- (a) for the heading substitute “**Additional measures relating to Egyptian potatoes**”;
 - (b) in sub-paragraph (1)—
 - (i) for “the Union territory” substitute “Great Britain”;
 - (ii) for “Commission Implementing Decision 2011/787/EC” substitute “Article 41(1) of the Plant Health Regulation”.

Schedule 3

- 21.**—(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 the words from “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—

<p>“Article 41(1) (as read with Articles 47 and 48(1))</p>	<p>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.</p>
<p>Article 41(1A) (as read with Article 48(1))</p>	<p>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.</p>

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.”;
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- (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 the words from “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 the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
- (xvi) in the entry relating to Article 62(2), for the words from “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, 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 Article 84(3), after “issuing”, in each place where it occurs, insert “UK”;
- (xxii) in the entry relating to Article 85, 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.”;
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(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 Article 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

22. Omit Schedule 4.

PART 3

Revocation

Revocation

23. The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019(1) are revoked.

(1) S.I. 2019/674 (W. 130).

Name
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

Explanatory Memorandum to the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

24 November 2020

Part 1

1. Description

The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020 (the “instrument”) will make amendments to subordinate legislation, which apply in relation to Wales in relation to plant health.

Part 1 and Part 3 of this instrument will come into force immediately before Implementation Period (IP) completion day, and Part 2 of this instrument comes into force, on IP completion day.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the draft affirmative procedure.

There is a requirement under paragraph 4(a) of Schedule 2 to the Withdrawal Act for the Welsh Ministers to consult the Secretary of State regarding regulations that are due to come into force prior to IP completion day. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 20 November 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the

relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

The plant health regime is established, at European level, by Regulation (EU) 2016/2031) on protective measures against the pests of plants and Regulation (EU) 2017/625) on official controls and other official activities performed to ensure the application of matters including plant health (“the EU Regulations”) and associated implementing legislation.

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.

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) (Wales) Regulations 2019 (S.I. 2020/206) (W. 48) (“the 2020 Regulations”) contain supplementary domestic provisions to enable the Welsh Ministers 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 England, Scotland and Northern Ireland.

This instrument makes operability changes and other consequential amendments to domestic secondary legislation, including the 2020 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 on 31 December 2020.

4. Purpose and intended effect of the legislation

The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within Great Britain (GB) and between GB and the EU at the end of the transition period.

The operability amendments to the 2020 Regulations contribute to the creation of 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. Internal controls will also continue to apply to movement of goods within the GB internal market.

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 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. The Pest Risk Analysis process evaluates biological and other scientific and economic evidence to determine whether an organism is a plant pest or pathogen which poses a significant risk to plants in GB. It determines if a pest should be considered for regulation and identifies specific control measures to be taken against it. These risk-based principles, as used in the EU regime, will continue but for GB risk levels.

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 that apply to all countries exporting to GB.

What the instrument does

This instrument makes amendments to legislation in the field of plant health. It amends and revokes domestic secondary legislation relating to plant health.

This instrument revokes the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 (elements of which correct legislation that has since been revoked) and amends the following legislation:

- The Plant Health etc. (Fees) (Wales) Regulations 2018 - these Regulations, specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes, fruit plants and fruit plant propagating material; and
- The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 - these Regulations give effect to Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, and the plant health aspects of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls.

If this domestic secondary legislation was not amended, it would contain deficiencies that would prevent the Welsh Ministers from being able to deliver workable legislation on plant health. The instrument is made in exercise of powers under the Withdrawal Act to correct these deficiencies.

The UK Government are making equivalent amendments to equivalent secondary legislation that applies to England via the Plant Health (Amendment etc.) (EU Exit) Regulations 2020.

5. Consultation

Stakeholders have not been consulted on the amendments made by the 2020 Regulations as they are technical operability amendments as opposed to policy changes.

6. Regulatory Impact Assessment (RIA)

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.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs 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.) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate”.

This is the case because the changes being made address deficiencies arising from EU exit and ensure that the existing regime for safeguarding biosecurity will continue to operate effectively.

2. Good reasons

The Minister for Environment, Energy and Rural Affairs 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”.

These are that there is public concern about biosecurity and the Government should at least maintain the protections that currently exist.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020 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.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate

discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.

Agenda Item 5.5

SL(5)672 – The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020

Background and Purpose

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The purpose of these Regulations is to ensure retained EU law operates effectively once the UK leaves the EU. The Regulations amend redundant references to EU laws and systems which will no longer be relevant following IP completion day. The amendments are made in accordance with the Withdrawal Act to ensure no legislative hindrance to movement of live animals (including equines), and trade in animal products (including meat) with the EU and other listed third countries following IP completion day.

Part 2 of these Regulations make operability amendments to the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”). Part 3 makes consequential amendments to other statutory instruments relevant to the trade in animals and related products.

Procedure

Draft Affirmative

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 3 (a)(i) of these Regulations amends regulation 2(1) of the 2011 Regulations by providing that “*border control post*” has the meaning given in regulation 11 of the 2011 Regulations.

Further explanation is sought as to why this amendment is made given that regulation 2(3)(c) of the 2011 Regulations already provides that “*border control post*” (“*safle rheoli ar y ffin*”) is defined in regulation 11.



Merits Scrutiny

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

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

The 2011 Regulations which these Regulations amend establish a system for trade in live animals and genetic material and for the importation of live animals, genetic material and products of animal origin. It is noted that on 3 December 2020 the UK and Welsh Governments launched an eight week [consultation in England and Wales](#), seeking views on how to protect animal welfare during transport. The consultation primarily relates to ending live animal exports for slaughter and fattening that begin in or transit through England or Wales, and to further improve animal welfare in transport more generally. Whilst this consultation is not directly relevant to these Regulations, cross-cutting themes arise in relation to animal welfare and the system for trade in live animals after the UK leaves the EU.

In its [press release](#), the UK Government states that it recognizes that animal health and welfare is a "*fully devolved matter*" and is working closely with the Welsh Government on this consultation. With regards to the Scottish Government, the UK Government provides that it will "*discuss the results of the consultation with the Scottish Government with the aim of having similar rules apply across Great Britain on improving the protection for animals in transport.*"

Under the common framework programme, the UK Government and the devolved administrations agreed to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. Animal health and welfare is one of the areas identified under the common framework programme.

It is notable that the UK and Welsh Governments are consulting over potential divergence to EU rules in relation to animal welfare, despite the absence of an agreed framework between the UK Government and all of the devolved administrations.

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

It is noted that the Secretary of State has been consulted through a letter issued on 17 November 2020, in accordance with the requirement under paragraph 4 of Schedule 2 to the European Union (Withdrawal) Act 2018 for the Welsh Ministers to consult the Secretary of State on any provisions made under those powers, which are due to come into force prior to IP completion day.



Implications arising from exiting the European Union

Save for those set out above, no other implications are identified for reporting under Standing Order 21.3 in respect of these Regulations.

Welsh Government response

Technical Scrutiny point 1:

The Welsh Government agree with this reporting point and note that this amendment is superfluous given that regulation 2(3)(c) of the 2011 Regulations already provides that “border control post” is defined in regulation 11. The Welsh Government will take steps to correct this at the next suitable opportunity.

Merits Scrutiny point 1:

Officials from all four Administrations have co-produced the provisional Animal Health and Welfare (AHW) Common Framework, which sets out the long term governance arrangements in areas returning to the UK following EU Exit and areas which intersect with devolved competence. It builds on the existing good relationships between all Devolved Administrations (DAs) in AH&W, and makes use of the governance arrangements such as the joint DAs policy decision-making bodies: the Animal Disease Policy Group and the Animal Welfare Policy Group.

The AHW Common Framework includes a commitment not to diverge from baseline standards in a manner harmful to biosecurity, welfare or the UK internal market across relevant policy areas in a way that threatens the Common Framework Principles, whilst retaining its competence to legislate independently.

The ability for each administration to diverge above these standards will not be affected, but such decisions should also be notified to the other administrations, so that any risk of harmful divergence can be identified and addressed in line with the arrangements set out in the Framework.

Any changes to AHW legislation will be considered on a four-administration basis to ensure that the highest possible standards continue to apply.

These Regulations are relevant to imports of animals, animal germinal and other products, not exports.

The Welsh Government are consulting jointly with the UK Government on proposals to end the export of live animals (excluding poultry) for slaughter and fattening where the journeys begin or transit through England or Wales. Leaving the EU has enabled us to pursue these proposals which would prevent unnecessary suffering of animals during transport. We are also consulting on proposals to further improve animal welfare in transport more generally, such as: reduced maximum journey times; more space and headroom during transport; stricter rules



on transporting animals in extreme temperatures; and tighter rules for transporting live animals by sea.

The joint Defra/Welsh Government consultation follows an earlier call for evidence by the UK Government and Devolved Administrations in April 2018, on controlling live exports for slaughter and improving animal welfare during transport, and a Farmed Animal Welfare Committee (now the Animal Welfare Committee (GB)) Opinion on the Welfare of Animals During Transport (2019). It should be noted that, because animals move largely without restrictions within the 'single market' of Great Britain, there is a mutual need for all administrations to work closely together, as divergent restrictions in one country could lead to the trade taking place elsewhere.

Legal Advisers

Legislation, Justice and Constitution Committee

4 December 2020



Draft Regulations laid before Senedd Cymru under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMAL HEALTH, WALES

**The Trade in Animals and Related
Products (Wales) (Amendment)
(EU Exit) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 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 arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation relevant to the trade in animals and related products.

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

Draft Regulations laid before Senedd Cymru under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMAL HEALTH, WALES

**The Trade in Animals and
Related Products (Wales)
(Amendment) (EU Exit)
Regulations 2020**

Made

*Coming into force in accordance with
regulation 1(2) and (3)*

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018⁽¹⁾, make the following Regulations.

In accordance with paragraph 4 of Schedule 2⁽²⁾ to that Act, to the extent that these Regulations are to come into force before implementation period completion day, the Welsh Ministers have consulted with the Secretary of State.

(1) 2018 c. 16. Paragraph 21 of Schedule 7 was amended by paragraph 53 of Part 2 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(2) Paragraph 4 of Schedule 2 was amended by section 27(7)(a) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru⁽¹⁾.

PART 1

Introductory

Title and commencement

1.—(1) The title of these Regulations is the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020.

(2) Part 1 and Part 3 come into force immediately before implementation period completion day.

(3) Part 2 comes into force on implementation period completion day.

PART 2

Amendment of the Trade in Animals and Related Products (Wales) Regulations 2011

Amendment of the Trade in Animals and Related Products (Wales) Regulations 2011

2. The Trade in Animals and Related Products (Wales) Regulations 2011⁽²⁾ are amended as follows.

3. In regulation 2—

(a) in paragraph (1)—

(i) in the appropriate places insert—

““appropriate computerised information management system” (“*system rheoli gwybodaeth gyfrifiadurol briodol*”) means the computerised information management system for official controls referred to in Article 131 of the Official Controls Regulation;”;

““border control post” (“*saflle rheoli ar y ffin*”) has the meaning given in regulation 11;”;

““CHED” (“*DMIG*”) has the meaning given in regulation 10;”;

(1) The reference in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(2) S.I. 2011/2379 (W. 252), amended by S.I. 2018/1152 (W. 234), S.I. 2018/1216 (W. 249), S.I. 2019/463 (W. 111), S.I. 2019/597 (W. 126), S.I. 2019/799 (W. 151), S.I. 2020/44 (W. 5) and S.I. 2020/177 (W. 38).

““third country” (*trydedd wlad*)” means any country or territory other than the British Islands.”;

- (ii) in the definition of “importer” (*mewnforiwr*), for “United Kingdom” substitute “British Islands”;
 - (iii) in the definition of “intensified official controls” (*rheolaethau swyddogol dwysach*), for “EU Regulation” substitute “Official Controls Regulation”;
 - (iv) in the definition of “official controls” (*rheolaethau swyddogol*), for “EU Regulation” substitute “Official Controls Regulation”;
 - (v) in the definition of “product” (*cynnyrch*), for “inspection” substitute “control”;
- (b) omit paragraph (2);
 - (c) in paragraph (3)—
 - (i) in sub-paragraph (a), for ““the EU Regulation” (*Rheoliad yr UE*)” substitute ““Official Controls Regulation” (*Rheoliad Rheolaethau Swyddogol*)”;
 - (ii) omit sub-paragraph (d).

4. In regulation 3—

- (a) for the heading substitute “**Pet animals**”;
- (b) after paragraph (1) insert—

“(1A) In addition to the requirements of these Regulations, dogs, cats and ferrets not exempted by paragraph (1) must not be moved into Wales from a third country unless they comply with the requirements set out in—

- (a) points (a) to (d) of Article 10(1), subject to paragraph (1) of Article 12, of the Pets Regulation; and
- (b) Commission Implementing Decision (EU) 2019/294 laying down the list of territories and third countries authorised for imports of dogs, cats and ferrets and the model animal health certificate for such imports.”

5. Omit regulation 4.

6. Omit Part 2.

7. In regulation 9—

- (a) for “This Part” substitute “Subject to regulation 26, this Part”;
- (b) for “country outside the European Union” substitute “third country”.

8. In regulation 10(4), for “EU Regulation” substitute “Official Controls Regulation”.

9. In regulation 11—

- (a) in paragraph (1), for “EU Regulation” where it first occurs to the end substitute “Official Controls Regulation”;
- (b) in paragraph (2), for “EU Regulation” substitute “Official Controls Regulation”;
- (c) in paragraph (4), omit “, and must inform the Commission of the suspension and the reason”.

10. In regulation 14—

- (a) in paragraph (1), after “must notify” insert “, through the appropriate computerised information management system.”;
- (b) in paragraph (3), for “CVED” substitute “CHED”.

11. In regulation 15—

- (a) in paragraph (1)—
 - (i) for “documentation specified for that consignment in the relevant legislation listed in Schedule 1” substitute “relevant export health certificate, in the form published by the Welsh Ministers or the Secretary of State, and other documentation specified for that consignment in retained direct EU legislation relating to importation”;
 - (ii) in sub-paragraph (a), for “EU Regulation” substitute “Official Controls Regulation”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), for “the lists” to the end substitute “a list drawn up in accordance with retained direct EU legislation for the species concerned or from which imports are otherwise prohibited under that legislation of approved third countries, or if imports from that country or territory are otherwise prohibited”;
 - (ii) in sub-paragraph (c), for “legislation of the European Union” substitute “retained direct EU legislation relating to importation”;
 - (iii) in sub-paragraph (e), for “legislation of the European Union” substitute “retained direct EU legislation”;
- (c) in paragraph (5)(b), after “product” insert “or live animal”.

12. In regulation 17—

- (a) for “the United Kingdom or a member State” substitute “Great Britain”;
- (b) for “Welsh Ministers of its arrival” substitute “appropriate authority of its arrival, and for this purpose “appropriate authority” (“*awdurdod priodol*”) means the Secretary of State (in relation to England), the Welsh Ministers (in relation to Wales) and the Scottish Ministers (in relation to Scotland)”.

13. In regulation 18—

- (a) except in the first place it occurs in paragraph (3), in each other place, including in the heading, for “the United Kingdom” substitute “Great Britain”;
- (b) in paragraph (2)—
 - (i) for “animal consigned to a destination outside the European Union” substitute “imported animal”;
 - (ii) after “country” insert “or territory”;
- (c) in paragraph (3), for “Products that arrive at a border control post for an ultimate destination outside the United Kingdom, and” substitute “Imported products”;
- (d) in paragraph (4)—
 - (i) in the first place it occurs, for “the European Union” substitute “the British Islands”;
 - (ii) in the second place it occurs, for “the European Union” substitute “any of the territories of the British Islands”.

14. In regulation 19—

- (a) in paragraph (a), for “inspection” substitute “control”;
- (b) in paragraph (b), in the English language text, after “CHED or” insert “without”.

15. In regulation 20—

- (a) in each place it occurs, for “EU Regulation” substitute “Official Controls Regulation”;
- (b) in paragraph (1), for “Article 1(2)” substitute “Chapter 5 of Title 2”;
- (c) in paragraph (2)—
 - (i) after “representative,” insert “and in accordance with Article 68(1)(b) of the Official Controls Regulation,”;
 - (ii) for the “United Kingdom” substitute “Wales”;
- (d) in paragraph (3)—

- (i) in the words before sub-paragraph (a), for “may” substitute “must”;
- (ii) in sub-paragraph (a), for “Article 1(2)” substitute “Chapter 5 of Title 2”;
- (iii) in sub-paragraph (b)—
 - (aa) for “the European Union” substitute “Great Britain”;
 - (bb) for “from arrival” substitute “of the date of the official notification of the decision of the enforcement authority after arrival of the consignment”.

16. In regulation 21, for “EU Regulation” substitute “Official Controls Regulation”.

17. In regulation 22—

- (a) in paragraph (1)—
 - (i) for “the United Kingdom” substitute “Great Britain”;
 - (ii) for “this regulation applies” to the end substitute “the enforcement authority may require extra physical checks and take samples for testing or analysis from subsequent consignments from the source concerned and take appropriate measures in accordance with Section 3 of Chapter 5 of Title 2 of the Official Controls Regulation”;
- (b) in paragraph (3), at the end insert “of the Official Controls Regulation”;
- (c) for paragraph (4) substitute—

“(4) Where the person responsible for consignments is informed that extra checks will be required in accordance with paragraph (1), that person must, before the arrival of future consignments at any border control post, lodge with the relevant enforcement authority a deposit or guarantee sufficient to cover all costs incurred by that enforcement authority, including the costs of taking samples and carrying out tests or analysis.”

18. In regulation 23—

- (a) in paragraph (1), for “Article 1(2)” substitute “Chapter 5 of Title 2”;
- (b) in each place it occurs, for “EU Regulation” substitute “Official Controls Regulation”.

19. In regulation 26—

- (a) in the heading, after “Exclusions” insert “, derogations and modifications”;
- (b) the existing text becomes paragraph (1);
- (c) after paragraph (1) insert—

“(2) The provisions of this Part apply subject to the derogations and modifications set out in Schedule 5.

(3) Paragraph (2) (and Schedule 5) have effect and remain in force from immediately after implementation period completion day until the end of the day on 31 July 2021.”

20. In regulation 27—

- (a) in each place it occurs, for “the Union” substitute “Great Britain”;
- (b) omit paragraph (1A);
- (c) in paragraph (3)(a)—
 - (i) omit “in the member State where the certificate was issued”;
 - (ii) for “inspection” substitute “control”.

21. For regulation 28 substitute—

“Admission of products into warehouses in compliance with Customs procedures and storage procedures

28. No person may bring into Great Britain a consignment of products that does not comply with the import requirements of these Regulations and the Customs procedures and storage procedures on imports in the Taxation (Cross-border Trade) Act 2018⁽¹⁾.”

22. In regulation 29—

- (a) in paragraph (1)—
 - (i) for “the United Kingdom”, in both places it occurs, substitute “Great Britain”;
 - (ii) in sub-paragraph (a), after “country”, in both places it occurs, insert “or territory”;
 - (iii) in sub-paragraph (b), for “EU Regulation” to “a member State” substitute “Official Controls Regulation in relation to imports”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), after “country” insert “or territory”;
 - (ii) in sub-paragraph (b)(ii)—
 - (aa) omit “from the European Union”;
 - (bb) for “EU Regulation” substitute “Official Controls Regulation”;
 - (cc) for “other countries” substitute “third countries”.

(1) 2018 c. 22.

23. In regulation 32(4), for “Article 134 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code” substitute “the Taxation (Cross-border Trade) Act 2018”.

24. In regulation 34(h), for “EU Regulation” substitute “Official Controls Regulation”.

25. In regulation 35—

(a) in paragraph (1)—

(i) in the first place it occurs, for “the Welsh Ministers” substitute “the appropriate enforcement authority”;

(ii) in the second place it occurs, for “the Welsh Ministers” substitute “that enforcement authority”;

(b) in paragraph (3)—

(i) in the first place it occurs, for “the Welsh Ministers” substitute “the appropriate enforcement authority”;

(ii) in the second place it occurs, for “the Welsh Ministers” substitute “that enforcement authority”;

(iii) for “Article 1(2) of the EU Regulation” substitute “Chapter 5 of Title 2 of the Official Controls Regulation”;

(c) in paragraphs (4) to (6), in each place it occurs, for “Welsh Ministers” substitute “enforcement authority”.

26. In regulation 36, in each place it occurs, for “EU Regulation” substitute “Official Controls Regulation”.

27. In regulation 37(1), for “the enforcement authorities in England, Scotland and Northern Ireland” substitute “an enforcement authority in any of the territories of the British Islands”.

28. In regulation 38—

(a) for “Welsh Ministers” substitute “enforcement authority”;

(b) for “EU Regulation” substitute “Official Controls Regulation”.

29. In regulation 39, in the table—

(a) omit the rows for “regulation 5(1) and (1A)” to “regulation 7” (including the corresponding entries in the second column);

(b) in the rows for “regulation 16(1)” and “regulation 16(2)”, in the corresponding entries in the second column for “CVED” substitute “CHED”;

(c) in the row for “regulation 28”, for the corresponding entry in the second column

substitute “Importing a product that does not comply with the import requirements of these Regulations and the Customs procedures and storage procedures on imports in the Taxation (Cross-border Trade) Act 2018”;

- (d) in the section for Schedule 2, omit the rows for “paragraph 5(1)” to “paragraph 7” (including the corresponding entries in the second column);
- (e) omit the row for “Schedule 3 paragraph 4(3)” (including the corresponding entry in the second column).

30. In Schedule 2—

- (a) for the shoulder reference, substitute “Regulation 25”;
- (b) omit Part 1;
- (c) in Part 2, omit paragraph 10.

31. In Schedule 3—

- (a) for the shoulder reference substitute “Regulation 26(1)”;
- (b) in paragraph 2, for “the Commission Delegated Regulation” to the end substitute “Commission Delegated Regulation (EU) 2019/2122”;
- (c) in paragraph 4—
 - (i) in sub-paragraph (1), for “Regulation (EU) No 142/2011” substitute “Commission Regulation (EU) No 142/2011”;
 - (ii) omit sub-paragraph (2);
- (d) for paragraph 5 substitute—

“Case 4: Consignments cleared in Great Britain

5. Consignments of animals and products from third countries that have been presented to any border control post in Great Britain and cleared for free circulation.”;

- (e) in paragraph 6(2)(d), for “an official language of a member State” substitute “English (whether or not it also appears in any other language)”.

32. After Schedule 4 insert—

“SCHEDULE 5 Regulation 26(2)

Application of, derogations from, and modifications to, Part 3 in relation to

territories subject to special transitional import arrangements

PART 1

Introductory

Application

1. This Schedule applies to products and live animals that originate from—

- (a) a territory subject to special transitional import arrangements; or
- (b) a third country other than a territory subject to special transitional import arrangements where, before importation into Wales, the products or live animals concerned—
 - (i) have been presented to a member State border control post recognised by the Welsh Ministers;
 - (ii) are accompanied by a CHED which has been completed to the satisfaction of the relevant authority; and
 - (iii) have been pre-notified.

Interpretation

2. For the purposes of this Schedule—

“pre-notified” (*“rhaghysbysu”*) means notified using the appropriate computerised information management system;

“relevant goods” (*“nwyddau perthnasol”*) means products and live animals falling within paragraph 1;

“territory subject to special transitional import arrangements” (*“tiriogaeth sy’n ddarostyngedig i drefniadau mewnforio trosiannol arbennig”*) means—

- (a) an EU member State;
- (b) the Faroe Islands;
- (c) Greenland;
- (d) Iceland;
- (e) Liechtenstein;
- (f) Norway;
- (g) Switzerland;

“working day” (*“diwrnod gwaith”*) means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday

under section 1 of the Banking and Financial Dealings Act 1971⁽¹⁾.

Application of, derogations from, and modifications to, Part 3 of these Regulations

3. The provisions of Part 3 of these Regulations apply to relevant goods with the derogations and modifications specified in Part 2 of this Schedule.

PART 2

Derogations from, and modifications to, Part 3 of these Regulations

Derogation from regulation 13: place of importation

4.—(1) Regulation 13 does not apply to relevant goods.

(2) Relevant goods are not required to enter Wales through a border control post and may enter Wales through any point of entry.

Derogation from regulation 14: timing of notification of importation

5.—(1) Regulation 14 does not apply to relevant goods.

(2) From 1 January 2021, relevant goods of the following descriptions must be pre-notified at least one working day before the expected time of arrival at a point of entry into Wales—

- (a) live animals;
- (b) germinal products;
- (c) animal by-products comprising—
 - (i) Category 1 material;
 - (ii) Category 2 material;
 - (iii) processed animal protein derived from Category 3 material,

but where the importer can provide evidence of a logistical constraint preventing such notification, that requirement may be satisfied by notification of its expected time of arrival at least four hours in advance.

(3) From 1 April 2021, relevant goods consisting of products of animal origin must be pre-notified at least one working day before the expected time of arrival at a point of entry into Wales; but where the importer can provide evidence of a logistical constraint preventing such notification, that requirement may be satisfied by

(1) 1971 c. 80.

notification of its expected time of arrival at least four hours in advance.

- (4) For the purposes of this paragraph—
- (a) “Category 1 material”, “Category 2 material” and “Category 3 material” have the meanings given in Articles 8 to 10 of Regulation (EC) No 1069/2009;
 - (b) “processed animal protein” has the meaning given in point 5 of Annex 1 to Commission Regulation (EU) No 142/2011.

Derogation from regulation 15: procedure on importation

6.—(1) Regulation 15 does not apply to relevant goods but—

- (a) official controls must take place at the place of destination indicated in the relevant accompanying importation documentation on a random or risk basis, and in accordance with regulation 29 and 35;
- (b) from 1 January 2021, relevant goods consisting of—
 - (i) live animals or germinal products may not be imported into Wales unless they are accompanied by the appropriate health certificate for third country imports, in the form published by the Welsh Ministers or the Secretary of State;
 - (ii) products of animal origin and animal by-products must be accompanied by relevant commercial documents which at least identify the premises of origin and destination, and contain a description of the product and the quantity of the product; and
- (c) from 1 April 2021, relevant goods consisting of products of animal origin may not be imported into Wales unless they are accompanied by the appropriate health certificate for third country imports, in the form published by the Welsh Ministers or the Secretary of State.

(2) The documents described in sub-paragraph (1)(b) and (c) must accompany the consignment of the relevant goods concerned to its place of destination.

Derogation from regulation 19(a): unchecked consignments

7. Regulation 19(a) does not apply to relevant goods which have entered Wales through a point of entry

other than a border control post in accordance with this Schedule.

Modification of regulation 20: action following failure of checks or seizure - products

8. Regulation 20 applies as if—

- (a) in paragraph (1), after “Official Controls Regulation” there were inserted “or, in the case of relevant goods, does not comply with the provisions of Schedule 5”;
- (b) in paragraph (3)(b)—
 - (i) “from the same border control post” were omitted;
 - (ii) for “at the border control post” there were substituted “into Wales”.

Modification of regulation 23: action following failure of checks or seizure - animals

9. Regulation 23 applies as if, in paragraph (1), after “Official Controls Regulation” there were inserted “or, in the case of relevant goods, does not comply with the provisions of Schedule 5”.

Derogation from regulation 27: re-importation of animals and products

10.—(1) Regulation 27 does not apply in the circumstances described in sub-paragraph (2).

(2) Products and live animals that originate from Wales and which have been rejected from entering the European Union at a European Union border control post are not required to re-enter Wales through a Welsh border control post if—

- (a) in the case of products and live animals that are not high risk, notification of the re-entry has been given to the Welsh Ministers or the Food Standards Agency;
- (b) in the case of products and live animals that are high risk, the re-entry has been authorised in writing by the Welsh Ministers or the Food Standards Agency before the re-entry is to take place.

(3) In this paragraph, “high risk” means the products or live animals are suspected of constituting a serious risk to human or animal health or animal welfare.

PART 3

Additional rules in relation to relevant goods consisting of live animals

Live animals

11.—(1) This paragraph applies in relation to relevant goods consisting of live animals.

(2) The live animals must remain under restricted movement at the place of destination indicated in the health certificate until the completed and signed health certificate has been uploaded to the appropriate computerised information management system.

(3) The person responsible for the transportation of the live animals to the place of destination must be in possession of the appropriate authorisation in accordance with Council Regulation (EC) No 1/2005.”

PART 3

Consequential amendments of other statutory instruments

Amendment of the Disease Control (Wales) Order 2003

33. In the Disease Control (Wales) Order 2003(1), in paragraph 7 of Schedule 1, omit “approved under Part 1 of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011”.

Amendment of the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

34. In the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019(2), omit regulation 3.

Amendment of the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

35. In the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(3), omit regulation 3.

(1) S.I. 2003/1966 (W. 211), amended by S.I. 2017/674 (W. 156).

(2) S.I. 2019/597 (W. 126).

(3) S.I. 2019/737 (W. 140).

Amendment of the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

36. In the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019(1), omit regulation 2.

Amendment of the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

37. In the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020(2), omit regulation 29.

Name

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

(1) S.I. 2019/1334 (W. 232).

(2) S.I. 2020/44 (W. 5).

Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

24 November 2020

Part 1

1. Description

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 (the “instrument”) will make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in relation to the trade in animals and related products .

Part 1 and Part 3 of this instrument will come into force immediately before implementation period (IP) completion day and Part 2 of this instrument comes into force on IP completion day.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the draft affirmative procedure. The instrument makes minor and technical changes and should therefore be subject to annulment.

There is a requirement under paragraph 4 of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State on any provisions that are due to come into force prior to IP completion. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 17 November 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The purpose of the instrument is to ensure retained EU law operates effectively once the UK leaves the EU. It will amend redundant references to EU laws and systems which will no longer be relevant at the end of the IP and is necessary to ensure a functioning system for the importation of live animals (including equines), products of animal origin (including meat), animal by-products, and germplasm whilst maintaining biosecurity and welfare standards.

The proposed amendments aim to maintain the existing import regime and will ensure that Wales will have a deliverable and well-functioning imports system for animals and animal products at the end of the IP. The proposed amendments will also introduce transitional arrangements for specified territories (by inserting a new Schedule 5 to the Trade in Animals and Related Products (Wales) Regulations 2011) to deliver the UK Government's decision to phase in official controls on imports from those countries subject to special transitional measures.

The phased approach from 1st April 2021 will allow Great Britain to protect itself from EU imports of Products of Animal Origin ("POAO") that may pose a biosecurity risk. Given Great Britain is currently part of the EU's Sanitary and Phytosanitary ("SPS") regime, this risk is currently very low. Additionally, through the pre-notification requirement, the new regime will provide data on the risk posed by EU imports. This data will be able to inform decisions on future controls, leading to a more efficient regime.

The final stage of the phased approach will mean that from July 1 2021, all POAO and Live Animals will enter and be checked at a Border Control Post (BCP). Welsh Government Officials in conjunction with other delivery agencies are currently assessing the impact of this change and planning the construction and delivery of these BCPs. The amendments made by this instrument will work in conjunction with The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 and Regulation (EU) 2017/625 to ensure that our BCPs have an operable legislative framework to function within.

The proposed amendments are made in accordance with the Withdrawal Act to ensure no legislative hindrance to movement of live animals including equines, and trade in animal products including meat with the EU and other listed third countries, at the end of the IP.

What the instrument does

Part 2 of the instrument (regulations 2 through to 32) make operability amendments to the Trade in Animal and Related Products Regulations 2011.

Part 3 of the instrument (Regulation 33 through to 37) makes consequential amendments to other statutory instruments to take account of the amendments in Part 2.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to this instrument as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 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.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.

SL(5)673 – The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations make amendments to retained EU law and domestic law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020 and to ensure it is efficient and effective.

The Instrument also makes amendments to this legislation to:

- simplify the administration of the scheme and make it more efficient and effective;
- remove provisions which are spent or not in use;
- remove or reduce burdens on persons applying for direct payments under the scheme;
- improve the way the scheme operates;
- ensure sanctions and penalties imposed under the scheme are appropriate and proportionate; and
- limit the application of the scheme to land in Wales only.

In addition, these Regulations make amendments to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, and to correct errors in existing EU Exit statutory instruments.

Parts 1, 5 and 6, and regulation 7(4) of these Regulations come into force on the day after the day on which these Regulations are made, and the remaining provisions come into force on Implementation Period completion day (11pm on 31 December 2020).

Parts 2, 3, and 4 of these Regulations are made in exercise of the powers conferred by paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the Agriculture Act 2020, which was the subject of scrutiny by the Committee through the Legislative Consent Motion process earlier this year.

Parts 5 and 6 of the Instrument are made in exercise of the power conferred by paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 Act. In relation to Parts 5 and 6, the requirement in paragraph 4(a) of Schedule 2 to the 2018 Act, which requires consultation with the Secretary of State, has been satisfied.



Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that its drafting appears to be defective or it fails to fulfil statutory requirements

These Regulations make a number of amendments to retained EU law, including omitting provisions contained in retained EU law in so far as they relate to direct payments. Although certain provisions have been omitted, references to some of those omitted provisions remain in retained EU law.

The relevant provisions are:

- Regulation 2(12) of these Regulations amends Regulation (EU) No. 1306/2013 to omit Article 77(6). A reference to the omitted Article 77(6) remains in Article 77(7)(a) of Regulation (EU) No. 1306/2013.
- Regulation 3(7) of these Regulations amends Commission Delegated Regulation (EU) No. 640/2014 to omit Article 10. A reference to the omitted Article 10 remains in the final subparagraph of Article 9(1) of Commission Delegated Regulation (EU) No. 640/2014.
- Regulation 3(8) of these Regulations amends Commission Delegated Regulation (EU) No. 640/2014 to omit the second subparagraph of paragraph 1 of Article 13. This means the third subparagraph becomes the second subparagraph. A reference to the third subparagraph of Article 13(1) remains in paragraph (b) of Article 12 of Commission Delegated Regulation (EU) No. 640/2014, although the same reference has been substituted in the second subparagraph of paragraph 3 of Article 13.
- Regulation 4(7)(a) of these Regulations amends Commission Implementing Regulation (EU) No. 809/2014 to omit Article 17(2). A reference to the omitted Article 17(2) remains in the second subparagraph of Article 36(2) of Commission Implementing Regulation (EU) No. 809/2014.

2. Standing Order 21.2(v) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 7(6)(c) of these Regulations omits paragraphs 6 to 8 of Article 9 of Regulation (EU) No. 1307/2013. On exit day, paragraph 6 was omitted from Article 9 of Regulation (EU)



No. 1307/2013 pursuant to regulation 4(10)(f) of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

Merits Scrutiny

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

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

It is noted that the Explanatory Memorandum states that these Regulations:

“do not make fundamental changes to the current agricultural support funding arrangements and will have no significant effect on public or private sectors, charity or voluntary sectors”

However, the Explanatory Memorandum also explains that these Regulations *“simplify the administration of the scheme”, “remove or reduce burdens on persons applying for direct payments under the scheme”, “improve the way the scheme operates”* and ensures *“sanctions and penalties imposed under the scheme are appropriate and proportionate”*.

The Code of Practice on the carrying out of Regulatory Impact Assessments includes the following exception to carrying out a regulatory impact assessment:

“where routine technical amendments or factual amendments are required to update regulations, etc. that have no major policy impact”.

Although this exception appears to apply to some of the amendments made by these Regulations, other provisions, particularly given the explanation referenced above, appear to constitute more than routine or factual amendments. It is not clear that any of the other exceptions under the Code apply to these Regulations.

The Welsh Government is asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

Implications arising from exiting the European Union

On exit day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated EU legislation governing the 2020 Common Agricultural Policy direct payment schemes into UK law. This was necessary because the effect of Article 137 of the Withdrawal Agreement was to exclude direct payments legislation for claim year 2020.

These Regulations ensure that the existing direct payment schemes for farmers in Wales can continue to operate efficiently and effectively beyond the 2020 claim year, which runs until 31 December 2020.



Welsh Government response

Technical Scrutiny

Point 1

The Welsh Government agrees that the highlighted references are drafting errors. The Welsh Government will correct these at the next suitable opportunity.

Point 2

The Welsh Government agrees that paragraph 6 of Article 9 of Regulation (EU) No. 1307/2013 has already been omitted by the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). On this basis, the omission in regulation 7(6)(c) has no legal effect. The Welsh Ministers do not have urgent regulation-making powers in the Agriculture Act 2020, and as such it is not possible to amend the provision before the end of the Implementation Period. Had there been a suitable instrument being taken forward, the Welsh Government would have amended the instrument, however there is insufficient time to withdraw and amend it.

Merits Scrutiny

Point 3

The Welsh Government considers the changes to be routine technical amendments to the operation of the scheme which for example reduce the application of sanctions or penalties, compared to EU versions of the schemes.

Legal Advisers

Legislation, Justice and Constitution Committee

7 December 2020



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 50(6)(c) and (8) of the Agriculture Act 2020, and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Direct Payments to Farmers
and Rural Affairs (Miscellaneous
Amendments etc.) (Wales) (EU
Exit) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Parts 2, 3, and 4 of these Regulations are made in exercise of the powers conferred by paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the Agriculture Act 2020 (c. 21) in order to make provision in retained EU law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020.

Regulations 2, 3, 4, 5 and 6 modify Regulations (EU) No. 1306/2013, 809/2014, 640/2014, 907/2014 and 908/2014 to the extent necessary for the basic payment scheme to function effectively beyond 2020. Those EU Regulations contain some of the rules governing the direct payment schemes as well as other schemes under the Common Agricultural Policy. These Regulations amend that body of law insofar as it relates to the direct payment schemes only.

Regulations 7, 8 and 9 amend Regulation (EU) No. 1307/2013 (“the Direct Payments Regulation”), Regulations (EU) No. 639/2014 and 641/2014. These changes allow the basic payment scheme to function effectively beyond 2020. Regulation 7(4) introduces a new Article 5A to the Direct Payments Regulation

which provides the manner in which to determine the direct payments ceiling beyond 2020.

Regulations 2 to 9 also amend the retained EU law relating to the direct payment schemes to—

- (a) simplify the administration of the scheme and make its operation more efficient and effective,
- (b) remove provisions which are spent or not in use,
- (c) remove or reduce burdens on persons applying for, or entitled to, direct payments under the scheme,
- (d) improve the way the scheme operates in relation to persons applying for, or entitled to direct payments under the scheme,
- (e) ensure that sanctions and penalties imposed under the scheme are appropriate and proportionate, and
- (f) limit the application of the scheme to land in Wales only.

Part 4 of these Regulations amend domestic legislation which relates to direct payments.

Regulation 10 amends the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (S.I. 2014/3223 (W. 328)), in order to secure its operability for the basic payment scheme in Wales beyond 2020. Regulation 10 also inserts a new paragraph into Schedule 1 (*Standards for Good Agricultural and Environmental Condition*) which details the restrictions on converting, ploughing or reseeded environmentally sensitive permanent grassland. This ensures alignment with the changes made by regulation 2 to Regulation (EU) No. 1306/2013.

Regulation 11 amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263), and applies in relation to Wales. Regulation 3 (competent authority) of those Regulations is amended to ensure it aligns with the retained EU law relating to direct payments.

Regulation 12 amends the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (S.I. 2015/1252 (W. 84)) to ensure it aligns with the changes being made to the retained EU law relating to direct payments by these Regulations.

Part 5 of these Regulations is made in exercise of the powers conferred by paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the

withdrawal of the United Kingdom from the European Union. Regulation 13 amends the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/688 (W. 132)), which address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Regulation 13 revokes regulations 2, 4(2) and 5(2) and (3) to align with changes made by these Regulations and by the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 (S.I. 2020/104 (W. 17)).

Part 6 of these Regulations is made in exercise of the powers conferred by paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to correct errors in the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/1281 (W. 225)) and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1376 (W. 242)).

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

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 50(6)(c) and (8) of the Agriculture Act 2020, and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Direct Payments to Farmers
and Rural Affairs (Miscellaneous
Amendments etc.) (Wales) (EU
Exit) Regulations 2020**

Made ***

*Coming into force in accordance with
regulation 1 (2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred on them by—

- (a) in relation to Part 1, the provisions mentioned in paragraphs (b) and (c);
- (b) in relation to Parts 2, 3 and 4, paragraphs 2(1), 3(1) and (2), and 4(1) and (2) of Schedule 5 to, the Agriculture Act 2020⁽¹⁾;
- (c) in relation to Parts 5 and 6, paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018⁽²⁾ (“the 2018 Act”).

In relation to Parts 5 and 6, the requirement in paragraph 4(a) of Schedule 2 (relating to consultation with the Secretary of State) to the 2018 Act has been satisfied.

(1) 2020 c. 21. See paragraph 3(4) of Schedule 5 for the definition of “specified”.

(2) 2018 c. 16. See section 20(1) for the definition of “devolved authority”.

In accordance with section 50(6)(c) and (8) of the Agriculture Act 2020, and paragraph 1(9) of Schedule 7 to the 2018 Act, a draft of this instrument has been laid before, and approved by a resolution of Senedd Cymru.

PART 1

Introductory

Title, commencement, and application

1.—(1) The title of these Regulations is the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020.

(2) They come into force as follows—

- (a) except as provided for by sub-paragraph (b), these Regulations come into force on implementation period completion day;
- (b) Parts 1, 5 and 6 and regulation 7(4) come into force on the day after the day on which these Regulations are made.

(3) These Regulations apply in relation to Wales.

PART 2

Direct Payments: Horizontal Legislation

Amendment of Regulation (EU) No. 1306/2013

2.—(1) Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy⁽¹⁾ is amended, insofar as it relates to direct payments, as follows.

(2) For Article 2(1)(m) substitute—

“(m)“appropriate authority” means the relevant authority for the constituent nation in which the regulations apply.”

(3) In Article 12—

- (a) for “must” substitute “may”;
- (b) for “shall”, in the second sentence, substitute “may”;
- (c) for the third sentence substitute—

(1) EUR 2013/1306, amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2013/1306 is also amended prospectively with effect from implementation period completion day by S.I. 2019/748 (as amended by S.I. 2019/831), 763 (as amended by S.I. 2019/812), 831 and 1402. However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.

“That system may cover the maintenance of the agricultural area as referred to in point (c) of Article 4(1) of Regulation (EU) No. 1307/2013.”

(4) Omit Article 26.

(5) In Article 54—

(a) in paragraph 1, omit “within 18 months”;

(b) in paragraph 3(a)—

(i) in point (i), for “EUR 100” substitute “£100”;

(ii) in point (ii)—

(aa) for “EUR 100” substitute “£100”;

(bb) for “EUR 250” substitute “£250”.

(6) Omit Article 55.

(7) In Article 67—

(a) in paragraph 4(a), after “continuous area of land” insert “within Wales”;

(b) in paragraph 4(b), omit “the payment for agricultural practices beneficial for the climate and the environment referred to in Chapter 3 of Title III of Regulation (EU) No 1307/2013”.

(8) In Article 69—

(a) omit the final sentence of paragraph 1;

(b) omit paragraph 2.

(9) In Article 70—

(a) in paragraph 1—

(i) omit “and, as from 2016, at a scale of 1: 5 000,”;

(ii) omit the second subparagraph;

(b) omit paragraph 2.

(10) Omit Article 71(2).

(11) In Article 75—

(a) in paragraph 1, after “calendar year” insert “or in cases where it has not been possible to complete the verification of eligibility conditions by 30 June, upon completion.”;

(b) in paragraph 1(a)—

(i) omit “but not before 16 October”;

(ii) after “direct payments” insert “before the verification of eligibility conditions, to be carried out by the relevant authority pursuant to Article 74, has been finalised”;

(c) in paragraph 2, after “paragraph 1” insert “(excluding advances for direct payments under paragraph 1(a))”.

(12) Omit Article 77(6).

(13) In Article 91—

- (a) omit the second subparagraph of paragraph 2;
- (b) in paragraph 3(a), for “the United Kingdom” substitute “Wales”.

(14) In the title of Article 94, omit “of Member States”.

(15) In Article 97(3), for “EUR 100” substitute “£100”.

(16) Omit Articles 105 and 106.

(17) Omit Article 108.

(18) Omit the final subparagraph of Article 111(1).

(19) In Article 112, in the first subparagraph, for the words from “the Funds” to the end, substitute “received in one year by a beneficiary is equal to or less than £1250.”

(20) In Annex II, in the row “Landscape, minimum level of maintenance”, in the fourth column, after “measures for avoiding invasive plant species” insert—

“ . Restrictions on converting, ploughing or reseeded environmentally sensitive permanent grassland.”

Amendment of Commission Delegated Regulation (EU) No. 640/2014

3.—(1) Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance⁽¹⁾, is amended, insofar as it relates to direct payments, as follows.

(2) In Article 2(1), for point (22) substitute—

“(22) ‘use’ in relation to area means the use of area in terms of the type of permanent grassland as defined in Article 4(1)(h) of Regulation (EU) No. 1307/2013, or areas of grassland, other than permanent grassland, or ground cover or the absence of a crop;”.

(3) In Article 5(2)—

- (a) omit point (c);
- (b) in point (d), omit the words from “areas designated” to the end.

(4) In Article 6—

(1) EUR 2014/640, amended in relation to direct payment schemes by S.I. 2020/90 and in relation to direct payment schemes in England by S.I. 2020/551. EUR 2014/640 is also amended prospectively with effect from implementation period completion day by S.I. 2019/765. However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.

(a) for paragraph 1 substitute—

“1. The relevant authority shall annually assess the quality of the identification system for agricultural parcels. Where the results of the quality assessment reveal deficiencies in the system, the relevant authority shall take appropriate remedial action.”;

(b) for paragraph 2 substitute—

“2. The relevant authority shall perform the assessment referred to in paragraph 1 on the basis of a sample of reference parcels.”;

(c) in paragraph 3, omit “by 31 January 2021”.

(5) In Article 7(1), omit “at United Kingdom level”.

(6) Omit the final subparagraph of Article 9(3).

(7) Omit Article 10.

(8) In Article 13—

(a) omit the second subparagraph of paragraph 1;

(b) after the final subparagraph of paragraph 1 insert—

“All documents in support of an aid application, must be submitted by 31 December of that calendar year.”;

(c) in the second subparagraph of paragraph 3, for “third” substitute “second”.

(9) Omit the second subparagraph of Article 16(1).

(10) In Article 18(2), omit “and (8)”.

(11) In Article 19a—

(a) for paragraph 2 substitute—

“2. The administrative penalty referred to in paragraph 1 shall be reduced by 50% if the difference between the area declared and the area determined does not exceed 10% of the area determined.”;

(b) omit paragraphs 3 and 4.

(12) Omit Articles 22 to 29.

(13) Omit the final sentence of Article 38(1).

Amendment of Commission Implementing Regulation (EU) No. 809/2014

4.—(1) Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural

development measures and cross compliance⁽¹⁾, is amended, in so far as it relates to direct payments, as follows.

(2) Omit Article 2.

(3) Omit the second paragraph of Article 4.

(4) In Article 6—

(a) in paragraph 2(f)(v), for “national” substitute “total”;

(b) omit paragraph 3(b).

(5) In Article 14(1), omit point (h).

(6) In Article 15—

(a) omit paragraph 1b;

(b) in paragraph 2—

(i) in the second subparagraph, for “Member States” substitute “the relevant authority”;

(ii) in the third subparagraph, omit the words from “the payment for agricultural practices” to “Regulation (EU) No 1307/2013 or”;

(c) omit paragraph 2b;

(d) in paragraph 3, omit the second subparagraph.

(7) In Article 17—

(a) omit paragraph 2;

(b) in the second subparagraph of paragraph 4, omit the final sentence;

(c) for paragraph 5 substitute—

“5. The beneficiary shall unambiguously identify and declare the area of each agricultural parcel.”;

(d) omit paragraph 6.

(8) Omit Article 18.

(9) In Article 25, omit “and shall not exceed 14 days”.

(10) Omit Article 26(4).

(11) Omit the second and third paragraphs of Article 27.

(12) In Article 29(1)(d), for “(6)” substitute “(4)”.

(13) In the heading of Article 30, omit “other than the payment for agricultural practices beneficial for the climate and environment”.

(1) EUR 2014/809, amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2014/809 is also amended in relation to direct payment schemes in England by S.I. 2020/510 and 575. EUR 2014/809 is also amended prospectively with effect from implementation period completion day by S.I. 2019/765. However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.

(14) For Article 30 substitute—

“For area-related aid schemes the control sample for on-the-spot checks carried out each year shall cover at least:

- (a) 3% of all beneficiaries applying for the basic payment scheme in accordance with Title III of Regulation (EU) No. 1307/2013 (which includes the redistributive payment, and the payment for young farmers); and
- (b) 5% of all beneficiaries applying for area-related payments under voluntary coupled support in accordance with Chapter 1 of Title IV of Regulation (EU) No 1307/2013.”

(15) Omit Article 31.

(16) For Article 33 substitute—

“For animal aid schemes, the control sample for on-the-spot checks carried out each year shall for each of the aid schemes cover at least 5% of all beneficiaries applying for that respective aid scheme.”

(17) Omit Article 33a.

(18) In Article 34—

(a) for paragraph 2 substitute—

“2. For the purposes of Article 30, the sample selection shall ensure that:

- (a) a proportion of the control population is selected randomly;
- (b) the remaining number of beneficiaries in the control sample is selected on the basis of a risk analysis.”;

(b) omit paragraphs 3, 4 and 4a;

(c) in paragraph 5—

- (i) for “shall” substitute “may”;
- (ii) in point (d), after “that” insert “may”.

(19) In Article 36—

(a) in paragraph 2—

- (i) omit “and (b)”;
- (ii) for “3%” substitute “1%”;

(b) in paragraph 3—

- (i) omit “and (b)”;
- (ii) omit the second, third and fourth subparagraphs;

(c) in paragraph 5—

- (i) for “2, 3 and 4” substitute “2 and 3”;
- (ii) omit “and (b)”.

(20) Omit Article 37(3).

- (21) In Article 38—
 - (a) omit the final sentence in paragraph 5;
 - (b) omit paragraph 6;
 - (c) omit paragraph 9;
 - (d) in paragraph 10, omit “or permanent pastures”.
- (22) In Article 39—
 - (a) omit the first sentence of paragraph 2;
 - (b) omit paragraph 3.
- (23) Omit Article 40a.
- (24) In Article 41—
 - (a) omit the final subparagraph of paragraph 1;
 - (b) in the final subparagraph of paragraph 2—
 - (i) omit “or by means of monitoring in accordance with Article 40a,”;
 - (ii) omit “or by monitoring” in both places that it occurs;
 - (iii) omit the final sentence.
- (25) In Article 42(1), in the second subparagraph—
 - (a) omit “at least 50% of”;
 - (b) for “shall”, in both places that it occurs, substitute “may”.
- (26) Omit Article 44.
- (27) In Article 68—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, omit “, as it has effect in EU law”;
 - (ii) omit the second subparagraph;
 - (b) in paragraph 4, for “shall” substitute “may”.
- (28) In Article 69(1), omit the final sentence of the first subparagraph.
- (29) In Article 70—
 - (a) in paragraph 3, omit the words from “or by using” to “equivalent value”;
 - (b) omit paragraph 4.
- (30) Omit Articles 70a and 70b.
- (31) In Article 72—
 - (a) omit the final subparagraph of paragraph 1;
 - (b) in paragraph 2, omit “checked by monitoring in accordance with Article 70a,”;
 - (c) in paragraph 3, omit the final sentence in the first subparagraph;
 - (d) in paragraph 4, omit the second sentence of the first subparagraph.

Amendment of Commission Delegated Regulation (EU) No. 907/2014

5. In Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro⁽¹⁾, omit Article 11, insofar as it relates to direct payments.

Amendment of Commission Implementing Regulation (EU) No. 908/2014

6.—(1) Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency⁽²⁾ is amended, insofar as it relates to direct payments, as follows.

(2) In Article 4(1)—

- (a) omit point (i);
- (b) in point (ii), omit “on a single website”.

(3) Omit Article 11.

(4) In Article 27(1), for “EUR 5” substitute “£5.00”.

(5) In Article 28—

- (a) omit “established in accordance with national law”;
- (b) omit the words from “under direct” to “Development”.

(6) For Article 41(1) substitute—

“1. The relevant authorities may decide to reduce the minimum level of on-the-spot checks in accordance with Article 59(5) of Regulation (EU) No 1306/2013. For the reduced control rate to apply, the paying agency must confirm that—

- (a) the internal control system is functioning correctly; and

(1) EUR 2014/907, amended in relation to direct payment schemes by S.I. 2020/90. EUR 2014/907 is also amended prospectively with effect from implementation period completion day by S.I. 2019/765. However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.

(2) EUR 2014/908, amended in relation to direct payment schemes by S.I. 2020/90. EUR 2014/907 is also amended prospectively with effect from implementation period completion day by S.I. 2019/765. However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.

- (b) the error rate for the population concerned was below the materiality threshold of 2.0%.”

(7) In Article 58, for “third” substitute “second”.

(8) Omit Article 62.

PART 3

Direct Payments: Retained Direct Legislation

Amendment of Regulation (EU) No. 1307/2013

7.—(1) Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy⁽¹⁾ is amended as follows.

(2) In Article 1, omit point (b)(iv).

(3) In Article 4—

(a) in paragraph (1)—

(i) in points (a), (b) and (i), for “the United Kingdom”, in each place that it occurs, substitute “Wales”;

(ii) in point (e), omit “and permanent pasture”;

(iii) in point (g)—

(aa) omit “and permanent pasture”;

(bb) for “occupy” substitute “occupies”;

(iv) in point (h), for ““permanent grassland and permanent pasture” (together referred to as “permanent grassland”)” substitute ““permanent grassland””;

(v) for point (s) substitute—

“(s) “appropriate authority” means the relevant authority for the constituent nation in which the regulations apply;”;

(vi) after point (s) insert—

“(t) “total ceiling” means the amount determined in accordance with Article 5A.”;

(b) in paragraph 2, omit the final subparagraph.

(4) After Article 5 insert—

(1) EUR 2013/1307, amended by S.I. 2020/91, S.I. 2020/576 and S.I. 2020/760. This Regulation was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2).

“Article 5A

The total ceiling for Wales

1. The Welsh Ministers must determine the total ceiling for Wales.

2. The Welsh Ministers must determine the total ceiling before the start of the relevant year.

3. The Welsh Ministers must publish the total ceiling as soon as practicable after they have determined it under paragraph 1.

4. The total ceiling, for any relevant year, must be distributed among all claimed payment entitlements, including the national reserve or the regional reserves, and ceilings set in accordance with Articles 42 and 51 and the amount allocated under Article 53.

5. In this Article, “relevant year” has the same meaning as in paragraph 3(4) of Schedule 5 to the Agriculture Act 2020.”

(5) Omit Articles 6, 7 and 7A.

(6) In Article 9—

- (a) omit paragraphs 2 to 4;
- (b) omit paragraph 5(b), (c) and (d);
- (c) omit paragraphs 6 to 8.

(7) In Article 10(2), for “EUR 100” substitute “£100”.

(8) In Article 11—

- (a) in paragraph 1, for “EUR 150 000” substitute “£150,000”;
- (b) in paragraph 3—
 - (i) omit “of its share” in both places that it occurs;
 - (ii) for “annual national”, in both places that it occurs, substitute “total”.

(9) Omit Article 14.

(10) In Article 22—

- (a) omit paragraph 1;
- (b) for paragraph 2 substitute—

“2. The basic payment scheme ceiling in Wales for any given year is the amount which remains for the basic payment scheme after deducting, from the total ceiling, the ceilings set in accordance with Articles 42 and 51 for that year, and the amount allocated under Article 53.”;

- (c) omit paragraph 3;
- (d) for paragraph 4 substitute—

“4. The total value of all claimed payment entitlements in the constituent nation must equal the basic payment scheme ceiling in Wales.”;

(e) for paragraph 5 substitute—

“5. If the ceiling calculated pursuant to paragraph 2 of this Article is different from the relevant authority’s share of the basic payment scheme ceiling in claim year 2020 as a result of any decision taken by the relevant authority, or the total value of all claimed payment entitlements (including those allocated and claimed from the national reserve or regional reserve) is different from the total value of claimed payment entitlements in claim year 2020, the relevant authority shall linearly reduce or increase the value of all claimed payment entitlements in order to ensure compliance with paragraph 4 of this Article.”

(11) In Article 25—

- (a) omit paragraphs 1 and 2;
- (b) omit paragraph 8.

(12) In Article 30—

- (a) in paragraph 7—
 - (i) omit points (a) and (b);
 - (ii) in point (e), for “relevant authority’s share of the basic payment scheme ceiling” substitute “basic payment scheme ceiling in Wales”;
 - (iii) in point (f), omit “and Article 65(1), (2) and (3)”;
- (b) in paragraph 8—
 - (i) in the second subparagraph, for “relevant authority’s share of the basic payment scheme ceiling” substitute “basic payment scheme ceiling in Wales”;
 - (ii) omit the third subparagraph;
- (c) in paragraph 11(a), omit “(3) and”.

(13) Omit Article 31(1)(h).

(14) In Article 32—

- (a) in paragraph 1—
 - (i) omit “of financial discipline,”;
 - (ii) omit “Article 7 and”;
- (b) omit paragraph 5.

(15) In Article 34, omit paragraph 4.

(16) In Article 35(1)—

- (a) in point (g), omit “and 7”;
- (b) omit point (h).

(17) In Article 41—

- (a) in paragraph 1, omit the words from “, provided that” to the end;
 - (b) in paragraph 3—
 - (i) omit “of financial discipline.”;
 - (ii) omit “, of linear reductions as referred in Article 7”;
 - (c) in paragraph 4, for the second sentence substitute—

“The number of such payment entitlements or hectares shall not exceed a maximum level to be set by the relevant authority which shall not be higher than 54 hectares.”
- (18) In Article 42—
- (a) omit “, by the date referred to in Article 41(1)”;
 - (b) for “its share of the annual national” substitute “the total”.
- (19) Omit Chapter 3 of Title III.
- (20) In Article 50—
- (a) omit paragraph 3;
 - (b) in paragraph 4, omit “of financial discipline.”;
 - (c) omit the second subparagraph of paragraph 5;
 - (d) omit paragraphs 8 and 10A.
- (21) In Article 51—
- (a) in the first subparagraph of paragraph 1, for “its share of the annual national” substitute “the total”;
 - (b) in paragraph 2, for “relevant authority’s share of the national” substitute “total”;
 - (c) in paragraph 3, for “its share of the annual national” substitute “the total”.
- (22) In Article 53—
- (a) for paragraph 1 substitute—

“1. Up to 10% of the total ceiling may be used to finance the coupled support.”;
 - (b) omit paragraph 3;
 - (c) in paragraph 5—
 - (i) for “percentages set out in paragraphs 1 to 4” substitute “percentage set out in paragraph 1”;
 - (ii) for “EUR 3” substitute “£3”;
 - (d) omit paragraph 6.
- (23) In Article 71A—
- (a) in paragraph 1, for “paragraphs 2” substitute “paragraphs 3”;
 - (b) omit paragraph 2.
- (24) In Annex I, omit the third entry in the table.

(25) In Annex II, in the heading, for “Article 6” substitute “Article 5A”.

(26) Omit Annexes III, IX and X.

Amendment of Commission Delegated Regulation (EU) No. 639/2014

8.—(1) Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy⁽¹⁾ is amended as follows.

(2) Omit Article 1(d).

(3) Omit Article 8.

(4) Omit Articles 11 to 13.

(5) Omit Article 26.

(6) Omit Article 29(4).

(7) Omit Article 30(2).

(8) Omit Chapter 3.

(9) In Article 49(3)(a), omit “;(8)”.

(10) In Article 53(2), in the second subparagraph, in points (a) and (b), after “Annex I to this Regulation”, in both places that it occurs, insert “as it had effect immediately before exit day”.

(11) In Article 53a, omit paragraph 4.

(12) Omit Annex II.

Amendment of Commission Implementing Regulation (EU) No. 641/2014

9.—(1) Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy⁽²⁾ is amended as follows.

(2) Omit Article 1(c).

(3) In Article 8(1), omit “prior to exit day”.

(4) Omit Chapter 3.

(1) EUR 2014/639, amended by S.I. 2020/91 and 576. EUR 2014/639 was prospectively amended with effect from implementation period completion day by S.I. 2019/208 and 763 (as amended by S.I. 2019/812), but those prospective amendments were revoked by the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 immediately before implementation period completion day.

(2) EUR 2014/641, amended by S.I. 2020/91. EUR 2014/641 was also prospectively amended with effect from implementation period completion day by S.I. 2019/208, although that instrument was revoked by the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 immediately before implementation period completion day.

PART 4

Direct Payments: Domestic Legislation

Amendment of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

10.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014⁽¹⁾ are amended, insofar as they relate to direct payments, as follows.

(2) In regulation 2, omit paragraph (1A).

(3) In regulation 5—

(a) for paragraph (2)(b) substitute—

“(b) includes a statement by the Welsh Ministers of the rate for that period;”;

(b) omit paragraph (3).

(4) In Schedule 1, after paragraph 15 insert—

“Converting, ploughing or reseeded land designated as environmentally sensitive permanent grassland

16.—(1) A beneficiary may only convert, plough or reseed certain areas of environmentally sensitive permanent grassland if—

(a) the site of special scientific interest notification requires or allows the beneficiary to plough or convert certain areas of the site of special scientific interest; or

(b) consent to do so has been provided by Natural Resources Wales.

(2) In this paragraph—

“environmentally sensitive permanent grassland” (“*glaswelltir parhaol amgylcheddol-sensitif*”) means—

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

(b) grassland in relation to which written consent to plough is required in accordance with section 28E(1) of the Wildlife and Countryside Act 1981⁽²⁾ but such consent has not been obtained;

(1) S.I. 2014/3223 (W. 328), amended by S.I. 2016/217 (W. 86), S.I. 2016/1154, S.I. 2017/565 (W. 134), S.I. 2019/688 (W. 132) as from implementation period completion day, and S.I. 2020/104 (W. 17).

(2) 1981 c. 69.

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

Amendment of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014

11.—(1) The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014⁽¹⁾ are amended, insofar as they relate to direct payments, as follows.

(2) In regulation 2 (interpretation), in the definition of “competent authority”, omit “, except as otherwise provided by regulation 3,”.

(3) In regulation 3 (competent authority)—

(a) omit paragraphs (2) to (3A);

(b) for paragraph (4) substitute—

“(4) In this regulation, “holding” has the meaning given by Article 4(1)(b) of the Direct Payments Regulation.”

Amendment of the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

12.—(1) The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015⁽²⁾ are amended, insofar as they relate to direct payments, as follows.

(2) In regulation 3—

(a) the existing provision is renumbered as paragraph (1);

(b) at the beginning of renumbered paragraph (1), insert “Subject to paragraph (2),”;

(c) after renumbered paragraph (1) insert—

“(2) Direct payments may be granted to a farmer where the eligible area of the holding referred to in paragraph (1) is less than 5 hectares if in 2020 direct payments were claimed by or due to be granted to that farmer—

(a) before the application of Article 63 of Regulation (EU) No 1306/2013; and

(b) in respect of such a holding (as defined for the 2020 claim year)—

(1) S.I. 2014/3263, amended by S.I. 2015/1325. There are other amending instruments but none are relevant.

(2) S.I. 2015/1252 (W. 84), amended by S.I. 2016/217 (W. 86), S.I. 2019/688 (W. 132) as from implementation period completion day, and S.I. 2020/104 (W. 17).

- (i) situated in Wales and at least one other territory;
- (ii) where the eligible area situated in Wales of that holding was less than 5 hectares; and
- (iii) for which a payment was claimed or due to be granted in respect of the eligible area situated in Wales.

(3) Omit regulation 9.

(4) In regulation 10—

- (a) in paragraph (1), omit “Article 24 or”;
- (b) omit paragraphs (3) and (4).

(5) In regulation 11(3), for “30 April” substitute “15 May”.

(6) Omit regulations 14 to 16, and 19.

PART 5

Direct Payments: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

Amendment of the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

13.—(1) The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019⁽¹⁾ are amended as follows.

- (2) Omit regulation 2.
- (3) Omit regulation 4(2).
- (4) Omit regulation 5(2) and (3).

PART 6

Amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

Amendment to the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

14. In regulation 1(3) of the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019⁽²⁾, after “Regulations” insert “1,”.

(1) S.I. 2019/688 (W. 132).
(2) S.I. 2019/1281 (W. 225).

Amendment to the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019

15. In regulation 1(2) of the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019⁽¹⁾, after “regulations” insert “1,”.

Name

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

⁽¹⁾ S.I. 2019/1376 (W. 242).

The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd 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 Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

24 November 2020

1. Description

The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 (“the Instrument”) make amendments to retained EU law and domestic law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020 and to ensure it is efficient and effective.

The Instrument also makes amendments to this legislation to:

- simplify the administration of the scheme and make it more efficient and effective;
- remove provisions which are spent or not in use;
- remove or reduce burdens on persons applying for direct payments under the scheme;
- improve the way the scheme operates;
- ensure sanctions and penalties imposed under the scheme are appropriate and proportionate; and
- limit the application of the scheme to land in Wales only.

In addition, the Instrument makes amendments to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, and to correct errors in existing EU Exit statutory instruments.

The Instrument has six Parts. Part 1 makes introductory provisions for the Instrument. Parts 2 to 6 contain the substantive amendments, detailed below.

Part 2 - Direct Payments: Horizontal Legislation

Part 2 of the Instrument amends the following, insofar as they relate to direct payments:

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”);
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated

administration and control system, rural development measures and cross compliance;

- Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro; and
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Part 3 – Direct Payments: Retained Direct Legislation

Part 3 of the Instrument amends:

- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (“the Direct Payments Regulation”);
- Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy; and
- Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Part 4 – Direct Payments: Domestic Legislation

Part 4 of the Instrument amends the following, insofar as they relate to direct payments:

- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014;
- the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014; and
- the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

Part 5 – Direct Payments: Amendment of Domestic Legislation consequent on the Withdrawal of the United Kingdom from the European Union

Part 5 of the Instrument amends the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

Part 6 – Amendment of Domestic Legislation consequent on the Withdrawal of the United Kingdom from the European Union

Part 6 of the Instrument amends:

- the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and
- the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019.

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

Parts 1, 5 and 6, and regulation 7(4) come into force on the day after the day on which the Instrument is made, with the rest of the Instrument coming into force on Implementation Period completion day (“IP completion day”). Section 39 of the European Union (Withdrawal Agreement) Act 2020 defines IP completion day as 11pm on 31 December 2020.

Parts 2, 3, and 4 of the Instrument are made in exercise of the powers conferred by paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the Agriculture Act 2020 (c.21) (“the 2020 Act”) in order to make provision in retained EU law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020, and to make small but impactful changes to the scheme including simplifications, and the removal of administrative burdens.

Parts 5 and 6 of the Instrument are made in exercise of the power conferred by paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”). Part 5 contains amendments which revoke provisions in the

Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/688 (W. 132)) to ensure the legislation reflects the changes already made by the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 (S.I. 2020/104 (W. 17)), and the changes being made by this Instrument.

Part 6 contains amendments to correct errors in the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/1281 (W. 225)) and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1376 (W. 242)).

In relation to Parts 5 and 6 of the Instrument, the requirement in paragraph 4(a) of Schedule 2 (relating to consultation with the Secretary of State) to the 2018 Act has been satisfied.

3. Legislative background

On Exit Day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 (“the DPFLC Act”) incorporated EU legislation governing the 2020 Common Agricultural Policy (CAP) Direct Payment schemes into UK law.

This was necessary because the effect of Article 137 of the Withdrawal Agreement was to exclude direct payments legislation for claim year 2020 from legislation which formed part of the transition period.

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90) and the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91) were made pursuant to powers in section 3 of the DPFLC Act. These SIs made corrections to the direct payments legislation to ensure it functioned effectively upon Exit Day. These regulations continue in force after 31 December 2020 by virtue of section 3(8) of the DPFLC Act.

This Instrument is being made pursuant to paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the 2020 Act, and paragraph 1 of Schedule 2 to the 2018 Act.

This Instrument is subject to the affirmative procedure pursuant to section 50(6)(c) and (8) of the 2020 Act, and paragraph 1(9) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

This Instrument ensures that the existing Direct Payment schemes for farmers in Wales can continue to operate efficiently and effectively beyond the 2020 claim year, which runs until 31 December 2020.

Direct Payments have been the main income-support schemes for farmers under the CAP. The legislation governing the 2020 Direct Payment schemes was incorporated into UK law on exit day and the 2020 scheme was domestically funded.

The purpose of the legislation being amended by the Instrument is as follows:

Part 2 - Direct Payments: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) set out the detailed rules of implementing the EU Common Agricultural Policy (CAP) for both Pillar 1 and Pillar 2 schemes. The Horizontal Regulations provide requirements for administration of the schemes (including Audit and Control measures) and reporting of funding under the CAP.
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance sets out the detailed rules relating to conditions for partial or total refusal or withdrawal of support, administrative penalties, the integrated system, for the identification system for agricultural parcels and cross-compliance.
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance sets out the detailed rules relating to administrative and on the spot checks, reporting of checks and verifications, specific control measures in relation to hemp, cases in which payment claims may be corrected and adjusted, the recovery of undue payments and penalties, the transfer of holdings and the payment of advances.
- Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro sets out detailed rules in relation to paying agencies and coordinating bodies, the accreditation of such bodies, financial management and use of the Euro.
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks,

securities and transparency sets out detailed rules in relation to paying agencies, financial management, checks, securities and transparency.

Part 3 - Direct Payments: Retained Direct Legislation

- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy;
- Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy; and
- Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Part 4 - Direct Payments: Domestic Legislation

- The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 make provision in relation to Wales, for the implementation of European Regulations (including the Horizontal Regulations and Direct Payments Regulations and the accompanying Delegated and Implementing Regulations) relating to the administration of the EU CAP. These Regulations include provisions on control and enforcement in relation to payments granted directly to farmers under Direct Payments, eligible dates for applications, minimum holding size, procedures for debts, powers of entry, offences and penalties and rules on cross-compliance.
- The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 make provision for the implementation in England and, for certain purposes, the United Kingdom, of the European Regulations relating to the administration of the EU CAP. Regulations 3 and 4 extend to the UK. Regulation 3 specifies which competent authority may determine a single application for direct payments, and regulation 4 permits competent authorities to enter into agency agreements with each other.
- The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 make provision, in relation to Wales, for the administration of the Direct Payments Regulations and the associated Delegated and Implementing Regulations. These Regulations set out provisions on minimum eligible size of a holding, the date on which parcels of land must be at the farmers' disposal, the minimum level of agricultural activity, short rotation coppice and maximum harvest cycles, the Young

Farmers Scheme payment calculation, payment entitlement allocation, transfer & lease and the Greening requirements.

Part 5 - Direct Payments: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

- The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations apply in relation to Wales and make miscellaneous amendments to subordinate legislation about the common agriculture policy.

Part 6 - Amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

- The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations make amendments to various pieces of domestic legislation including:
 - The Welsh Language (Wales) Measure 2011;
 - The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019;
 - The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019; and
 - The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019.
- The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations make amendments to legislation relating to food and horticulture:
 - The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009;
 - The Eggs and Chicks (Wales) Regulations 2010;
 - The Poultrymeat (Wales) Regulations 2011;
 - The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019; and
 - The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019.

Why is it being changed?

This Instrument allows the continuation of the Direct Payment schemes for farmers in Wales beyond the end of the 2020 scheme.

The Direct Payments Regulation currently contains financial ceilings which are used to calculate Direct Payments to farmers across the UK. However, it only includes financial ceilings up to and including the 2020 claim year. This Instrument specifies the manner by which the Welsh Ministers will determine the annual financial ceiling to calculate payments beyond 2020 in Wales.

This Instrument removes from the retained EU law provisions which are not applicable in Wales, and provisions which are not relevant beyond the 2020 scheme. For example, the Instrument removes rules concerning the transfer of funds from the 2020 Direct Payments budget to be used for rural development measures (pillar transfer).

This Instrument also makes small but impactful amendments and simplifications to ensure the scheme operates efficiently and effectively beyond 2020. This includes, for example, replacing dates specific to the 2020 scheme year, removing references to the euro and simplifications to remove administrative complexities and tailor the retained EU law to support Welsh farmers whilst delivering on Welsh Government objectives.

In addition, the Instrument makes amendments to Welsh EU Exit statutory instruments to ensure they are operable and to address errors.

5. Consultation

The amendments in Parts 2 – 5 of the Instrument have been subject to formal public consultation. ‘Sustainable Farming and Our Land: Proposals to continue and simplify Agricultural Support for Farmers and the Rural Economy’ was open between 31 July and 23 October 2020.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments have been considered in relation to these Regulations. Officials consider these amendments do not make fundamental changes to the current agricultural support funding arrangements and will have no significant effect on public or private sectors, charity or voluntary sectors.

As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements 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	An RIA must be completed for proposed legislation that could affect the public or private sectors, charities and the voluntary sector.
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 2020.
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	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

		In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	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.
Explanation 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 statement where amending regulations under s.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 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

			<p>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</p> <p>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.</p>
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Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate.”

This is the case because the Instrument corrects deficiencies which arise from withdrawal and ensures that the direct payments scheme continues to operate effectively in Wales once we leave the EU. The Instrument makes small but impactful changes allowing a tailored approach to the delivery of agricultural funding in Wales after the end of the Implementation Period. It ensures that the legislation remains up to date and continues to operate effectively in Wales following the Implementation Period. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs 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.”

This is because the provisions ensure that the legislation amended by this Instrument will allow for a smooth transition out of the Implementation Period and until the future reform of agricultural support.

4. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

SL(5)682 – The Council Tax Reduction Schemes (Prescribed Requirement and Default Scheme) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations are made under section 13A(4) and (5) of, and paragraphs 2 to 7 of Schedule 1B to, the Local Government Finance Act 1992.

The Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively as “the 2013 CTRS Regulations”). Council Tax Reduction Schemes (CTRS) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.

The Regulations uprate certain figures used to calculate an applicant’s entitlement to a reduction under a CTRS, and the subsequent level of reduction to reflect increases in the cost of living, and make certain technical and consequential amendments.

Procedure

Draft Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

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

No consultation has been undertaken in respect of these Regulations. The Explanatory Memorandum notes that:

“The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.”

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

8 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

Draft Regulations laid before Senedd Cymru under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of Senedd Cymru.

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

2021 No. (W.)

COUNCIL TAX, WALES

**The Council Tax Reduction
Schemes (Prescribed Requirements
and Default Scheme) (Wales)
(Amendment) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 (“the Prescribed Requirements Regulations”) and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (“the Default Scheme Regulations”) made under section 13A(4) and (5) of, and Schedule 1B to, the Local Government Finance Act 1992.

The Prescribed Requirements Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. The Prescribed Requirements Regulations also set out the matters that must be included within such a scheme.

The Default Scheme Regulations set out a scheme that will take effect, in respect of dwellings situated in the area of a billing authority, if the authority fails to make its own scheme.

These Regulations amend both the Prescribed Requirements and the Default Scheme Regulations.

The amendments made to the Prescribed Requirements Regulations by regulations 3, 6, 9 and 10 provide for how payments under “the Windrush Compensation Scheme” are to be taken into account when determining eligibility for a reduction and the amount of a reduction. The same amendments are

made to the Default Scheme Regulations by regulations 12, 15, 18 and 19.

The amendment made to the Prescribed Requirements Regulations by regulation 4(2) provides for how payments of universal credit to claimants who have reached state pension credit qualifying age are to be taken into account when determining eligibility for a reduction and the amount of a reduction. The same amendment is made to the Default Scheme Regulations by regulation 14.

The amendments to the Prescribed Requirements Regulations by regulations 4(1), 5, 7 and 8 increase certain figures that are used in calculating whether a person is entitled to a reduction and the amount of that reduction. The uprated figures relate to non-dependant deductions (adjustments made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant); and the applicable amount in relation to an application for a reduction (the amount against which an applicant's income is compared in order to determine the amount of reduction to which the applicant is entitled). The same amendments are made to the Default Scheme Regulations by regulations 13, 16 and 17.

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

Draft Regulations laid before Senedd Cymru under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of Senedd Cymru.

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

2021 No. (W.)

COUNCIL TAX, WALES

**The Council Tax Reduction
Schemes (Prescribed Requirements
and Default Scheme) (Wales)
(Amendment) Regulations 2021**

Made

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) and (5) of, and paragraphs 2 to 7 of Schedule 1B to, the Local Government Finance Act 1992(1).

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by resolution of Senedd Cymru(2).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force the day after the day on which they are made.

(1) 1992 c. 14. Section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17) and Schedule 1B was inserted by section 10(2) of, and Schedule 4 to, that Act.

(2) The reference in section 13(A)(8) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32), as amended by section 9 of, and Schedule 1 to, the Senedd and Elections (Wales) Act 2020 (anaw 1).

(3) These Regulations apply in relation to a council tax reduction scheme made for a financial year beginning on or after 1 April 2021.

(4) In these Regulations “council tax reduction scheme” (*“cynllun gostyngiadau'r dreth gyngor”*) means a scheme made by a billing authority in accordance with the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013⁽¹⁾, or the scheme that applies in default by virtue of paragraph 6(1)(e) of Schedule 1B to the Local Government Finance Act 1992.

Amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013

2. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 are amended in accordance with regulations 3 to 10.

3. In regulation 2(1) (interpretation)—

(a) in the definition of “qualifying person”, after “the We Love Manchester Emergency Fund” insert “; the Windrush Compensation Scheme”;

(b) in the appropriate place insert—

““the Windrush Compensation Scheme” (*“Cynllun Digolledu Windrush”*) means—

(a) the scheme of that name (2) operated by the Secretary of State for the purpose of compensating individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom; and

(b) the policy entitled “Windrush Scheme: Support in urgent and exceptional circumstances”⁽³⁾ which was operated

(1) S.I. 2013/3029 (W. 301), as amended by S.I. 2014/66 (W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21), S.I. 2017/46 (W. 20), S.I. 2018/14 (W. 7), S.I. 2019/11 (W. 5) and S.I. 2020/16 (W. 2).

(2) The Windrush Compensation Scheme Rules are published and can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925385/Windrush_Compensation_Scheme_Full_Rules.pdf. A hard copy may be obtained on request by writing to the Local Taxation Division, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London, SW1P 4DF. Further information about the Windrush Compensation Scheme can be found at <https://www.gov.uk/guidance/windrush-compensation-scheme>.

(3) This policy can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916834/Windrush_Scheme_-_Support_in_Urgent_and_Exceptional_Circumstances.pdf. A hard copy may be obtained on request by writing to the Local Taxation Division, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London, SW1P 4DF.

by the Secretary of State for the purpose of compensating individuals who, for urgent and exceptional reasons, required support in advance of the scheme referred to in paragraph (a) of this definition becoming operational;”.

4. In Schedule 1 (determining eligibility for a reduction: pensioners)—

(1) in paragraph 3 (non-dependant deductions: pensioners)—

- (a) in sub-paragraph (1)(a) for “£14.65” substitute “£15.35”;
- (b) in sub-paragraph (1)(b) for “£4.85” substitute “£5.10”;
- (c) in sub-paragraph (2)(b) for “£9.75” substitute “£10.20”;
- (d) in sub-paragraph (2)(c) for “£12.25” substitute “£12.85”;

(2) in paragraph 10 (meaning of “income”: pensioners) in sub-paragraph 1(j) insert “(xx) universal credit;”.

5. In Schedule 2 (applicable amounts: pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowance)—
 - (i) in sub-paragraph (1) for “£173.80” and “£187.80” substitute “£177.10” and “£191.15” respectively;
 - (ii) in sub-paragraph (2) for “£265.20” and “£280.85” substitute “£270.30” and “£286.05” respectively;
 - (iii) in sub-paragraph (3) for “£265.20” and “£91.40” substitute “£270.30” and “£93.20” respectively;
 - (iv) in sub-paragraph (4) for “£280.85” and “£93.05” substitute “£286.05” and “£94.90” respectively;
- (b) in the Table in Part 4 (amounts of premium specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£66.95” in each place where it occurs substitute “£67.30” and for “£133.90” substitute “£134.60”;
 - (ii) in sub-paragraph (2) for “£26.60” substitute “£26.67”;
 - (iii) in sub-paragraph (3) for “£65.52” substitute “£65.94”;
 - (iv) in sub-paragraph (4) for “£37.50” substitute “£37.70”.

6. In Schedule 5 (capital disregards: pensioners), in paragraph 16(1)(a), after “the We Love Manchester

Emergency Fund” insert “, the Windrush Compensation Scheme”.

7. In Schedule 6 (determining eligibility for a reduction under an authority’s scheme, amount of reduction and calculation of income and capital: persons who are not pensioners) in paragraph 5 (non-dependant deductions: persons who are not pensioners)—

- (a) in sub-paragraph (1)(a) for “£14.65” substitute “£15.35”;
- (b) in sub-paragraph (1)(b) for “£4.85” substitute “£5.10”;
- (c) in sub-paragraph (2)(b) for “£9.75” substitute “£10.20”;
- (d) in sub-paragraph (2)(c) for “£12.25” substitute “£12.85”.

8. In Schedule 7 (applicable amounts: persons who are not pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£79.20” in each place in which it occurs substitute “£79.60” and for “£62.75” substitute “£63.05”;
 - (ii) in sub-paragraph (2) for “£79.20” substitute “£79.60”;
 - (iii) in sub-paragraph (3) for “£124.45” substitute “£125.05”;
- (b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£34.95” and “£49.80” substitute “£35.10” and “£50.05” respectively;
 - (ii) in sub-paragraph (2) for “£66.95” in each place in which it occurs substitute “£67.30” and for “£133.90” substitute “£134.60”;
 - (iii) in sub-paragraph (3) for “£65.52” substitute “£65.94”;
 - (iv) in sub-paragraph (4) for “£37.50” substitute “£37.70”;
 - (v) in sub-paragraph (5) for “£26.60”, “£17.10” and “£24.50” substitute “£26.67”, “£17.20” and “£24.60” respectively;
- (c) in Part 6 (amount of components)—
 - (i) in paragraph 23 for “£29.35” substitute “£29.70”;
 - (ii) in paragraph 24 for “£39.20” substitute “£39.40”.

9. In Schedule 10 (capital disregards: persons who are not pensioners)—

- (a) in paragraph 29(1), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”;
- (b) in paragraph 29(7), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”.

10. In Schedule 13 (all applicants: matters that must be included in an authority’s scheme—other matters), in paragraph 5(7)(a)(ii), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”.

Amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013

11. The scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013(1) is amended in accordance with regulations 12 to 19.

12. In paragraph 2(1) (interpretation)—

- (a) in the definition of “qualifying person”, after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”;
- (b) in the appropriate place insert—
 - ““the Windrush Compensation Scheme” (“*Cynllun Digolledu Windrush*”) means—
 - (a) the scheme of that name (2) operated by the Secretary of State for the purpose of compensating individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom; and
 - (b) the policy entitled “Windrush Scheme: Support in urgent and exceptional

(1) S.I. 2013/3035 (W. 303), as amended by S.I. 2014/66(W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21), S.I. 2017/46 (W. 20), S.I. 2018/14 (W. 7) S.I. 2019/11 (W. 5) and S.I. 2020/16 (W. 2).

(2) The Windrush Compensation Scheme Rules are published and can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925385/Windrush_Compensation_Scheme_Full_Rules.pdf. A hard copy may be obtained on request by writing to the Local Taxation Division, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London, SW1P 4DF. Further information about the Windrush Compensation Scheme can be found at <https://www.gov.uk/guidance/windrush-compensation-scheme>.

circumstances”(1) which was operated by the Secretary of State for the purpose of compensating individuals who, for urgent and exceptional reasons, required support in advance of the scheme referred to in paragraph (a) of this definition becoming operational;”.

13. In paragraph 28 (non-dependant deductions: pensioners and persons who are not pensioners)—

- (a) in sub-paragraph (1)(a) for “£14.65” substitute “£15.35”;
- (b) in sub-paragraph (1)(b) for “4.85” substitute “£5.10”;
- (c) in sub-paragraph (2)(b) for “£9.75” substitute “£10.20”;
- (d) in sub-paragraph (2)(c) for “£12.25” substitute “£12.85”.

14. In paragraph 36 (meaning of “income”: pensioners) in sub-paragraph (1)(j) insert “(xx) universal credit;”.

15. In paragraph 111(7)(a)(ii), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”.

16. In Schedule 2 (applicable amounts: pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£173.80” and “£187.80” substitute “£177.10” and “£191.15” respectively;
 - (ii) in sub-paragraph (2) for “£265.20” and “£280.85” substitute “£270.30” and “£286.05” respectively;
 - (iii) in sub-paragraph (3) for “£265.20” and “£91.40” substitute “£270.30” and “£93.20” respectively;
 - (iv) in sub-paragraph (4) for “£280.85” and “£93.05” substitute “£286.05” and “£94.90” respectively;
- (b) in the Table in Part 4 (amounts of premium specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£66.95” in each place in which it occurs substitute

(1) This policy can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916834/Windrush_Scheme_-_Support_in_Urgent_and_Exceptional_Circumstances.pdf. A hard copy may be obtained on request by writing to the Local Taxation Division, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London, SW1P 4DF.

- “£67.30” and for “£133.90” substitute “£134.60”;
- (ii) in sub-paragraph (2) for “£26.60” substitute “£26.67”;
- (iii) in sub-paragraph (3) for “£65.52” substitute “£65.94”;
- (iv) in sub-paragraph (4) for “£37.50” substitute “£37.70”.

17. In Schedule 3 (applicable amounts: persons who are not pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£79.20” in each place in which it occurs substitute “£79.60” and for “£62.75” substitute “£63.05”;
 - (ii) in sub-paragraph (2) for “£79.20” substitute “£79.60”;
 - (iii) in sub-paragraph (3) for “£124.45” substitute “£125.05”;
- (b) in the Table in Part 4 (amount of premiums specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£34.95” and “£49.80” substitute “£35.10” and “£50.05” respectively;
 - (ii) in sub-paragraph (2) for “£66.95” in each place in which it occurs substitute “£67.30” and for “£133.90” substitute “£134.60”;
 - (iii) in sub-paragraph (3) for “£65.52” substitute “£65.94”;
 - (iv) in sub-paragraph (4) for “£37.50” substitute “£37.70”;
 - (v) in sub-paragraph (5) for “£26.60”, “£17.10” and “£24.50” substitute “£26.67”, “£17.20” and “£24.60” respectively;
- (c) in Part 6 (amount of components)—
 - (i) in paragraph 23 for “£29.35” substitute “£29.70”;
 - (ii) in paragraph 24 for “£39.20” substitute “£39.40”.

18. In Schedule 8 (capital disregards: pensioners), in paragraph 16(1)(a), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”.

19. In Schedule 9 (capital disregards: persons who are not pensioners)—

- (a) in paragraph 29(1), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”;
- (b) in paragraph 29(8), after “the We Love Manchester Emergency Fund” insert “, the Windrush Compensation Scheme”.

Name

Minister for Finance and Trefnydd, one of the Welsh
Ministers

Date

**Explanatory Memorandum to the Council Tax Reduction Schemes
(Prescribed Requirements and Default Scheme) (Wales) (Amendment)
Regulations 2021**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the Senedd 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 Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Rebecca Evans
Minister for Finance and Trefnydd
1 December 2020

PART 1: DESCRIPTION

1 Overview

- 1.1 Council Tax Reduction Schemes (CTRS) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.
- 1.2 This statutory instrument makes amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as ‘the 2013 CTRS Regulations’). It updates certain figures used to calculate an applicant’s entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction and makes certain technical and consequential amendments.

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

- 2.1 There are no matters of special interest.

3 Legislative background

- 3.1 Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 (the 1992 Act). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes (CTRS) in Wales via regulations.
- 3.2 The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
- 3.3 This statutory instrument is made pursuant to powers in section 13A and Schedule 1B to the Local Government Finance Act 1992. The instrument is subject to approval of the Senedd (the affirmative procedure) by virtue of section 13A(4) of the 1992 Act”.

4 Purpose and intended effect of the legislation

- 4.1 This statutory instrument amends the 2013 CTRS Regulations to update certain figures in those Regulations used to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2021-22 financial year to reflect increases in the cost-of living. It also makes minor technical and consequential changes to the 2013 CTRS Regulations.

Background

- 4.2 The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax was devolved to local authorities in England. Fixed funding, reduced by 10% compared to the 2012-13 costs, was passed to the Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.
- 4.3 Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 (the 1992 Act), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.
- 4.4 The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.
- 4.5 The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

2013 CTRS Regulations

- 4.6 Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules to prevent low-income households facing sharp changes in the level of support they received. All eligible applicants were automatically and seamlessly transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013. If an applicant receives Income Support, Income-Based Jobseeker's Allowance (JSA), Income-Based Employment and Support Allowance (ESA), Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum, full, reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive these passporting benefits.
- 4.7 If an applicant does not receive any of the passporting benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:
 - The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.

- The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer’s responsibilities. Once the applicable amount has been determined, the applicant’s level of income is calculated.
- 4.8 For CTRS, Universal Credit (UC) recipients are treated in a similar way to non-passported applicants. However, instead of an ‘applicable amount’ being calculated, the ‘maximum amount’ (calculated within their UC application) is used instead.
- 4.9 If the applicable amount (or maximum amount) is higher than an applicant’s calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.
- 4.10 Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).
- 4.11 Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to a reduction.
- 4.12 If a working-age applicant has capital of between £6,000 and £16,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £250 of capital between £6,000 and £16,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.
- 4.13 If a pension-age applicant has capital of between £10,000 and £16,000, the local authority will treat it as income. The local authority will assume an applicant has an income of £1 a week for each £500 of capital between £10,000 and £16,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.

Uprating figures for 2021-22

- 4.14 This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.
- 4.15 The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:

- Personal allowances in relation to working age, and carer and disabled premiums
The financial figures in respect of these allowances have been amended and have increased in line with the cost-of-living rises. The convention is to uprate in line with the Consumer Price Index figure for September from the previous year (2020), which is 0.5%.
- Personal allowances in relation to pensioners
The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with assistance from the Department of Work and Pensions and have been uprated by different mechanisms. For example, the Pension Credit Standard Minimum Guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.
- Non-dependant deductions
The financial figures for the income bands and deductions made in relation to non-dependants have been uprated. If amendments are not made, the deductions from CTRS awards would not be appropriate as the income thresholds would no longer reflect average earnings and the deduction would no longer reflect the overall cost of council tax.

Additional Amendments

4.16 In addition to uprating the financial figures, this statutory instrument makes a number of other amendments to the 2013 CTRS Regulations. These make provision for the treatment of two other types of payments and ensure the 2013 Regulations remain up-to-date and fit for purpose.

Amendments related to the Windrush Compensation Scheme

4.17 This compensation scheme (“the Scheme”) is designed to compensate individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom.

4.18 The proposed amendments to the 2013 CTRS Regulations make provision that compensation payments made under the Scheme will be disregarded from capital when determining an applicant’s eligibility for a reduction and the amount of that reduction.

Universal Credit Run-On Disregard

4.19 Entitlement to Universal Credit (UC) ends when a person (or mixed-age couple) reaches the qualifying age for state pension credit (PC). From this point, claimants can instead claim pension-age benefits such as Pension Credit (PC).

- 4.20 Previously, claimants who reached state pension age during the assessment period risked there being a gap between their last UC payment and their first PC (and other pension-age benefits) payments. DWP is taking steps towards a smoother transition from UC to pension-age benefits, with no risk of gaps in entitlement for claimants. To achieve this, DWP is making additional UC run on payments to cover the entire month in which a claimant reaches pension-age. For some claimants, depending on which date within the month they reach this age, there will be an overlap in the receipt of this UC run-on payment and pension-age benefits.
- 4.21 The proposed amendments to the 2013 Regulations make provision that any 'additional income' resulting from such an overlap is not to be considered as income when determining eligibility for a pension-age council tax reduction in Wales.

PART 2: REGULATORY IMPACT ASSESSMENT (RIA)

Options

Option 1 – Do nothing

- 1 If the financial figures used to assess household allowances in the council tax reduction means-test remained static, the criteria used would be slightly less generous for non-passported applicants and would lead to small decreases in support in real terms.
- 2 The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.
- 3 If consequential amendments are not made to the 2013 CTRS Regulations, this would mean that they would not take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support. It could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

Option 2 – Make amending Regulations

- 4 This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations in line with to Welsh Government policy, cost-of-living increases and changes to qualifying benefits.
- 5 The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living for 2020-21 (0.5%, as measured by CPI). The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefits system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.
- 6 The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.
- 7 The necessary technical and consequential amendments would also be made.

Costs and Benefits

Costs

Option 1 – Do nothing

- 8 If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI), CTRS recipients would be slightly worse off in real terms.
- 9 The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.
- 10 If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions and other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

Benefits

- 11 Not uprating pensioner and working age figures would help to limit any increases in total reductions under CTRS. However, not uprating figures in relation to non-dependant deductions, would result in council tax reductions for relevant households being higher than they would otherwise be.

Option 2 – Make amending Regulations

Costs

- 12 Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under CTRS. However, if the financial figures in relation to non-dependant deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

Benefits

- 13 Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line with the CPI (0.5%).

- 14 Uprating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the Standard Minimum Guarantee and Savings Credit.
- 15 If the financial figures in relation to non-dependant deduction rates are updated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.
- 16 As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This would ensure CTRS reflects changes made to interrelated social security benefits which often determine entitlement to a reduction. It would also avoid any additional administrative burden for local authorities or advice providers arising from managing different regimes.

Sectors

- 17 Local government and the voluntary sector were consulted during the development of proposals to introduce CTRS in Wales. Draft regulations for 2020-21 have been shared with local authorities.
- 18 This legislation will not affect the business sector.

Duties

- 19 In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.
- 20 An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.
- 21 This statutory instrument is provided bilingually. CTRS is implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.
- 22 Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.
- 23 Maintaining full entitlements to CTRS will continue to help low-income households in meeting their council tax liability and, as such, will contribute to the Welsh Government's commitment to make council tax fairer.

Competition Assessment

- 24 These Regulations have been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

- 25 No consultation has been undertaken in respect of this statutory instrument. The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.

Post implementation review

- 26 Amendments are required on an annual basis to uprate the financial figures used to calculate entitlements to reductions. This provides an opportunity to review the legislation.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The laying of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2021**

DATE **1 December 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

Today, I have laid the draft [Council Tax Reduction Schemes \(Prescribed Requirements and Default Scheme\) \(Wales\) \(Amendment\) Regulations 2021](#) before the Senedd.

Subject to the approval of the Senedd, these Regulations will uprate the financial figures in the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 to ensure that the scheme in place for the 2021-22 financial year reflects increases in the cost-of-living. This helps to ensure that the scheme maintains entitlements for the 280,000 households across Wales who rely on this support.

I look forward to the debate on the Regulations early in the New Year.

SL(5)685 – The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the principal Regulations”) and also make technical amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (“the Functions of Local Authorities Regulations”).

Amendments to the Principal Regulations

The principal Regulations put in place restrictions and requirements on a pan-Wales basis following the “firebreak” that operated in Wales between 23 October and 8 November.

These Regulations make amendments to those Regulations to:

- require bars, cafes, canteens, restaurants and pubs to be closed to customers between 6.00 p.m. and 6.00 a.m. (though this restriction is subject to specific exceptions in new regulation 19B, including in relation to holiday or travel accommodation and for wedding or civil partnership receptions booked before these Regulations come into force);
- prevent any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses (though this does not prevent alcohol being sold to residents in holiday or travel accommodation as part of room service (subject to requirements in regulation 20), or prevent residents from drinking alcohol in their private rooms);
- require indoor premises of entertainment venues and visitor attractions to close;
- prohibit travel into Wales from, or out of Wales to, areas which are subject to the highest levels of restrictions in England and Scotland, and also Northern Ireland.

The Regulations also amend various enforcement provisions (including for example, clarifying that the power of an enforcement officer to enter a private dwelling may only be exercised by a police constable) and provide that it is an offence to fail, without reasonable excuse, to take measures specified in a premises improvement notice issued under Schedule 3 to the principal Regulations.

Amendments to the Functions of Local Authorities Regulations

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 were made on 17 September 2020 and came into force the next day. They include a ‘sunset provision’ within them, such that those Regulations will expire at the end of 8 January 2021. The principal Regulations, to which those Regulations relate, will expire at the end of 19 February 2021. Therefore the first amendment being made in these Regulations is to align expiry dates between the two sets of Regulations, so that both will expire at the end of 19 February 2021.



Regulation 6 of the Functions of Local Authorities Regulations gives local authorities the power to issue directions (“events directions”) requiring an event to stop or not be held, or imposing restrictions or requirements on the holding of the event. They can do this only if certain conditions are met and having had regard to whether people will be gathered illegally at the event. Two minor amendments are being made to this regulation –

-to amend a cross reference; and

-to require local authorities, in deciding whether to issue an event direction, to also have regard to whether more than 15 people are in attendance (if it is indoors) or 30 people are in attendance (if it is outdoors).

Despite the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, these regulations clarify that penalty notices issued under those Regulations must be taken into account in determining the amount of a fixed penalty notice to be issued under regulation 19 of the functions of local authorities Regulations;

Regulation 46 of the principal Regulations permits local authorities to bring prosecutions under those Regulations themselves, but this is not currently provided for under the Functions of Local Authority Regulations. An amendment is therefore made to regulation 20 to now provide for this, so as to ensure there is consistency in prosecution powers for local authorities.

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:

1. 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.

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 amendments contained in these Regulations continue to engage under the principal Regulations and the Functions of Local Authorities Regulations 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 or public policy likely to be of interest to the Senedd.

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, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 1 December the Welsh Government’s intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.”

It has been well documented in the media that these Regulations have had a significant direct economic impact on businesses, particularly in the hospitality sector and the businesses that provide goods and services to that sector. The Committee note that the announcement for the policy and legal changes being brought about by these Regulations were made on 1st December, only four days before coming into force. Given that many of the affected businesses would have invested heavily at this time of year, for example, in perishable stock, what measures of financial support have the Welsh Government put in place to ameliorate the economic impact and what consideration was given to other policy alternatives?

3. 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.

The Explanatory Note to these regulations contain errors. The Explanatory Note states :- “The amendments to the Functions of Local Authorities Regulations (a) provide for the Regulations to expire on 19 February 2020 instead of 8 January 2020, to align with the expiry date of the Principal Regulations.” The new sunset dates specified should be in 2021, not 2020. Both the Regulations and the Explanatory Memorandum specify the correct dates.

4. 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.

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum explains that this is “due to the need to put them in place urgently to deal with a serious and imminent threat to public health.”. The Explanatory Memorandum goes on to state that “a summary integrated impact assessment has been prepared and will be published on the gov.wales website - <https://gov.wales/impact-assessments-coronavirus>. However, at the time of writing (9 December) none have been published. The Welsh Government are asked to confirm when such summaries are expected to be published.

Implications arising from exiting the European Union

None.



Government Response

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

Legal Advisers

Legislation, Justice and Constitution Committee

9 December 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

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. 1409 (W. 311)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions and Functions of Local
Authorities) (Amendment) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (S.I. 2020/1219 (W. 276)) (the “principal Regulations”) and the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 225)) (the “functions of local authorities Regulations”).

The amendments to the principal Regulations—

- (a) require, at new regulation 19A(1) of the principal Regulations, bars, cafes, canteens, restaurants and pubs to be closed to customers between 6.00 p.m. and 6.00 a.m. (though this restriction is subject to specific exceptions in new regulation 19B, including in relation to holiday or travel accommodation and for wedding or civil partnership receptions booked before these Regulations come into force);
- (b) prevent, at new regulation 19A(2), any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses (though this does not prevent alcohol being sold to residents in holiday or travel accommodation as part of

- room service (subject to requirements in regulation 20), or prevent residents from drinking alcohol in their private rooms);
- (c) require indoor premises of entertainment venues and visitor attractions to close;
 - (d) make consequential, minor or technical amendments, including revoking redundant provisions and amending various enforcement provisions (including to provide that it is an offence to fail, without reasonable excuse, to take measures specified in a premises improvement notice issued under Schedule 3 to the principal Regulations).

The amendments to the functions of local authorities Regulations—

- (a) provide for the Regulations to expire on 19 February 2020 instead of 8 January 2020, to align with the expiry date of the principal Regulations;
- (b) require a local authority, when deciding whether to give an event direction, to have regard to whether the event may result in people gathering in contravention of regulation 6 of the principal Regulations and to whether there may be more than 15 people (where the event is indoors) or 30 people (where it is outdoors) attending the event at any one time;
- (c) put beyond doubt that, despite the expiry of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, penalty notices issued under those Regulations must be taken into account in determining the amount of a fixed penalty notice to be issued under regulation 19 of the functions of local authorities Regulations;
- (d) permit local authorities to bring proceedings for offences under the Regulations.

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

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

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. 1409 (W. 311)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions and Functions of Local
Authorities) (Amendment) (Wales)
Regulations 2020**

Made 2 December 2020

Laid before Senedd Cymru 3 December 2020

*Coming into
force* at 6.00 p.m. on 4 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) 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.

(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.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020.

(2) These Regulations come into force at 6.00 p.m. on 4 December 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 9—

(a) in paragraph (1), for “outside Wales” substitute a “in a restricted UK area”;

(b) in paragraph (2), after “leave Wales” insert “for the purposes of entering or remaining in a restricted UK area”;

(c) at the end insert—

“(6) For the purposes of this regulation, “restricted UK area” means—

(a) an area of England for the time being specified or described in Part 2 of Schedule 4 to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020⁽²⁾ as being within the Tier 3 area;

(b) an area of Scotland for the time being specified in the table in Schedule 6 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020⁽³⁾, where the table indicates it is a Level 3 or Level 4 area;

(c) Northern Ireland.”

(3) In Part 4, omit Chapter 3.

(4) In regulation 19, after paragraph (1) insert—

(1) S.I. 2020/1219 (W. 276) as amended by S.I. 2020/1237 (W. 279) and S.I. 2020/1288 (W. 286).

(2) S.I. 2020/1374.

(3) S.S.I. 2020/344 as amended by S.S.I. 2020/347, S.S.I. 2020/374, S.S.I. 2020/389, S.S.I. 2020/392 and S.S.I. 2020/400.

“(1A) In its application to a business or service listed in paragraphs 10 to 12 of Schedule 1, paragraph (1) only applies to premises that are indoors.”

(5) After regulation 19 insert—

“Restrictions on food and drink businesses

19A.—(1) A person responsible for carrying on a business or providing a service listed in paragraphs 5 to 7 of Schedule 2—

- (a) may not open its premises to customers before 6.00 a.m. each day;
- (b) must close the premises to customers at or before 6.00 p.m. each day.

(2) The person responsible for the business may not—

- (a) sell or supply alcohol for consumption on its premises;
- (b) permit the consumption of alcohol on the premises.

(3) For the purposes of this regulation, an 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.

(4) Where—

- (a) a person responsible for carrying on a business listed in paragraphs 5 to 7 of Schedule 2 (“business A”) is subject to a requirement or restriction under this regulation, and
- (b) business A forms part of a larger business (“business B”),

the requirement or restriction is complied with if the person responsible for carrying on business B complies with the requirement or restriction.

Restrictions on food and drink businesses: exceptions

19B.—(1) Regulation 19A(1) does not apply to—

- (a) premises located in—
 - (i) a sea port;
 - (ii) an airport;
 - (iii) an educational establishment;
 - (iv) a hospital or care home;
- (b) workplace canteens, where there is no practical alternative for people at that

workplace to obtain food between 6.00 p.m. and 6.00 a.m.;

(c) premises used for the provision of food or drink to homeless persons.

(2) Regulation 19A(1) does not prevent premises being used to sell or supply food or drink for consumption off the premises.

(3) If—

(a) the celebration of a marriage or formation of a civil partnership is being held on premises to which regulation 19A applies, and

(b) the celebration was booked before 6.00 p.m. on 4 December 2020,

the premises may, despite regulation 19A(1)(b), remain open until 10.00 p.m. for the purposes of holding the celebration.

(4) Paragraphs (5) and (6) apply where premises of a business or service listed in paragraphs 5 to 7 of Schedule 2 (“the restricted premises”) form part of the premises of holiday or travel accommodation.

(5) Regulation 19A(1) does not—

(a) require the restricted premises to be closed to the residents of the holiday or travel accommodation;

(b) prevent the sale of food or drink to residents—

(i) as part of room service, or

(ii) between 6.00 a.m. and 10.00 p.m. in any part of the premises of the holiday or travel accommodation.

(6) Neither regulation 19A(1) nor (2)—

(a) prevents residents from consuming food or drink (including alcohol) at any time in their private room;

(b) prevents the sale of alcohol to residents as part of room service (but see regulation 20).”

(6) In regulation 20—

(a) omit paragraphs (2) to (5);

(b) in paragraph (6), for “Paragraphs (1) and (2) do not allow the premises to be open, or” substitute “Paragraph (1) does not allow”;

(c) omit paragraph (7).

(7) In regulation 25(3)—

(a) after “19(1),” insert “19A(1) or (2),”;

(b) for “20(1) or (2)” substitute “20(1)”.

(8) In regulation 28(4), for “, 14(2) or 18A(3)” substitute “or 14(2)”.

(9) In regulation 31(4), for “, 14(2) or 18A(3)” substitute “or 14(2)”.

(10) In regulation 32, at the end insert—

“(4) An enforcement officer may enter premises used wholly or mainly as a private dwelling only if the enforcement officer is a constable.”

(11) In regulation 34—

(a) in paragraph (1), omit “, including requiring any person to give any information or answer any question the officer considers to be relevant to the exercise of the power”;

(b) after paragraph (1) insert—

“(1A) Action taken under paragraph (1) may include requiring any person to give any information or answer any question the officer considers—

(a) necessary to enable the officer to determine whether to exercise a power conferred on the officer by this Part, or

(b) is otherwise relevant to the exercise of such a power.”

(12) In regulation 35—

(a) in paragraph (1)—

(i) in sub-paragraph (a), omit “18A(3),”;

(ii) in sub-paragraph (b)—

(aa) after “19(1),” insert “19A(1) or (2),”;

(bb) for “20(1) or (2)” substitute “20(1)”;

(b) in paragraph (5), before sub-paragraph (a) insert—

“(za) without reasonable excuse, fails to take the measures specified in a premises improvement notice issued under paragraph 1(1) of Schedule 3 within the time limit specified in the notice.”

(13) For regulation 42(1) substitute—

“**42.**—(1) This regulation applies to a fixed penalty notice issued in respect of an alleged offence—

(a) of contravening—

(i) regulation 19(1), 19A(1) or (2), or 20(1), or

(i) paragraph 3(1) of Schedule 3, or

(b) under regulation 35(5)(za),

(referred to in this regulation as an “alleged business offence”).”

(14) In regulation 46(1)(c)(i), for “or 20(1) or (2)” substitute “, 19A(1) or (2), or 20(1)”.

(15) In Schedule 1, at the end insert—

“**5.** Bingo halls.

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

7. Casinos.

8. Cinemas.

9. Skating rinks.

10. Funfairs, amusement parks and theme parks.

11. Museums and galleries.

12. Visitor attractions.”

(16) In Schedule 2—

- (a) omit paragraphs 13, 14, 17, 18, 25, 33 and 38;
- (b) in paragraph 30, after “Libraries” insert “and archive services”;
- (c) in paragraph 45, for “Visitor attractions and holiday” substitute “Holiday”;
- (d) after paragraph 45 insert—

“**45A.** A business or service which is listed in Schedule 1 to the extent that the premises are permitted to be—

- (a) open by virtue of regulation 19(1A), or
- (b) used by virtue of regulation 19(2).”

(17) In Schedule 3, in paragraph 2, at the end insert—

“(8) Where—

- (a) an enforcement officer considers that a responsible person has failed to take the measures specified in a premises improvement notice within the specified time limit, and

(b) either—

- (i) a fixed penalty notice has been issued in respect of an alleged offence under regulation 35(5)(za), or

- (ii) proceedings have been brought for such an offence,

in relation to that failure,

the enforcement officer may nevertheless issue a premises closure notice under sub-paragraph (1).”

Amendment of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

3.—(1) The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 3(1), for “8 January” substitute “19 February”.

(3) In regulation 6—

(a) for paragraph (2) substitute—

“(2) In considering whether the public health conditions are met, a local authority must, in particular, have regard to—

(a) whether people are gathering, or are likely to gather, at the event in contravention of regulation 6 of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020;

(b) where the event is held wholly or mainly indoors, whether more than 15 people are, or are likely to be, in attendance;

(c) where the event is held wholly or mainly outdoors, whether more than 30 people are, or are likely to be, in attendance.”;

(b) after paragraph (7), insert—

“(8) For the purposes of paragraph (2), an event is to be treated as being held indoors if it is held in premises which are enclosed or substantially enclosed within the meaning given by regulation 2 of the Smoke-free Premises etc. (Wales) Regulations 2007⁽²⁾.”

(4) In regulation 17, at the end insert—

“(4) An enforcement officer may enter premises used wholly or mainly as a private dwelling only if the enforcement officer is a constable.”

(5) In regulation 19(10), after sub-paragraph (b) insert—

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

(6) In regulation 20, after “Prosecutions” insert “, a local authority”.

(1) S.I. 2020/1011 (W. 225) as amended by S.I. 2020/1100 (W. 250), S.I. 2020/1149 (W. 261) and S.I. 2020/1219 (W. 276).
(2) S.I. 2007/787 (W. 68).
(3) S.I. 2020/1149 (W. 261).

Mark Drakeford
First Minister, one of the Welsh Ministers
2 December 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (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 and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020.

Mark Drakeford
First Minister

3 December 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the principal Regulations”) and also make technical amendments to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (“the Functions of Local Authorities Regulations”).

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

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

European Convention on Human Rights

The amendments contained in these Regulations continue to engage under the principal Regulations and the Functions of Local Authorities Regulations 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, 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act.

Regulations made under sections 45B and 45C of the 1984 Act are subject to different Senedd procedure. However, in accordance with section 40 of the Legislation (Wales) Act 2019, these regulations are subject to the made affirmative procedure as set out in sections 45Q and 45R of the 1984 Act.

The Explanatory Memoranda to the principal Regulations and the Functions of Local Authorities Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

These Regulations make amendments to the principal Regulations and the Functions of Local Authorities Regulations as set out below.

Amendments to the principal Regulations

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 put in place restrictions and requirements on a pan-Wales basis following the “firebreak” that operated in Wales between 23 October and 8 November.

These Regulations make amendments to those Regulations to:

- require bars, cafes, canteens, restaurants and pubs to be closed to customers between 6.00 p.m. and 6.00 a.m.;
- prevent any alcohol being sold for consumption, or being consumed, in bars, cafes, canteens, restaurants and public houses;
- require indoor premises of entertainment venues and visitor attractions to close;
- prohibit travel into Wales from, or out of Wales to, areas which are subject to the highest levels of restrictions in England and Scotland, and also Northern Ireland.

The Technical Advisory Cell has noted there is increasing scientific and observational evidence highlighting the association between hospitality settings and disease transmission. There is also a concern about the effect socialising more generally has on the spread of the virus, with going out to hospitality often being the catalyst for other risky (and often illegal) behaviour such as meeting with others in people’s homes before and after going out, not wearing face coverings (including on public transport) and not following social distancing practices. Pubs, bars, restaurants and cafes will be required to close by 6 p.m. and not allowed to serve alcohol for consumption on the premises. After 6 p.m. they would only be allowed to provide takeaway services.

The limited scope for opening is intended not to encourage socialising but one benefit is that it provides an opportunity for people to meet with others to mitigate the detrimental effect on mental health that can arise from loneliness and isolation. This is likely to be of particular importance to people who are not part of an extended household who would otherwise, due to the wider restrictions, not be able to meet indoors with any others.

The hospitality sector has already introduced mitigations to minimise the risk of spreading coronavirus on their premises in line with Welsh Government requirements. These include requirements for customers to order, be served and consume their food and drink when seated only (not at any bar in the premises). These requirements will remain in place.

Hotels and other travel accommodation will be not be able to serve non-residents food after 6 p.m. or to serve alcohol. Residents will however be able to be served food in the dining areas until 10 p.m. Room service will still be available and can include alcohol but will cease at 10 p.m. in line with wider off-sales of alcohol restrictions.

The existing restriction for premises with an off-sales licence for alcohol to cease the sale of alcohol by 10 p.m. is not amended by these Regulations.

As with all indoor activities, there is a higher risk of transmission in entertainment settings such as cinemas, bingo halls, bowling alleys, indoor play centres and areas, casinos, skating rinks, amusement arcades and adult gaming centres, theatres and concert halls. This is due to the potential for a high number of people to be in close proximity to each other, often for long periods of time. In addition, there are often risks posed by shared surfaces.

Due to these heightened risks, from 6 p.m. on Friday 4 December indoor visitor attractions and entertainment venues will be required to close.

Outdoor attractions may remain open. Where a venue has both an indoor and outdoor element, access to the indoor areas of that venue must be prevented.

The principal Regulations are also amended so as to prohibit persons living in Wales from leaving Wales and entering a restricted UK area¹, and persons living in a restricted UK area from entering Wales without reasonable excuse. This is due to the risks posed by people moving between areas where incidence of the disease is high, with a greater likelihood of risks from transmission. Travel within Wales continues to be allowed but is not encouraged.

In addition, these Regulations also make consequential, minor or technical amendments, including revoking spent provisions – for example, the provisions at regulation 18A relating to persons who had arrived in Wales from Denmark applied from 7 November to 21 November only. The Regulations also amend various enforcement provisions (including for example, clarifying that the power of an enforcement officer to enter a private dwelling may only be exercised by a police constable) and provide that it is an offence to fail, without reasonable excuse, to take measures specified in a premises improvement notice issued under Schedule 3 to the principal Regulations.

Amendments to the Functions of Local Authorities Regulations

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 were made on 17 September 2020 and came into force the next day². They include a ‘sunset provision’ within them, such that those Regulations will expire at the end of 8 January 2021. The principal Regulations, to which those Regulations relate, will expire at the end of 19 February 2021. Therefore the first amendment being made in these Regulations is to align expiry dates between the two sets of Regulations, so that both will expire at the end of 19 February 2021.

¹ This is a Tier 3 area in England (see Part 2 of Schedule 4 to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374), a Level 3 or 4 area in Scotland (see Schedule 6 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (S.S.I. 2020/344 as amended) or Northern Ireland

² Revoking the previously made Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

Regulation 6 of the Functions of Local Authorities Regulations gives local authorities the power to issue directions (“events directions”) requiring an event to stop or not be held, or imposing restrictions or requirements on the holding of the event. They can do this only if certain conditions are met and having had regard to whether people will be gathered illegally at the event. Two minor amendments are being made to this regulation –

- to amend regulation 6(2) which currently contains a cross reference to regulations 14 and 14A of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 that should be a reference to regulation 6 of the principal Regulations. (Regulations 14 and 14A of the No. 2 Regulations are regarded as having been re-enacted with modifications as regulation 6 of the No. 4 Regulations). Section 35 of the Legislation (Wales) Act 2019 requires a reference to a revoked provision which has been re-enacted to be read as including a reference to the re-enacted provision. However by updating this cross reference through an amendment, it will make it easier for the reader to understand how the legislation works.
- to require local authorities, in deciding whether to issue an event direction, to also have regard to whether more than 15 people are in attendance (if it is indoors) or 30 people are in attendance (if it is outdoors).

Regulation 46 of the principal Regulations permits local authorities to bring prosecutions under those Regulations themselves, but this is not currently provided for under the Functions of Local Authority Regulations. An amendment is therefore made to regulation 20 to now provide for this, so as to ensure there is consistency in prosecution powers for local authorities.

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, I together with other Ministers and the Welsh Government officials have held and continue to hold discussions with key sectors and stakeholders, including local government and business leaders and trade unions in Wales. I announced in my statement to Members on 1 December the Welsh Government’s intention to introduce the changes achieved in these Regulations, which have subsequently been widely reported.

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.

A summary integrated impact assessment has been prepared and will be published on the GOV.wales website: <https://gov.wales/impact-assessments-coronavirus>.



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

2 December 2020

Dear Elin

The Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020 under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 6 p.m. on 4 December 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 January 2021 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 15 December 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
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CF99 1SN

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

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



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Review of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020**

DATE **3 December 2020**

BY **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

On 30 November I set out additional all-Wales restrictions, including in relation to the hospitality sector, which are targeted to protect people's health and reduce the speed and spread of coronavirus, creating as much headroom as possible as we approach the Christmas period.

I informed Members that we would also consider the current travel restrictions to make sure they are the right ones for Wales, in light of the end of the month-long lockdown in England.

Travel restrictions are an important part of our overall package to reduce the spread of the virus. A combination of regulations and guidance will therefore seek to take a proportionate approach to lowering the risk of exporting and importing cases from areas of high prevalence.

Regulations in Wales will restrict travel to and from areas at the equivalent to Tier 3 in England and Level 3 and above in Scotland (Northern Ireland remains under lockdown).

Guidance will continue to stress the risk of seeding the virus if people travel to and from areas designated Tier 2 / Level 2 or lower in other parts of the UK. Travel to and from these areas will therefore still not be advised. Travellers will need to be aware of and follow any legal restrictions in those countries.

International travel restrictions will continue and will likely remain in place until at least January but will be kept under constant review.

Taken together with our other measures, these necessary restrictions will help to Keep Wales Safe.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Review of the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020**

DATE **30 November 2020**

BY **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

We worked with the Scottish, Northern Irish and UK governments to agree a common four-nation plan for the festive period.

This will not be a “normal” Christmas, but following a long and difficult year, everyone will have a chance to spend some time with close friends and family, as we have agreed a set of common measures between 23 December and 27 December, which will be reflected in the Welsh regulations:

- Travel restrictions across the four nations and between tiers will be lifted during this period.
- Up to three households will be able form an exclusive Christmas ‘bubble’ to meet at home during this period. To recognise the risks of loneliness and isolation, a single adult household will also be able to join this bubble, as in England.
- Each Christmas bubble can meet at home, at a place of worship or an outdoor public place.

Coronavirus thrives when we come together and there is always risk that as people come together to celebrate Christmas, they will catch or spread the virus. It is

therefore important that in the run-up to 23 December, we do everything we can to make sure rates are low.

Unfortunately, coronavirus is again accelerating across Wales, eroding the gains we achieved during the firebreak period. The all-Wales rate has risen to almost 210 cases per 100,000 people and there are currently 1,000 people with confirmed coronavirus in our hospitals.

These are worrying figures and we need to take further, targeted action to protect people's health and reduce the speed and spread of coronavirus, as well as creating as much headroom as possible as we approach the Christmas period to enable us to relax restrictions.

The restrictions will be strengthened to focus on places where we meet and where coronavirus thrives. We have drawn on the recent evidence from the UK Scientific Advisory Group on Emergencies, which has examined which interventions have had the biggest impact on the virus. It has highlighted the positive impact of measures in the Scottish level three system and the English tier three restrictions. We already have many of these in place in Wales and will adapt other measures to Wales' unique circumstances.

From 6pm on Friday, our national measures will be amended to introduce new restrictions for hospitality and indoor attractions.

- Pubs, bars, restaurants and cafes must close by 6pm and they will not be allowed to serve alcohol. After 6pm they will only be able to provide takeaway services.
- Indoor entertainment venues, including cinemas, bingo halls, bowling alleys, soft play centres, casinos, skating rinks and amusement arcades, must close.
- Indoor visitor attractions, such as museums, galleries and heritage sites will also have to close. Outdoor visitor attractions will remain open.

The rest of the national measures will remain the same – there will be no changes to household bubbles, how many people can meet in public indoor or outdoor places or restrictions on other businesses.

We are looking at the current travel restrictions to make sure they are the right ones for Wales, in light of the imminent end of the month-long lockdown in England, and we will make a further announcement later this week.

The hospitality and visitor sectors have worked hard to comply with the many regulations to make their businesses compliant and to protect customers from the threat of coronavirus. I am very grateful for everything the sector has done. I know

these new restrictions will be difficult as they come at the one of the busiest times of the year.

To support businesses we will make a further £340m package of support available through the Economic Resilience Fund. This includes a £180m fund targeted at hospitality and tourism businesses.

Taken together these measures continue our determination to protect both lives and livelihoods during the coronavirus crisis in Wales.

I am asking for the people of Wales' help to again make a real difference to the course of this virus and ultimately to save lives. Together we will keep Wales safe.

I look forward to making a further statement in the Senedd tomorrow.

Agenda Item 5.9

SL(5)690 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the No. 4 Regulations”).

In particular, these Regulations amend:

- the International Travel Regulations and the No. 4 Regulations to:
 - reduce the period for which a person is required to isolate from 14 days to 10 days; and
 - permit a child who is required to isolate to move to another household during the period of isolation, if this is in line with existing arrangements relating to custody and contact with the child’s parents; and
- the No. 4 Regulations to:
 - remove the ability for a contact tracer to disclose information about fixed penalties issued or criminal proceedings.

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 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 or the No. 4 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 that there is no equality impact assessment for these Regulations. However, we note the following paragraph in the Explanatory Memorandum:

“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. A summary of the impacts relating to the original self isolation duty can be found [here](#). The reduction in the self-isolation period is anticipated to have a positive equality and children’s rights impact. It is anticipated to reduce the length of time children and young people spend away from face to face learning, reduce the impact on those with caring responsibilities (disproportionately women) and help to relieve the disruption for businesses.”

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
11 November 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. 1477 (W. 316)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Restrictions) (Amendment)
(No. 3) (Wales) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (S.I. 2020/1219 (W. 276)) (the “No. 4 Regulations”).

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

Regulation 2 amends the International Travel Regulations to reduce the period for which a person is required to isolate from 14 days to 10 days.

Regulation 3 makes transitional provision with the effect that a person who is subject to an isolation requirement under the International Travel Regulations

when the amendments in regulation 2 come into force will only be required to isolate for a period of 10 days. If the person is already beyond the 10th day of their isolation period at that point, they may immediately stop isolating.

Regulation 4 amends the No. 4 Regulations to—

- (a) provide that a person's period of isolation begins on the day after the event which triggers the requirement (for example – a positive test, the first day that symptoms are experienced, or the day when close contact with a person who has tested positive occurred);
- (b) provide that a person subject to a requirement under regulation 13 or 14 of the No. 4 Regulations to isolate as a result of having had close contact with a person who has tested positive for coronavirus must isolate for 10 days instead of 14;
- (c) permit a child who is required to isolate under regulation 12 or 14 of the No. 4 Regulations to move between parental households during the period of isolation if this is in line with existing arrangements relating to custody and contact with the child's parents;
- (d) remove the ability for a contact tracer to disclose information about fixed penalties issued or criminal proceedings brought in relation to the commission of an offence of contravening the requirements imposed by the provisions of the No. 4 Regulations relating to isolation requirements (contact tracers do not have access to that information so this provision was redundant).

Regulation 5 provides that when the amendments in regulation 4(2) come into force is subject to an isolation requirement under the No. 4 Regulations is subject to those requirements as amended by regulation 4(2). For example, if the person is isolating for a period of 14 days that period is reduced to 10 days when the amendments come into force. If the person is already beyond the 10th day of their isolation period at that point, they may immediately stop isolating.

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. 1477 (W. 316)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Restrictions) (Amendment)
(No. 3) (Wales) Regulations 2020**

Made at 3.52 p.m. on 8 December 2020

*Laid before Senedd
Cymru at 6.00 p.m. on 8 December 2020*

Coming into force 10 December 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) 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.

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020.

(2) These Regulations come into force on 10 December 2020.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1), and
- (b) the “No. 4 Regulations” means the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020(2).

Amendment of the International Travel Regulations

2. In the International Travel Regulations—

- (a) in the following places, for “14” substitute “10”—
 - (i) regulation 3(1)(b)(ii);
 - (ii) regulation 7(1)(b)(ii);
 - (iii) regulation 8(1)(b);
 - (iv) Schedule 1, paragraph 2(ia);
 - (v) Schedule 2, paragraphs 2(1)(a), 3(1)(b), 4(a), and 38(2)(c);
- (b) in regulation 10(4), after paragraph (e) insert—
 - “(ea) where P is a child who does not live in the same household as P’s parents, or one of P’s parents, to continue existing arrangements for access to, and contact between, P and P’s parents,

(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. 2020/942, S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295) and S.I. 2020/1362 (W. 301).

(2) S.I. 2020/1219 (W. 276) as amended by S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286) and S.I. 2020/1409 (W. 311).

and for the purposes of this subparagraph, “parent” includes a person who is not a parent of P, but who has parental responsibility for, or who has care of, P;”

- (c) in regulation 12, for “14 days beginning with” substitute “10 days beginning with the day after”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before 10 December 2020—

- (a) a person (“P”) was subject to an isolation requirement, and
- (b) P’s last day of isolation would, but for paragraph (2), be 10 December 2020 or later.

(2) Regulation 12 of the International Travel Regulations applies to P as if for “14 days beginning with” there were substituted “10 days beginning with the day after”.

(3) In paragraph (1)—

- (a) “isolation requirement” has the meaning given by regulation 10(2) of the International Travel Regulations, and
- (b) the reference to P’s last day of isolation is to be interpreted in accordance with regulation 12 of those Regulations.

Amendment of the No. 4 Regulations

4.—(1) The No. 4 Regulations are amended as follows.

(2) In regulation 11—

- (a) in paragraph (4), after “beginning with” insert “the day after”;
- (b) in paragraph (5), after “beginning with” insert “the day after”.

(3) In regulation 12—

- (a) in paragraph (4), for “beginning with the date” substitute “beginning with the day after the day”;
- (b) in paragraph (5), after “beginning with” insert “the day after”.

(4) In regulation 13—

- (a) in paragraph (4), for “14 days beginning with” substitute “10 days beginning with the day after”;
- (b) in paragraph (5)—

- (i) in sub-paragraph (a), for “14 days beginning with” substitute “10 days beginning with the day after”;
- (ii) in sub-paragraph (b), for “14 days beginning with” substitute “of 10 days beginning with the day after”.

(5) In regulation 14—

- (a) in paragraph (4), for “14 days beginning with” substitute “10 days beginning with the day after”;
- (b) in paragraph (5)—
 - (i) in sub-paragraph (a), for “14 days beginning with” substitute “10 days beginning with the day after”;
 - (ii) in sub-paragraph (b), for “14 days beginning with” substitute “of 10 days beginning with the day after”.

(6) In regulation 15(2), after sub-paragraph (h) insert—

“(i) where the person is a child who does not live in the same household as the child’s parents, or one of the child’s parents, to continue existing arrangements for access to, and contact between, the child and the child’s parents, and for the purposes of this sub-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.”

(7) In regulation 18(2)(a), omit paragraph (iv).

Transitional provision in connection with regulation 4

5. Where a person is, immediately before 10 December 2020 subject to a requirement in regulation 11(2), 12(2), 13(2) or 14(2) of the No. 4 Regulations, Part 4 of those Regulations applies from 10 December 2020 to the person subject to the amendments made in regulation 4.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
At 3.52 p.m. on 8 December 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (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, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

8 December 2020

1. Description

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (“the No. 4 Regulations”).

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

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

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the No. 4 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. 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.

These Regulations are made in reliance on the powers in sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act.

Regulations made under both sections 45B and 45C of the 1984 Act are subject to different Senedd procedure. However, in accordance with section 40 of the Legislation (Wales) Act 2019, these Regulations are subject to the made affirmative procedure as set out in sections 45Q and 45R of the 1984 Act.

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.

The Explanatory Memoranda to the International Travel Regulations and the No. 4 Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

These Regulations make amendments to the International Travel Regulations and the No. 4 Regulations as set out below.

International Travel Regulations

These Regulations amend the International Travel Regulations to:

- a) provide that a person subject to a requirement to isolate under these Regulations must isolate for 10 days instead of 14 days and makes transitional provision for those who are already isolating. For example if a person is already beyond the 10th day of their isolation period at that point, they may immediately stop isolating;
- b) permit a child who is required to isolate to move to another household during the period of isolation, if this is in line with existing arrangements relating to custody and contact with the child's parents.

No. 4 Regulations

These Regulations amend the No. 4 Regulations to:

- a) provide that a person subject to a requirement to isolate as a result of having had close contact with a person who has tested positive for coronavirus must isolate for 10 days instead of 14 days and makes transitional provision for those who are already isolating. For example if a person is already beyond the 10th day of their isolation period at that point, they may immediately stop isolating;
- b) permit a child who is required to isolate to move to another household during the period of isolation if this is in line with existing arrangements relating to custody and contact with the child's parents;
- c) remove the ability for a contact tracer to disclose information about fixed penalties issued or criminal proceedings brought in relation to the commission of an offence of contravening the requirements relating to isolation requirements; contact tracers do not have access to that information so this provision was redundant.

Reducing the isolation period to 10 days is endorsed by the UK Chief Medical Officers on the current available evidence around likelihood of being infectious as a contact after 10 days. The other amendments to the No. 4 Regulations are to ensure custody arrangements are respected and to remove a redundant provision.

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. A summary of the impacts relating to the original self isolation duty can be found [here](#). The reduction in the self-isolation period is anticipated to have a positive equality and children's rights impact. It is anticipated to reduce the length of time children and young people spend away from face to face learning, reduce the impact on those with caring responsibilities (disproportionately women) and help to relieve the disruption for businesses.



Ein cyf/Our ref MA-P/VG/4224/20

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

8 December 2020

Dear Elin,

**The Health Protection (Coronavirus, International Travel and Restrictions)
(Amendment) (No. 3) (Wales) Regulations 2020**

I have today made the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 under sections 45B, 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. 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 25 January 2021 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. The Regulations will be scheduled for debate in Plenary on 15 December 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,

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

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Changes to Self-isolation Period**

DATE **09 December 2020**

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

I have today laid regulations to make further amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.

Following the advice of the Chief Medical Officer and UK Government's Scientific Advisory Group for Emergencies, these regulations:

- provide that a person required to isolate as a result of having had close contact with a person who has tested positive for coronavirus must isolate for 10 days instead of 14, and makes transitional provision for those who are already isolating;
- permit a child who is required to isolate to move to another household during the period of isolation if this is in line with existing arrangements relating to custody and contact with the child's parents;

The International Travel Regulations are also amended to reduce the period for which a person is required to isolate from 14 days to 10 days and to permit a child who is required to isolate to move to another household during the period of isolation if this is in line with existing arrangements relating to custody and contact with the child's parents.

These regulations have been made as soon as practicable following public health advice, agreed by the UK's four CMOs, that showed little absolute risk, in reducing the period of isolation to 10 days compared with the known low compliance of 14 days.

In the published impact assessment for the self-isolation duty, we recognised the requirement to self-isolate for 14 days was likely to have a negative impact in a wide range of circumstances and on protected groups. Safely reducing the self-isolation period to 10 days will reduce these relative harms. This change reduces the length of time children and young people spend away from face to face

learning, reduces the impact on those with caring responsibilities (disproportionately women) and helps to relieve the disruption for businesses and our vital public services.

The self-isolation support scheme payment of £500 is unaffected by these changes.

Agenda Item 5.10

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. 1490 (W. 319)

PUBLIC HEALTH, WALES

The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 45C of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers as “The appropriate Minister”, 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 prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, nuisance or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant.

These Regulations expire on 11 January 2021.

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. 1490 (W. 319)

PUBLIC HEALTH, WALES

**The Public Health (Protection from
Eviction) (Wales) (Coronavirus)
Regulations 2020**

Made 9 December 2020

Laid before Senedd Cymru 10 December 2020

*Coming into
force* in accordance with regulation 1(2)

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 45C(1), (2), (3)(c) and 45P(2) 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 restrictions and requirements imposed 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 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, commencement, application and interpretation

1.—(1) The title of these Regulations is the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on the day following the day on which they are laid.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “dwelling-house” has the same meaning as in the Housing Act 1985, the Housing Act 1988 or the Rent Act 1977, as the case may be.

Residential Tenancies (Protection from Eviction)

2.—(1) Subject to paragraphs (2) and (3), no person may attend at a dwelling-house for the purpose of—

- (a) executing a writ or warrant of possession;
- (b) executing a writ or warrant of restitution; or
- (c) delivering a notice of eviction.

(2) Paragraph (1) does not apply where the court is satisfied that the notice, writ or warrant relates to an order for possession made—

- (a) against trespassers pursuant to a claim to which rule 55.6 (service of claims against trespassers) of the Civil Procedure Rules 1998(1) applies;
- (b) wholly or partly under section 84A (absolute ground for possession for anti-social behaviour) of the Housing Act 1985(2);
- (c) wholly or partly on Ground 2 or Ground 2A in Schedule 2 (grounds for possession of dwelling-houses let under secure tenancies) to the Housing Act 1985(3);

(1) S.I. 1998/3132. Rule 55.6 was inserted by S.I. 2001/256 r 17, Schedule 1.

(2) 1985 c. 68, section 84A was inserted by section 94(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”).

(3) Ground 2 was substituted by section 144 of the Housing Act 1996 (c. 52) (“the 1996 Act”) and amended by section 98(1) of the 2014 Act and Schedule 7 to the Serious Organised Crime and Police Act 2005 (c. 15) (“the 2005 Act”). Ground 2A was inserted by section 145 of the 1996 Act and amended by Schedule 8 to the Civil Partnership Act 2004 (c. 33) (“the 2004 Act”) and by S.I. 2019/1458, Schedule 3.

- (d) wholly or partly on Ground 7A, Ground 14 or Ground 14A in Schedule 2 (grounds for possession of dwelling-houses let on assured tenancies) to the Housing Act 1988(1);
- (e) wholly or partly on Ground 7 in Schedule 2 (ground for possession where tenant dies and no right of succession) to the Housing Act 1988(2); or
- (f) wholly or partly under case 2 of Schedule 15 (ground for possession of dwelling-houses let on or subject to protected or statutory tenancies) to the Rent Act 1977(3).

(3) Where paragraph 2(e) applies, the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before carrying out those matters set out in regulation 2(1)(a), (b) or (c).

Expiry of Regulations

3.—(1) These Regulations expire on 11 January 2021.

(2) The expiry of these Regulations does not affect the validity of anything done or not done pursuant to these Regulations before they expire.

Julie James

Minister for Housing and Local Government, one of
the Welsh Ministers
9 December 2020

-
- (1) 1988 c. 50. Ground 7A was inserted by section 97(1) of the 2014 Act. Ground 14 was substituted by section 148 of the 1996 Act and amended by section 98(2) of the 2014 Act and Schedule 7 to the 2005 Act. Ground 14A was inserted by section 149 of the 1996 Act and amended by Schedule 8 to the 2004 Act, S.I. 2019/1458, S.I. 2010/866 and S.I. 2011/1396.
 - (2) Ground 7 was amended by section 162 of and Schedule 25 to the Localism Act 2011 (c. 20).
 - (3) 1977 c. 42.

Explanatory Memorandum to the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before the 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 Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Julie James
Minister for Housing and Local Government
10 December 2020

1. Description

- 1.1 These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The regulations will expire on 11 January 2021

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

- 2.1 There is an urgent need to ensure that evictions are kept as low as possible during the Christmas and mid-winter period. With access to services and alternative accommodation often limited during this time, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of Covid 19 being contracted by the individual and transmitted by them. In the light of this, these Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and have been made without a draft having been first laid and approved by a resolution of the Senedd, as would usually be required under section 45Q of the Act. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health posed by the incidence and spread of Covid-19. The Regulations will come into force on the day following the day on which they are laid. Since they are made under the emergency procedure they will cease to have effect at the end of 28 days from the day on which they are made unless, during that period, they are approved by the Senedd.

3. Legislative background

- 3.1 These Regulations are made under section 45C of the Public Health (Control of Disease) Act 1984 to enable public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of Covid 19. Section 45C of that Act enables the Welsh Ministers (as “The appropriate Minister”), 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. The Regulations will prevent evictions from occurring during the mid-winter period for residential tenants. In accordance with section 45R of the 1984 Act, the Welsh Ministers are of

the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by the Senedd.

- 3.2 Legislative measures have previously been put in place for the purpose of protecting tenants from eviction during the coronavirus pandemic. Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provides protection from eviction in respect of most residential tenancies and notices¹ served during the ‘relevant period’ (which was initially defined as ending on 30 September 2020 but has subsequently been extended to 31 March 2021). It does this by increasing, in most cases, the period of the notice that must be served before possession proceedings can be commenced in the courts.
- 3.3 Although landlord notice periods have been increased, the temporary stay on court proceedings in Wales and England initiated in March came to an end on 20 September. It has subsequently become possible to commence possession proceedings through the courts where the required notice period has elapsed, and, if an order is made, for the landlord to seek to enforce that order by applying to the court for a writ or warrant of possession, which could lead to eviction by County Court bailiffs or High Court enforcement officers.
- 3.4 The UK Government has sought to prevent evictions taking place (on an England and Wales basis) where these have been deemed incompatible with public health measures, through guidance to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers. This has applied during the recent firebreak in Wales and the recent national lockdown in England. The UK Government has also previously said that possession orders in England and Wales would not be enforced by bailiffs between 11 December 2020 and 11 January 2021.
- 3.5 On 16 November, the UK Government laid regulations before Parliament - The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. Amongst other things, those regulations prevent in England, except in specified circumstances, attendance at a dwelling house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction during the period up to 11 January 2021.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of the Regulations is to provide a public health response to the incidence and spread of Covid-19 during the Christmas and mid-winter period by preventing the enforcement of evictions in Wales except

¹ The relevant notices are those served under the Protection from Eviction Act 1977, the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996

in the most serious circumstances. The Regulations come into force on the day following the day on which they are laid.

- 4.2 Up until 20 September, and thus throughout the first wave of the pandemic, evictions were prevented from going ahead through amendments to the Civil Procedure Rules which stayed possession proceedings. Given the stay, there was no need to consider taking action to prevent the enforcement of evictions during that period using the powers set out in the 1984 Act at that time. However, the lifting of the stay, combined with the onset of a second wave of the pandemic and the increased wintertime pressures on health and other services has changed that situation.
- 4.3 During the Christmas and mid-winter period, at a time when risk of transmission of the virus is high once again, there is a clear need for legislative action to be taken to ensure people are not evicted, on the basis the non-legislative approach taken by the UK Government may not sufficient to achieve this.
- 4.4 During this period, it will become more difficult for those facing eviction and at risk of becoming homeless, to access services, including advice services. Furthermore, businesses may be closed or running at a reduced capacity and securing alternative accommodation may present increased practical difficulties. In these circumstances, evictions will be more likely to lead to homelessness.
- 4.5 Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. This will likely place additional burdens on the NHS and hinder local authorities in their public health response, during a period when winter pressures on relevant public services are likely to be at their most acute. The UK Government has decided that it is necessary to legislate to prevent evictions in England and the Welsh Ministers consider that the same statutory reinforcement of the non-eviction policy during the mid-winter period is required in Wales.
- 4.6 To ensure the measure remains proportionate to the increased public health risk transmission of the virus presents over the winter period, the Welsh Ministers consider that some exceptions are needed to the ban on enforcement of possession orders. These are instances where it is considered that the interests of preventing harm to third parties and taking action against egregious behaviour are sufficient to outweigh the public health risks posed by evictions. Specifically, these are:

- cases where the court is satisfied that the order for possession was made wholly or partly on the grounds of anti-social behaviour; nuisance; and/or domestic violence in social tenancies; or
- cases where the court is satisfied that the claim is against trespassers who are persons unknown.

4.7 In applying these particular specified circumstances where enforcement is possible, the Welsh Ministers note that anti-social behaviour will often result in a significant negative impact on the mental-health and well-being of neighbours. If eviction is not possible on grounds of anti-social behaviour/nuisance and annoyance landlords may find themselves having to rehouse those neighbours whose well-being is worst affected or neighbouring residents may take steps of their own to find and move to new accommodation. In extreme circumstances, vulnerable individuals may even choose to become homeless rather than remain the victims of anti-social behaviour. Rehousing neighbours because of anti-social behaviour and the steps taken by neighbours themselves to find and move to a new home, will potentially expose those individuals to situations where they are at greater risk of transmitting the virus. In the case of those who choose to become homeless, those risks are likely to be even greater. In many instances, cases involving trespassers may also be associated with anti-social behaviour.

4.8 In these cases, permitting enforcement of possession orders may result in less risk of the virus being caught and spread than allowing the perpetrators of ASB to remain in their homes. Although this means that some people will be evicted during the mid-winter period, preventing the enforcement of evictions except in the most egregious of cases will substantially decrease enforcement proceedings during the winter period when transmission of the virus is increasing.

4.9 Another specified circumstance where enforcement is possible is where the tenant has died and there is no right of succession. In this case the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before executing a writ or warrant of possession or restitution or delivering a notice of eviction. This reflects the fact that taking possession of an unoccupied property poses no risk to public health.

5. Consultation

5.1 Given the public health emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so.

6. Regulatory Impact Assessment

- 6.1 The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative description of the likely impacts.

Options

- 6.2 Two options have been considered:

Option A – Do nothing

Option B – legislate to prevent most evictions taking place between 11 December 2020 and 11 January 2021

Costs and Benefits

Option A – Do nothing

- 6.3 If no action is taken, it would be necessary to rely on UK Government guidance issued to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers to prevent evictions during the Christmas and mid-winter period. However, it is not certain whether this guidance would be issued or whether it can be relied upon, noting that the policy of preventing evictions over this period has been placed on a statutory footing in England.
- 6.4 Although there are no immediate additional costs associated with this option, it will not achieve the benefit to public health and the control of the virus that would arise from preventing evictions during the Christmas and mid-winter period if an alternative non-legislative approach is not implemented by the UK Government or is not effective. As a result of the latter, there will be a potentially significant medium to longer term cost, both in terms of potential harm to public health and the impact on services of having to deal with those facing eviction and homelessness.

Option B – legislate to prevent most evictions taking place between 11 December 2020 and 11 January 2021

- 6.4 Under this option, regulations would prevent enforcement of possession orders unless the ground for possession fell within one of the specified circumstances where an order may be enforced during the mid-winter period. Consequently, the public health benefits of preventing an upsurge in homelessness and any associated upsurge in the incidence and transmission of the virus will be realised. There would also be a saving to local authorities and organisations providing support to individuals faced

with eviction, with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.

- 6.5 There are no obvious administrative and transitional costs of preventing evictions for this temporary period. Where a landlord is seeking possession of property for which rent is not being paid, there is a potential additional cost for landlords arising from the extra delay in the landlord gaining possession of the property and the arrears that may build up during that time. However the temporary, one month nature of the Regulations means that delay – and any associated costs – would be limited.

Competition Assessment

- 6.6 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, given their time limited application, it is unlikely that they will have any detrimental impact on competition.

Specific Impact Tests

Equal opportunities

- 6.7 These Regulations do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the provisions included in the regulations may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction and forced to find alternative accommodation during a period when finding such accommodation may be especially challenging. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the rented sector and therefore more vulnerable to eviction.

Children's rights

- 6.8 No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. For families with dependent children, a pause on evictions during the mid-winter period may help reduce the disruption caused to children by a home move by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

Welsh language

6.9 These Regulations should not give rise to any negative impacts in relation to the cultural wellbeing or the Welsh language.

Local Government

6.10 These Regulations may have a limited, positive, impact on local authorities, due to reduced demand on crisis homelessness services as a result of fewer evictions during the Christmas and mid-winter period.

Economic effects

6.11 As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from the delay caused by the pause in evictions. However, the temporary one month nature of the regulations means that any negative economic impact caused should therefore be limited.

Impact on Privacy

6.12 The Regulations do not produce any new requirements relating to privacy on the sharing of information.

Rural proofing

6.13 These Regulations will apply equally to people living in rural and urban areas. As such, the impacts – and benefits – should be no different between the two.

Health and wellbeing

6.14 In addition to the specific public health benefits that would result from a reduction in the number of people evicted into homelessness during the mid-winter period, the Regulations should also support the health and wellbeing of individuals liable to be evicted by providing reassurance that they will not face eviction during the Christmas and mid-winter period.

Impact on the Justice System

6.15 The Regulations will impact on the justice system in that they will prevent the carrying out of court orders during the Christmas and mid-winter period. However the temporary nature of the Regulations means that there should be no long-lasting effect.

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

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

9 December 2020

Dear Elin

The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

I have today made the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 11 December 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 26 January 2021 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. However please note that these Regulations will expire on 11 January 2021.

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

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Section 45C of the Public Health (Control of Disease) Act 1984 The Public Health (Coronavirus) (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020
DATE	10 December 2020
BY	Julie James, Minister for Housing and Local Government

Section 45C of the Public Health (Control of Disease) Act 1984 ('the 1984 Act') 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.

As Minister for Housing and Local Government, and using the powers under section 45C the 1984 Act, I have today laid before the Senedd regulations in response to the serious and imminent threat to public health which is posed by the incidence and spread of Covid 19.

The Regulations come into force on 11 December and will expire on 11 January 2021.

The Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant.

The purpose of the Regulations is to ensure that during the Christmas and mid-winter period, evictions are kept as low as possible. With access to services and alternative accommodation often limited during this time, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of transmission of the virus.

A copy of the Regulations and the accompanying Explanatory Memorandum can be viewed [here](#) and [here](#).

Agenda Item 6.1

SL(5)674 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020

Background and Purpose

These Regulations ensure that, following IP completion day, the existing regulatory framework for the mutual recognition of professional qualifications and the temporary and occasional provision of professional services as a social worker or a social care manager will continue to operate effectively in Wales.

The regulations make these changes in so far as they relate to the provision of such services by persons covered by the agreements that the United Kingdom has entered into with Switzerland and the EEA EFTA countries to protect citizens' rights.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

We note that these Regulations implement agreements entered into between the United Kingdom and:

- Switzerland, and
- Iceland, Liechtenstein and Norway (the EEA EFTA states),

on citizens' rights, to the extent that those agreements relate to the mutual recognition of professional qualifications and the provision of professional services.

Welsh Government response

A Welsh Government response is not required.



Legal Advisers
Legislation, Justice and Constitution Committee
8 December 2020



Draft Regulations laid before Senedd Cymru under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 and paragraph 3(5) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

SOCIAL CARE, WALES

**PROFESSIONAL
QUALIFICATIONS, WALES**

**The Regulation and Inspection of
Social Care (Qualifications) (Wales)
(Amendment) (EU Exit) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 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 arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/761 (W. 144) (“the 2019 Regulations”) to correct minor drafting errors and to substitute references to “IP completion day” for “exit day”.

They are also made in exercise of the powers conferred in sections 12 and 14 of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1) to implement and make

additional transitional provision in the 2019 Regulations relating to—

- the EEA EFTA citizens' rights agreement signed at London on 2 April 2019 between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland on arrangements regarding citizens' rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement, and
- the Swiss citizens' rights agreement signed at Bern on 25 February 2019 between the United Kingdom and the Swiss Confederation on citizens' rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement,

so far as those agreements relate to the mutual recognition of professional qualifications and the temporary and occasional provision of professional services.

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

Draft Regulations laid before Senedd Cymru under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 and paragraph 3(5) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

SOCIAL CARE, WALES

**PROFESSIONAL
QUALIFICATIONS, WALES**

**The Regulation and Inspection of
Social Care (Qualifications) (Wales)
(Amendment) (EU Exit) Regulations
2020**

Made ***

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(1) (“the 2018 Act”) and sections 12 and 14 of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020(2) (“the 2020 Act”).

In accordance with paragraph 1(9) of Schedule 7 to the 2018 Act and paragraph 3(5) of Schedule 4 to the 2020

(1) 2018 c. 16 (“the 2018 Act”). See section 20(1) of the 2018 Act for the definition of “devolved authority”. Paragraph 21 of Schedule 7 to the 2018 Act was amended by section 41(4) of, and paragraph 53(1) and (2) of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020.

(2) 2020 c. 1 (“the 2020 Act”). See sections 12(8) and 14(6) of the 2020 Act for the definition of “appropriate authority” and section 39(1) of that Act for the definition of “devolved authority”.

Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru.

As required by paragraph 4(a) of Schedule 2 to the 2018 Act, the Secretary of State has been consulted during the preparation of these Regulations.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020.

(2) These Regulations come into force immediately before IP completion day⁽¹⁾.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “the 2019 Regulations” means the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019⁽²⁾.

Amendment of the 2019 Regulations

2. The 2019 Regulations are amended as follows.

3. In regulation 1 (title, commencement, application and interpretation)—

- (a) in paragraph (2) omit “Subject to paragraph (3).”;
- (b) omit paragraph (3).

4. In Part 1 (amendments to legislation), for regulation 14 substitute—

“**14.** In Schedule 1 (regulated services: definitions), in paragraph 7(4) (advocacy services), for paragraph (b) substitute—

“(b) a person for whom one of the following provisions has effect so as to allow that person to continue to practise as a lawyer in England and Wales and Northern Ireland, or Scotland, on or after IP completion day—

- (i) regulation 5 (transitional provision: the 1978 Order and Switzerland) of the Services of Lawyers and Lawyer’s Practice (Revocation

(1) “IP completion day” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020, *see* section 39(1) to (5) of that Act.

(2) S.I. 2019/761 (W. 144) (“the 2019 Regulations”). The reference to “exit day” in regulation 1(2) of the 2019 Regulations is to be read as a reference to “IP completion day” by virtue of paragraph 1 of Schedule 5 to the 2020 Act.

- etc.) (EU Exit) Regulations 2020(1) (“the 2020 Regulations”);
- (ii) regulation 5 (transitional provision: the European Communities (Services of Lawyers) Order 1978 and Switzerland) of the Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019(2) (“the 2019 Regulations”);
- (iii) regulation 6 (transitional provision: the 2000 Regulations and Swiss lawyers) of the 2020 Regulations;
- (iv) regulation 7 (transitional provision: the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 and Swiss lawyers) of the 2019 Regulations.”

Insertion of interpretation provision

5. In Part 2 (savings and transitional provision) of the 2019 Regulations, before regulation 16 insert—

“Interpretation of Part 2

15A. In this Part—

“the 2007 Regulations” (“*Rheoliadau 2007*”) means the European Communities (Recognition of Professional Qualifications) Regulations 2007(3) as—

- (a) before IP completion day they continued to apply by virtue of—
 - (i) regulation 78 of the European Union (Recognition of Professional Qualifications) Regulations 2015;
 - (ii) regulation 155 of the European Qualifications (Health and Social Care Professions) Regulations 2016(4); and
- (b) after IP completion day, they continue to apply under Part 3 of Schedule 1 to the Recognition of Professional

(1) S.I. 2020/
 (2) S.S.I. 2019/127.
 (3) S.I. 2007/2781. S.I. 2007/2781 was revoked by S.I. 2015/2059 but continued to apply in relation to Swiss nationals before IP completion day by virtue of regulation 78 of S.I. 2015/2059 and regulation 155 of S.I. 2016/1030.
 (4) S.I. 2016/1030.

Qualifications (Amendment etc.) (EU Exit) Regulations 2019(1) ;

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the European Union (Recognition of Professional Qualifications) Regulations 2015(2);

“Directive 2005/36” (“*Cyfarwyddeb 2005/36*”) means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as it had effect immediately before IP completion day;

“enforceable EU right” (“*hawl EU orfodadwy*”) means a right recognised and available in domestic law immediately before IP completion day, by virtue of section 2(1) of the European Communities Act 1972(3);

“existing contract” (“*contract presennol*”) means a written contract which was concluded, and the performance of which started, before IP completion day;

“relevant applicant” (“*ymgeisydd perthnasol*”) means a person—

- (a) who provides services as a social worker or social care manager in the United Kingdom on a temporary and occasional basis on the basis of an existing contract,
- (b) who began providing, or begins to provide a service mentioned in paragraph (a), either—
 - (i) before IP completion day, as an employee or in a self-employed capacity, or
 - (ii) on or after IP completion day, as an employee posted for the purpose of carrying on social work or work as a social care manager in the United Kingdom by their employer who is

(1) S.I. 2019/312, amended by S.I. 2020/1038; Schedule 1 to S.I. 2019/312 amends the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781) and the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) and contains saving and transitional provisions relating to each of those instruments. S.I. 2007/2781 was revoked with savings by S.I. 2015/2059 and by S.I. 2019/312. S.I. 2015/2059 is amended by paragraph 389 of Schedule 19 to the Data Protection Act 2018 (c. 12), and by S.I. 2016/696, 1094 and 1030, 2018/838 and 1101 and 2019/89 and 312. As a result of the application of paragraph 1 of Schedule 5 to the 2020 Act, provisions in S.I. 2019/312 expressed to come into force on exit day are to be read instead as coming into force on IP completion day.

(2) S.I. 2015/2059.

(3) 1972 c. 68. Section 2 was repealed, subject to savings, by the European Union (Withdrawal) Act 2019 (c. 16), section 1.

established in the United Kingdom or Switzerland,

- (c) who is—
 - (i) a national of the United Kingdom,
 - (ii) a national of Switzerland, or
 - (iii) a third country national, who was, immediately before IP completion day, by virtue of any enforceable EU right entitled to be treated no less favourably than a national of either the United Kingdom or Switzerland for the purposes of access to and the pursuit of social work or work as a social care manager,
- (d) who is lawfully established in Switzerland for the purpose of access to and the pursuit of social work or work as a social care manager there,
- (e) who, if neither the profession of social worker or social care manager that the person wishes to access and pursue in the United Kingdom nor the education and training leading to it is regulated in Switzerland, has pursued that profession in Switzerland for at least 2 years during the 10 years preceding the provision of services;

“relevant European State” (*“Gwladwriaeth Ewropeaidd berthnasol”*) means an EEA State or Switzerland;

“relevant qualification” (*“cymhwyster perthnasol”*) means—

- (a) a professional qualification obtained in an EEA State or Switzerland before IP completion day;
- (b) a professional qualification started in an EEA State or Switzerland but not completed before IP completion day;
- (c) a third country professional qualification recognised by a competent authority in Switzerland pursuant to Article 2(2) of Directive 2005/36 before IP completion day;
- (d) a third country professional qualification for which an application for recognition pursuant to Article 2(2) of Directive 2005/36 has been submitted to a competent authority in Switzerland before IP completion day, where that application is successful,

and for the purposes of this definition, “professional qualification” means a

qualification relevant to the pursuit of social work or work as a social care manager;

“Swiss citizens’ rights agreement” (*“cytundeb ar hawliau dinasyddion Swisaidd”*) means (as modified from time to time in accordance with any provision of it) the Agreement signed at Bern on 25 February 2019 between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from—

- (a) the European Union, and
- (b) the free movement of persons agreement,

so far as the Agreement operates for the purposes of the case where “specified date” for the purposes of that Agreement has the meaning given in Article 2(b)(ii) of that Agreement;

“Swiss recognition period” (*“cyfnod cydnabod Swisaidd”*) means the period of four years beginning with the day immediately after IP completion day;

“third country” (*“trydedd wlad”*) has the same meaning as in regulation 2(1) of the 2007 Regulations;

“visiting practitioner transitional period” (*“cyfnod trosiannol ymarferwyr sydd ar ymweliad”*) means—

- (a) the period of five years beginning with IP completion day (see Article 23(1) of the Swiss citizens’ rights agreement), or
- (b) if the period in paragraph (a) is extended in accordance with Article 23(2) of that Agreement, that period as extended.”

Insertion of general saving in connection with actions taken etc. before IP completion day

6. After regulation 15A (interpretation of Part 2) of the 2019 Regulations (as inserted by regulation 5), insert—

“Actions taken, decisions made etc. before IP completion day

15B. The amendments made by Part 1 to the 2016 Act do not affect the validity of any action or decision taken, or right or liability accrued, before IP completion day under that Act, except as provided by any saving or transitional provision made by this Part.”

Insertion of provision concerning administrative co-operation

7. After regulation 15B (actions taken, decisions made etc. before IP completion day: general saving) of the 2019 Regulations (as inserted by regulation 6), insert—

“Administrative cooperation under the EEA EFTA citizens’ rights agreement

15C.—(1) Where a person, before IP completion day, made an application under Article 26 of the EEA EFTA citizens’ rights agreement to a competent authority in Iceland, Norway or Liechtenstein for recognition of a professional qualification awarded or recognised by Social Care Wales, Social Care Wales must—

- (a) cooperate with the competent authority in Iceland, Norway or Liechtenstein, or with the person (as the case may be), in accordance with the general cooperation provision, and
- (b) provide information to the competent authority in Iceland, Norway or Liechtenstein regarding disciplinary action taken or criminal sanctions imposed, or any other serious, specific circumstances which are likely to have consequences for the pursuit of professional activities by that individual.

(2) Social Care Wales must process information for the purposes of paragraph (1) in accordance with “the data protection legislation” within the meaning of section 3(9) of the Data Protection Act 2018⁽¹⁾.

(3) In this regulation—

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the 2015 Regulations⁽²⁾ as they had effect immediately before IP completion day subject to the modification that any reference to “the Care Council for Wales” is to be read as if there were substituted “Social Care Wales”;

“competent authority” (“*awdurdod cymwys*”), in relation to Iceland, Norway and Liechtenstein, means a body in Iceland, Norway or, Liechtenstein (as the case may be), which is a competent authority for the purposes of the 2015 Regulations (see paragraph (b) of the definition of “competent

(1) 2018 c. 12.
(2) S.I. 2015/2059.

authority” in regulation 2(1) of those Regulations);

“EEA EFTA citizens’ rights agreement” (“*cytundeb hawliau dinasyddion EFTA yr AEE*”) means the Agreement signed in London on 2 April 2019 between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland on arrangements regarding citizens’ rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement;

“the general cooperation provision” (“*y ddarpariaeth cydweithredu cyffredinol*”) means—

- (a) regulation 5(2), (4) and (5) of the 2015 Regulations, as modified by paragraph 44(4)(b) of Schedule 1 to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019(1),
- (b) regulation 5(3) of the 2015 Regulations, to the extent they apply in relation to Social Care Wales.”

8. In regulation 16(1) (pending applications) of the 2019 Regulations, for “exit day” in both places it occurs, substitute “IP completion day”.

Insertion of regulation 16A

9. After regulation 16 (pending applications) of the 2019 Regulations, insert—

“Swiss social workers and Swiss social care managers qualifying outside Wales: saving of old law

16A.—(1) This regulation applies to a person (“a qualifying applicant”)—

- (a) who is—
 - (i) a national of the United Kingdom,
 - (ii) a national of Switzerland, or
 - (iii) a third country national who was, immediately before IP completion day, by virtue of any enforceable EU right entitled to be treated no less favourably than a national of either the United Kingdom or Switzerland for the purposes of

(1) S.I. 2019/312. Paragraph 44(4) is substituted by the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) Regulations 2020/1038.

access to and the pursuit of social work or work as a social care manager;

- (b) who wishes to access and pursue social work or work as a social care manager in Wales on a permanent basis whether as an employee or in a self-employed capacity;
- (c) who has a relevant qualification;
- (d) who, if that relevant qualification was obtained in a third country, has three years' professional experience in social work or work as a social care manager in Switzerland and certified by a Swiss competent authority;
- (e) who, if that relevant qualification is a professional qualification obtained in an EEA state, is lawfully established in Switzerland, unless the person is a Swiss national.

(2) Despite the amendments made by Part 1, the provisions of the 2016 Act referred to in paragraph (4) continue to apply to a registration application submitted by a qualifying applicant on or after IP completion day as they applied immediately before that day but as modified by paragraph (5).

(3) Paragraph (2) has effect until the end of the Swiss recognition period.

(4) The provisions referred to in paragraph (2) are—

- (a) in section 66(1), the definition of “the General Systems Regulations”;
- (b) section 85(1) (qualifications gained outside Wales – social workers);
- (c) section 85A (qualifications gained outside Wales – social care managers);
- (d) section 90(8) (definitions for the purposes of Parts 3 to 8 of the 2016 Act);
- (e) section 105 (other appeals: decisions made under the General Systems Regulations).

(5) Insofar as the following provisions of the 2016 Act continue to apply by virtue of paragraph (2), they apply with the following modifications—

- (a) in section 85(1) (qualifications gained outside Wales – social workers), for “an exempt person” there were substituted “a Swiss social worker”;

- (b) in section 85A (qualifications gained outside Wales – social care managers), for “an exempt person” there were substituted “a Swiss social care manager”;
- (c) in section 90(8) (definitions for the purposes of Parts 3 to 8 of the 2016 Act)—
 - (i) the definitions of “exempt person”, “national” and “relevant European State” were omitted;
 - (ii) for the definition of “General Systems Regulations”, there were substituted—

““the General Systems Regulations” (“*y Rheoliadau Systemau Cyffredinol*”) means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

- (a) in relation to anything done before IP completion day, as they had effect at that time but subject to the modification that any reference to “the Care Council for Wales” is to be read as if there were substituted “Social Care Wales”;
- (b) as (and only to the extent that) they have effect, after IP completion day, in relation to an entitlement which arises in relation to a relevant qualification (within the meaning given in regulation 15A of the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019);”;
- (iii) there were inserted, at the appropriate place—

““Swiss social care manager” has the meaning given in regulation 16A(6) of the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019;

“Swiss social worker” has the meaning given in regulation 16A(6) of the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019;”;

- (d) in section 105 (other appeals: decisions made under the General Systems Regulations)—
 - (i) in subsection (1), paragraphs (a), (c) and the “or” immediately preceding paragraph (c) were omitted;

- (ii) in subsection (5)(b), the words from “or, in the case” to the end were omitted.

(6) In this regulation—

“registration application” (“*cais cofrestru*”) means an application for admission to a register maintained in accordance with section 80 of the 2016 Act;

Swiss social care manager” (“*rheolwr gofal Cymdeithasol Swisaidd*”) means a qualifying applicant who had not, before IP completion day, made a registration application (other than an application under section 90A of the 2016 Act);

“Swiss social worker” (“*gweithiwr Cymdeithasol Swisaidd*”) means a qualifying applicant who had not, before IP completion day, made a registration application (other than an application under section 90 of the 2016 Act).”

Substitution of regulation 17 (visiting social workers and visiting social care managers: saving of old law)

10. For regulation 17 of the 2019 Regulations substitute—

“Visiting social workers and visiting social care managers: saving of old law

17.—(1) This regulation applies where—

- (a) immediately before IP completion day—
 - (i) a person had the benefit of regulation 12 of the 2015 Regulations⁽¹⁾ in respect of the provision by that person of services as a social worker or a social care manager, and
 - (ii) section 90(3) or 90A(3) of the 2016 Act applied to the person;
- (b) by virtue of this regulation, the person continues to have that benefit on or after IP completion day; and
- (c) the person is not a relevant applicant.

(2) Despite the amendments made by Part 1, the provisions of the 2016 Act specified in paragraph (4) continue to apply in relation to the provision of those services by a person to whom paragraph (1) applies on or after IP completion day, as they applied before that day, but subject to the modifications specified in paragraph (5).

(1) S.I. 2015/2059.

(3) Paragraph (2) has effect until—

- (a) in the case of a person who is registered in accordance with section 90(3) or 90A(3) of the 2016 Act, the day on which the person's name is removed from the register under section 90(6) or 90A(6) of that Act as the case may be;
- (b) in the case of a person who is treated as being registered under section 90(4) or 90A(4) of the 2016 Act, the day on which the person's entitlement to be registered under section 90(3) or 90A(3) of the 2016 Act ceases by virtue of section 90(5) or 90A(5) of that Act as the case may be.

(4) The provisions of the 2016 Act referred to in paragraph (2) are—

- (a) in section 66(1) (interpretation of Parts 3 to 8), the definitions of “exempt person”, “the General Systems Regulations”, “national”, “relevant European State”, “visiting European social care manager part” and “visiting European social worker part”;
- (b) section 74(3) (rules: fees);
- (c) in section 80, subsections (1)(c) and (d), (2)(c) and (d) and (3)(c) and (d) (the register);
- (d) section 90 (visiting social workers from relevant European States);
- (e) section 90A (visiting social care managers from relevant European States);
- (f) section 105 (other appeals: decisions made under the General Systems Regulations);
- (g) section 113(3) to (5) (continuing professional development).

(5) Insofar as the following provisions of the 2016 Act continue to apply by virtue of paragraph (2), they apply with the following modifications—

- (a) in section 90 (visiting social workers from relevant European States)—
 - (i) subsection (1) is to be read as if “other than the United Kingdom” was omitted;
 - (ii) subsection (8) is to be read as if—
 - (aa) for the definitions of “exempt person” and “the General Systems

Regulations” there were substituted—

““exempt person” (*person esempt*)” means—

- (a) a person who, immediately before IP completion day, was a national of a relevant European State,
- (b) a person who, immediately before IP completion day, was a national of the United Kingdom and, at that time was seeking access to, or pursuing, by virtue of an enforceable EU right, social work or work as a social care manager, or
- (c) a person who, immediately before IP completion day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of social work or work as a social care manager, no less favourably than a national of a relevant European State, and for the purposes of this definition “enforceable EU right” (*“hawl UE orfodadwy”*) means a right recognised and available in domestic law, immediately before IP completion day, by virtue of section 2(1) of the European Communities Act 1972 (c. 68);

“the General Systems Regulations” (*“y Rheoliadau Systemau Cyffredinol”*) means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

- (a) in relation to anything done before IP completion day, as they had effect at that time but subject to the modification that any reference to “the Care Council for Wales” is to be read as if there were substituted “Social Care Wales”,
- (b) otherwise (and only to the extent that) they have effect, on or after IP completion day, in relation to an entitlement which arose before IP completion day or arises as a result of something done before IP completion day;”;
 - (bb) in the definition of “national” for “is not” there were substituted “was not immediately before IP completion day”;
- (b) in section 90A (visiting social care managers from relevant European

States), subsection (1) is to be read as if “other than the United Kingdom” was omitted.

(6) For the purposes of this regulation, the 2015 Regulations have effect as if for any reference to “the Care Council for Wales” there were substituted “Social Care Wales”.

Substitution of regulation 18 (interpretation of provisions saved by regulation 17(2))

11. For regulation 18 (interpretation of provisions saved by regulation 17(2)) of the 2019 Regulations substitute—

“Visiting Swiss social workers and visiting Swiss social care managers: saving of old law

18.—(1) This regulation applies to a relevant applicant.

(2) Despite the amendments made by Part 1, the provisions of the 2016 Act specified in paragraph (5) continue to apply in relation to the provision of those services by a relevant applicant on or after IP completion day as they applied immediately before that day subject to the restriction in paragraph (3) and the modifications specified in paragraph (6).

(3) A relevant applicant may only provide services as a social worker or a social care manager for a period not exceeding 90 days in any calendar year.

(4) Paragraph (2) has effect until the end of the visiting practitioner transitional period.

(5) The provisions of the 2016 Act referred to in paragraph (2) are—

- (a) in section 66(1) (interpretation of Parts 3 to 8), the definitions of “the General Systems Regulations”, “national”, “relevant European State”, “visiting European social care manager part” and “visiting European social worker part”;
- (b) section 74(3) (rules: fees);
- (c) in section 80, subsections (1)(c) and (d), (2)(c) and (d) and (3)(c) and (d) (the register);
- (d) section 90 (visiting social workers from relevant European States);
- (e) section 90A (visiting social care managers from relevant European States);
- (f) section 105 (other appeals: decisions made under the General Systems Regulations);

(g) section 113(3) to (5) (continuing professional development).

(6) Insofar as the following provisions of the 2016 Act continue to apply by virtue of paragraph (2), they apply with the following modifications—

(a) in section 90 (visiting social workers from relevant European States)—

(i) subsection (1) is to be read as if there were substituted—

“(1) This section applies to a relevant applicant (within the meaning given in regulation 15A of the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations) 2019 (“V”) who is lawfully established in Switzerland, as a social worker.”;

(ii) subsection (8) is to be read as if—

(aa) for the definition of “the General Systems Regulations”, there were substituted—

““the General Systems Regulations” (“*Rheoliadau Systemau Cyffredinol*”) means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

(a) in relation to anything done before IP completion day, as they had effect at that time but subject to the modification that any reference to “the Care Council for Wales” is to be read as if there were substituted “Social Care Wales”,

(b) otherwise (and only to the extent that) they have effect, on or after IP completion day, in relation to an entitlement which arose before IP completion day or arises as a result of something done before IP completion day;”;

(bb) in the definition of “national” for “is not” there were substituted “was not immediately before IP completion day”;

(b) section 90A (visiting social care managers from relevant European States) is to be read as if for subsection (1) there were substituted—

“(1) This section applies to a relevant applicant (within the meaning given in regulation 15A of the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations) 2019 (“X”) who is lawfully

established in Switzerland, as a social care manager.”;

- (c) section 113 (continuing professional development) is to be read as if in subsection (5) for “the relevant” to the end there were substituted “Switzerland”.

Insertion of provision concerning equal treatment and administrative co-operation under the Swiss citizens’ rights agreement

12. After regulation 18 (visiting Swiss social workers and visiting Swiss social care managers: saving of old law) of the 2019 Regulations (as substituted by regulation 11), insert—

“Equal treatment and administrative co-operation under the Swiss citizen’s rights agreement

18A.—(1) This regulation applies to a relevant applicant.

(2) In dealing with a relevant applicant who pursues social work or work as a social care manager in Wales pursuant to regulation 18 (visiting Swiss social workers and visiting Swiss social care managers: saving of old law) in relation to any matter, Social Care Wales must treat that person no less favourably than it would treat a native applicant (within the meaning of regulation 2 of the 2007 Regulations) who lawfully provides services as a social worker or as a social care manager in Wales in relation to that matter.

(3) Where a person is providing services that if provided in Wales would constitute social work or work as a social care manager on a temporary and occasional basis in Switzerland pursuant to Article 23 of the Swiss citizens’ rights agreement, Social Care Wales must cooperate with the appropriate competent authority in Switzerland and provide it with any information relevant to the legality of the individual’s establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature, in accordance with section 159 of the 2016 Act (disclosure of information about fitness to practise).

(4) Where a person has made or makes an application falling within Article 31(1) or 32(1) or (5) of the Swiss citizens’ rights agreement to a competent authority in Switzerland for recognition of a professional qualification awarded or recognised by Social Care Wales, Social Care Wales must—

- (a) cooperate with the competent authority in Switzerland or the person (as the case may be), in accordance with the general cooperation provision, and
- (b) provide information to the competent authority in Switzerland regarding disciplinary action taken or criminal sanctions imposed, or any serious, specific circumstances which are likely to have consequences for the pursuit of professional activities by that individual.

(5) Social Care Wales must process information for the purposes of paragraphs (3) and (4) in accordance with “the data protection legislation within the meaning of section 3(9) of the Data Protection Act 2018(1).

(6) In this regulation—

“competent authority” (*“awdurdod cymwys”*) has the meaning given by regulation 4(1) to (3) of the 2007 Regulations, and in relation to Switzerland means a body in Switzerland which is a competent authority for the purposes of regulation 4(4) of the 2007 Regulations;

“the general cooperation provision” (*“y ddarpariaeth cydweithredu cyffredinol”*) means regulation 5(2) to (7) of the 2007 Regulations (functions of competent authorities in the United Kingdom), to the extent it applies in relation to Social Care Wales.

(7) For the purposes of this regulation, the 2007 Regulations have effect subject to the following modifications—

- (a) any reference to “social worker in Wales” has effect as if there were substituted “social worker or social care manager in Wales”,
- (b) any reference to “the Care Council for Wales” has effect as if there were substituted “Social Care Wales”.

Amendment of regulation 19 (internal market information system (IMI) alerts)

13. In regulation 19 (internal market and information system (IMI) alerts) of the 2019 Regulations, for “exit day” in each place it occurs substitute “IP completion day”.

(1) 2018 c. 12.

Name

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

Date

Explanatory Memorandum to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020

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

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Julie Morgan

Deputy Minister for Health and Social Services

24 November 2020

PART 1

1. Description

- 1.1 The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 (“the Regulations”) make amendments to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019⁽¹⁾ (“the principal Regulations”).
- 1.2 The amendments made by the Regulations are necessary to reflect commitments made in respect of the recognition of professional qualifications in an agreement between the UK Government and the Swiss Confederation on citizen’s rights⁽²⁾ following the withdrawal of the UK from the European Union and the free movement of persons agreement and an agreement between the UK Government and EFTA States⁽³⁾ on arrangements regarding citizens’ rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement.
- 1.3 As the amendments made by the Regulations to the principal Regulations (which will come into force on IP completion day on 31 December 2020) are required to come into force immediately before IP completion day, the Welsh Ministers have consulted the relevant UK Government Secretaries of State, in this case the Secretaries of State for Health and Social Care and Justice together with the Lord Chancellor⁽⁴⁾ (“the relevant Secretaries of State”) in accordance with the requirement in paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018.
- 1.4 The letters that were issued to the relevant Secretaries of State indicated that if no formal response was received by 6 November, it would be assumed that no comments were deemed to be necessary by the relevant Secretaries of State. No comments have been received.

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

- 2.1 In accordance with paragraph 1(9) of Schedule 7 to the European Union (Withdrawal Act) 2018 (“the 2018 Act”) and paragraph 3(5) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) the Regulations are subject to the affirmative procedure because they make amendments to primary legislation.

⁽¹⁾ S.I. 2019/761 (W. 144).

⁽²⁾ Agreement signed at Berne on 25 February 2019.

⁽³⁾ Iceland, the Principality of Liechtenstein and the Kingdom of Norway; agreement was signed in London on 2 April 2019.

⁽⁴⁾ It was necessary to consult the Lord Chancellor and Secretary of State for Justice because the Regulations also include an amendment to description of the qualifications of certain lawyers within the definition of “advocacy services” in paragraph 7 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

3. Legislative background

3.1 The Regulations are being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. They are also made under powers with sections 12 and 14 of, and paragraph 12 of Schedule 4 to, the 2020 Act, which enable the making of additional transitional provision relating to the mutual recognition of professional qualifications and the temporary and occasional provision of professional services arising from the agreements concerning citizens' rights between the United Kingdom and Switzerland and the United Kingdom and the EEA EFTA Countries.

3.2 In accordance with the requirements of the 2018 Act the Deputy Minister for Health and Social Services has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

3.3 These Regulations are being made under the affirmative procedure.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The European Union Directive 2005/36/EC ("the 2005 Directive") facilitates the free movement of prescribed professionals across the European Economic Area (EEA) and Switzerland by setting out a reciprocal framework of rules for the recognition of professional qualifications. This enables European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised and gain access in an EEA State or Switzerland to the regulated profession in which they are qualified in another EEA State or Switzerland, in order to work on a permanent or temporary basis.

4.2 The 2005 Directive is currently implemented via a main set of the regulations which set out the general approach, namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 ("the 2015 Regulations"⁽⁵⁾) and the European Communities (Recognition of Professional Qualifications) Regulations 2007⁽⁶⁾ (which continue to apply in relation to Switzerland), and then sectoral specific Regulations. For the social care professions, the sectoral specific legislation is the European Qualifications (Health and Social Care Professions) Regulations 2016⁽⁷⁾

⁽⁵⁾ S.I. 2015/2059.

⁽⁶⁾ S.I. 2007/2781; these Regulations continue to apply before exit day by virtue of regulation 78 of the 2015 Regulations and by regulation 155 of the 2016 Regulations.

⁽⁷⁾ S.I. 2016/1030.

("the 2016 Regulations), which introduced a range of amendments relating to EEA and Swiss social workers and social care managers into the Regulation and Inspection of Social Care (Wales) Act 2016⁽⁸⁾ ("the 2016 Act").

4.3 The framework of Directives and the domestic legislation through which mutual recognition of professional qualifications currently operates will cease to apply to the UK when the UK leaves the EU. Therefore the domestic legislation implementing the Directives will not operate effectively after IP completion day.

4.4 The principal Regulations make amendments to the 2016 Act to ensure that in the event of a "no deal" exit from the EU that the Act would continue to operate effectively and to correct any deficiencies. The principal Regulations made savings and transitional provision to ensure that the professional qualifications of social workers and social care managers in Wales affected by EU exit are protected and provided with certainty about their future ability to practise their profession in Wales.

Why is it being changed?

4.5 The amendments made by the Regulations will mirror for social workers and social care managers who provide services in Wales the effect of the UK Government's proposed amendments to its legislation; they add additional transitional provision to the principal Regulations arising from both agreements to deal with matters that are not already covered in the principal Regulations, some of which affect all four EFTA states: such as mandatory co-operation required by regulators. They also makes additional transitional provision arising from the Swiss agreement, namely: an extended period to apply for a recognition decision under the pre-exit rules; and an extended period in which social workers and social care managers can continue to rely on the pre-exit recognition of professional qualification arrangements to provide temporary and occasional services in Wales.

4.6 They also correct some minor errors in the 2019 Regulations.

What will it now do?

4.7 The purpose of the Regulations is to make the changes required to correct the deficiencies arising from the United Kingdom's withdrawal from the European Union and to ensure that the existing regulatory framework for the mutual recognition of professional qualifications and the temporary and occasional provision of professional services as a social worker or a social care manager in Wales will continue to operate effectively in Wales; in so far as they relate to the provision of such services by persons covered by the

⁽⁸⁾ 2016 anaw 2.

Agreements that the United Kingdom has entered into with Switzerland and the EEA EFTA countries to protect citizens' rights during the transitional periods specified in the said Agreements, they make additional transitional provision.

5. Consultation

- 5.1 As these amendments are technical in nature and involve no substantial policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy framework to remain operable and enforceable following IP completion day and the withdrawal of the United Kingdom from the European Union and to give effect to the transitional provisions required as a result of the international agreements referred to in paragraph 4.7.
- 5.2 No technical discussions concerning the proposed amendments and transitional modifications to the provisions of the 2016 Act made by the Regulations were held with Social Care Wales. However, the Regulator has been made aware of the provision made by the Regulations.
- 5.3 Consultation on the Regulations with the relevant Secretaries of State which was required by paragraph 4(a) of Schedule 2 to the 2018 Act was undertaken as detailed in paragraphs 1.3 and 1.4.

6. Regulatory Impact Assessment (RIA)

- 6.1 No RIA has been undertaken as there is no significant impact on business, charities, voluntary bodies or the public sector resulting from this instrument. The changes are technical in nature and ensure that a system of recognition of professional qualifications for social workers and social care managers who work in Wales continues and that individuals with EEA and Swiss qualifications will have a means to seek recognition of their relevant professional qualifications after IP completion day.

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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statements

1.1 Not applicable.

2. Appropriateness statement

2.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.

2.2 This is the case because the Regulations largely make changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union and to ensure that the existing regulatory framework for the mutual recognition of professional qualifications and the temporary and occasional provision of professional services as a social worker or a social care manager in Wales will continue to operate effectively in Wales; in so far as it relates to the provision of such services by persons covered by the Agreements that the United Kingdom has entered into with Switzerland and the EEA EFTA countries to protect citizens’ rights during the transitional periods specified in the said Agreements. This is in line with Welsh Government policy.

3. Good reasons

3.1 The Deputy Minister for Health and Social Services, Julie Morgan, 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 the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020, and I have concluded they are a reasonable course of action”.

3.2 This is because the Regulations make amendments to Welsh legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies in that legislation arising from the United Kingdom’s withdrawal from the European Union and ensure an operable system for recognition of professional social care qualifications in Wales following IP completion day. They also give effect

to the protection for citizens' rights in respect of the mutual recognition of professional services and the provision of temporary and occasional services in accordance with the international agreements referred to in paragraph 2.2.

4. Equalities

- 4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement.

“The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 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.”

- 4.2 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018.

“In relation to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020, I, Julie Morgan, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

- 6.1 Not applicable

7. Legislative sub-delegation

- 7.1 Not applicable.

8. Urgency

- 8.1 Not applicable.

SL(5)662 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations provide for rules on penalties in relation to infringements of 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. These Regulations do so by making provision for civil sanctions.

The civil sanctions will sit alongside existing criminal sanctions. The civil sanctions consist of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertakings and enforcement undertakings.

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

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

It appears that civil penalties paid under these Regulations will be paid into the UK Consolidated Fund, not the Welsh Consolidated Fund.

We would welcome confirmation from the Welsh Government whether that is correct and, if it is, why are payments not made into the Welsh Consolidated Fund.



Implications arising from exiting the European Union

The substantive provisions of the EU Regulations mentioned above do not need to be implemented in the United Kingdom because they automatically have direct effect in the United Kingdom until the end of the transition period on 31 December 2020. However, domestic legislation (i.e. these Regulations) is required to supplement the EU Regulations. For example, these Regulations provide for the enforcement of the EU Regulations.

After the transition period ends on 31 December 2020, these Regulations and the EU Regulations will form part of retained EU law and, therefore, will continue to apply in Wales.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 7 December 2020 and reports to the Senedd in line with the reporting point above and also to highlight issues as a result of the UK exiting the EU.



Government Response: The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020

Merit Scrutiny point 1:

Yes, that is correct.

Plant pests can spread, and, as such, biosecurity is seen as a shared endeavour by the Governments of Great Britain. To support this shared endeavour, the Animal and Plant Health Agency police plant health across Great Britain. The monetary penalties paid in accordance with the Regulations will be paid into the UK consolidated fund as plant health in Wales is policed by the Animal and Plant Health Agency and funded by the UK Government.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020**

DATE **02 December 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd.

The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020

The 2020 Regulations make amendments to the following:

Amendments to Domestic Legislation

The Greenhouse Gas Emissions Trading Scheme Regulations 2012

The Greenhouse Gas Emissions Trading (Amendment) (EU Exit) Regulations 2019

The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2020 Regulations amends domestic legislation which largely falls within the legislative competence of the Senedd and the Welsh Ministers' executive powers in relation to a carbon trading scheme set up by legislation.

The purpose of the amendments

The 2020 Regulations support a smooth exit from the EU ETS scheme, as required by Article 96 of the Withdrawal Agreement. They do so by ensuring an appropriate legislative basis for UK operators to meet their compliance obligations in respect of the 2020

scheme year, which fall due in 2021. The SI will also enact Article 9 and Annex 4 of the Northern Ireland Protocol by providing a continuing basis for electricity generators in Northern Ireland to remain in the EU ETS.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.legislation.gov.uk/uksi/2020/1369/contents/made>

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. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU, by amending or revoking provisions that would otherwise be inoperable.

UK MINISTERS ACTING IN DEVOLVED AREAS

207 - The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020

Laid in the UK Parliament: 30 November 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	Not known
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Made negative
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 8B and 8C of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Sections 8B and 8C of the 2018 Act, as introduced by the European Union (Withdrawal Agreement) Act 2020, provide powers to implement Part 3 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (“the Withdrawal Agreement”) and the Revised Protocol to the Withdrawal Agreement on Ireland/Northern Ireland (“the NI Protocol”). The Regulations are not being made to address a deficiency in retained EU law but they relate to the withdrawal of the United Kingdom from the European Union.

Summary

As part of leaving the European Union, the UK is ceasing participation in the EU Emissions Trading System (EU ETS) at the end of the implementation period.

These Regulations implement Article 9 and Annex 4 of the NI Protocol. They provide a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland) to remain subject to the EU ETS. The Regulations also support a smooth exit from the EU ETS by ensuring an appropriate legislative basis for UK operators to conclude their participation in the scheme at the end of the 2020 scheme year, while still meeting their compliance obligations for that year, which fall due in 2021, as required by Article 96(2) of the Withdrawal Agreement.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 2 December 2020 regarding the effect of these Regulations:

- The statement confirms that:

"The 2020 Regulations amends domestic legislation which largely falls within the legislative competence of the Senedd and the Welsh Ministers' executive powers in relation to a carbon trading scheme set up by legislation."

However, the Welsh Government's statement 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.

- The statement makes no reference to the fact that the Regulations are not being made to address a deficiency in retained EU law but that they relate to the withdrawal of the United Kingdom from the European Union. Legal advisers recommend that further information is requested regarding what significance, if any, this has, particularly in the context of the following wording from the Welsh Government's written statement:

"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. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU, by amending or revoking provisions that would otherwise be inoperable."

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

As it is unclear from the Welsh Government's statement dated 2 December 2020 the impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether 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 Food and Drink (Amendment) (EU Exit) Regulations 2020**

DATE **02 December 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C –SI laid in Parliament which amends legislation in a devolved area

The Food and Drink (Amendment) (EU Exit) Regulations 2020

The Law which is being amended

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers.
- Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties.

The purpose of the Regulations

The 2020 Regulations make amendments to retained EU legislation on food information rules and wine.

The changes to the wine regulations ensure the provisions concerning trade of wine, monitoring production and maintaining records will operate correctly after implementation date and will be re-allocated appropriately taking into account the transition from being a singular member state to being separate singular country.

The 2020 Regulations set out various changes that will reflect the interdependencies with other legislation, primarily that made by HMRC, to ensure that following the transition from Single Customs Union controls to UK specific customs controls they continue to operate correctly.

The minor changes to food labelling are being made to the definition of “place of

provenance” and “country of origin” by replacing cross cutting references to the EC regulation with cross references to the replacement domestic legislation introduced by the HMRC.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-food-and-drink-amendment-eu-exit-no-4-regulations-2020>

Any impact the SI may have on the legislative competence of Sanded Cymru and/or the Welsh Ministers’ executive competence

The 2020 Regulations make minor technical amendments to 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.

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales on matters relating to Wine and food information rules, 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

208 - The Food and Drink (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 26 November 2020

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	10 December 2020
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
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 the European Union (Withdrawal) Act 2018.

Summary

These Regulations make minor, technical amendments to retained direct EU legislation relating to food information and wine. The amendments will ensure that appropriate rules covering movement and control of wine products from a regime and excise perspective are maintained following EU Exit.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 2 December 2020 regarding the effect of these Regulations:

In relation to the changes to Commission Delegated Regulation (EU) 2018/273 made by these Regulations, the Welsh Government's statement notes that those changes:

“ensure the provisions concerning trade of wine, monitoring production and maintaining records will operate correctly after implementation date [sic] and will be re-allocated appropriately taking into account the transition from being a singular member state to being a separate singular country”.

The amendments made by the Regulations appear to concern exemptions to wine import certification arrangements in relation to small consignments of wine sent from one private individual to another, and wine and grape juice for trade fairs. It is not immediately clear how these amendments relate to the monitoring of production or maintaining records, nor the meaning of “re-allocated” in the context 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.

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Agenda Item 9.1



**Llywodraeth Cymru
Welsh Government**

David Rees MS
Chair of External Affairs and
Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Mr Mick Antoniw MS
Chair of Legislation, Justice and Constitution
Committee
National Assembly for Wales
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Cc: LJC Committee Members

07 December 2020

Dear Chairs,

I am writing under the inter-institutional relations agreement to inform you that a meeting of the Ministerial Forum for Trade will take place on Wednesday 9 December.

The meeting is likely to include FTA negotiation updates, continuity updates and the UK Trade Bill.

I will be reiterating the Welsh Government's position that our views must be taken into account when developing UK trade policy and calling once again for the finalisation of the concordat.

I will write to you again following the meeting.

Yours sincerely,

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

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



Llywodraeth Cymru
Welsh Government

Our ref: MA-RE-4111-20

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

08 December 2020

Dear Mick,

I am writing to inform you that a consultation on a revised Regulatory Impact Assessment (RIA) Code for Subordinate Legislation opened today. The consultation was published on the Welsh Government website (<https://gov.wales/consultations>).

As set out in the draft Code, the Welsh Ministers' policy remains to always carry out an RIA for relevant Welsh subordinate legislation subject to a small number of exceptions. Officials have reviewed and, where necessary, amended the exceptions (which describe situations in which no RIA would be required) to ensure the approach in the Code is clear and proportionate. In addition, a number of changes have been made to simplify the Code and to update terminology and references.

I have copied this letter to the Chair of Finance Committee and look forward to receiving the views of both Committees on the draft Code. The consultation closes on the 4th of March 2021.

Yours sincerely,

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

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Rebecca Evans AM
Minister for Finance and Trefnydd

5 December 2019

Dear Rebecca

Regulatory impact assessment code for subordinate legislation

Thank you for your letter of 21 November in relation to the RIA code for subordinate legislation, which the Committee considered at its meeting on 2 December 2019.

The Committee noted that you have instructed officials to carry out a review of the code during 2020, and this is something that we welcome. We would be grateful if you could provide further information on the timescale for the review once it is available, and we look forward to seeing the consultation in due course.

Yours sincerely





Mick Antoniw AM

Chair



Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



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



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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21 November 2019

Dear Mick,

Thank you for your letter relating to the Welsh Ministers' regulatory impact assessment code for subordinate legislation.

The code has not been formally reviewed since its publication in 2009. While the general approach set out in the code for producing RIAs for Welsh subordinate legislation is still considered to be broadly correct, the Welsh Government recognises that some of the terminology and references in the code need to be updated.

I have therefore instructed officials to review the code and to consult with relevant individuals and organisations on a revised code during 2020.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans".

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

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Rebecca Evans AM
Minister for Finance and Trefnydd

31 October 2019

Dear Rebecca

Regulatory impact assessment code for subordinate legislation

We considered The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 MPH Speed Limit) Regulations 2010 (Revocation) Regulations 2019 at our meeting on 21 October 2019. We identified two merits points for reporting under Standing Order 21.3, the first of which highlighted that it was unclear why a regulatory impact assessment has not been produced for these Regulations.

The Welsh Government response to this point stated:

“Regulatory Impact Assessments have not historically been undertaken when the Welsh Ministers have made regulations under section 17 of the Road Traffic Regulation Act 1984 imposing speed limits on lengths of special roads. The reason for this is that such regulations have generally been made for highway safety reasons and have no impact on the costs of business. (...)

Specifically in relation to the Welsh Government’s Regulatory Impact Assessment Code for Subordinate Legislation, the relevant exception to the requirement to undertake an assessment is that the regulations in question involve a routine technical or factual amendment to update regulations that have no major policy effect.”

In noting this response, we became aware of the fact that section 76(3)(a) of the *Government of Wales Act 2006* provides that the Regulatory Impact Assessment (RIA) Code, which was introduced in October 2009, must be kept under review.

We would be grateful if you would confirm whether the RIA Code has been reviewed and, if not, when its review is likely to take place.



Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Kirsty Williams AS/MS
Y Gweinidog Addysg
Minister for Education

Our ref: MA/KW/3976/20

Lynne Neagle MS
Chair of Children, Young People and Education Committee

9 December 2020

Dear Lynne,

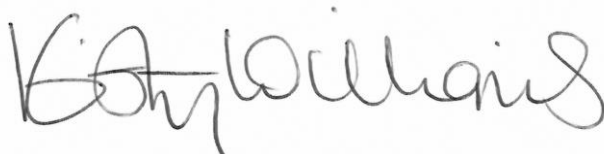
I would like to thank the Children, Young People and Education Committee for their scrutiny of the Curriculum and Assessment (Wales) Bill during Stage 1 and for the report which was published on 4 December 2020.

I will set out responses to the Committee's recommendations in Plenary during the General Principles debate.

During the debate I will also be setting out my response to the Finance Committee and the Legislation, Justice and Constitution Committee Stage 1 reports on the Bill. I have copied this letter to both Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely



Kirsty Williams AS/MS
Y Gweinidog Addysg
Minister for Education

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Agenda Item 9.4

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

10 December 2020

Dear Mick

Thank you for your letter of 5 October on behalf of the Legislation, Justice and Constitution Committee regarding The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 (“the Order”) which were laid in breach of the 21 day convention. You requested further clarification as to why a breach of the 21 day rule was necessary on this occasion.

The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 (“the first 2020 Order”) introduced temporary amendments to pre-application consultation procedures, Development of National Significant (DNS) submission requirements and Community Council consultation. The first 2020 Order prescribed an emergency period beginning with 19 May and ending with 18 September during which the temporary amendments would be in effect.

Following the laying of the first 2020 Order, restrictions introduced to manage the COVID-19 emergency began to be relaxed. This included increased freedom of movement of people and the reopening of public buildings. It was anticipated that by the summer months public buildings, and libraries in particular, would be widely accessible following successful phased openings across the country. Despite allowing the maximum time possible for local authorities to reopen public buildings, by the end of August it became apparent that local authorities were at different stages of preparedness and as such, a consistent approach to pre-application consultation across Wales could not be achieved if the emergency period were to lapse on 18 September.

We wanted a consistent approach to assist developers working across local authority boundaries, and help development proposals come forward at a time when creating momentum in economic development has been important. We have sought equal opportunities to engage in planning decisions. In order to ensure a consistent approach for developers and residents in Wales, we sought to renew the first 2020 Order and ensure there was no break in the emergency period.

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

As the time remaining before the expiration of the emergency period prescribed in the first 2020 Order was limited, in order to provide continuity, this regrettably meant breaching the 21 day convention.

Given the current situation regarding COVID-19, a further extension to the emergency period will be required and this work is in progress. I can assure the committee that this future Order will comply with the 21 day convention while ensuring the continuity of the temporary procedures. I have asked my Officials to advise on a long-term, permanent solution to address this issue. A consultation will be published in due course.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Agenda Item 12

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

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SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Environment Bill

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Environment Bill (the “Bill”) was introduced in the House of Commons on 30 January 2020 and consideration at House of Commons committee stage completed on 26 November. The Bill, as amended at Commons Committee stage can be found at:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0220/200220.pdf>

Policy Objectives

3. The UK Government’s stated policy objectives for this Bill are to provide a legal framework for environmental governance once the UK leaves the EU and to make provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs (Defra).
5. The Bill makes provisions about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
6. The clauses with particular relevance to matters within the legislative competence of the Senedd are:
 - Part 1 – Environmental Governance - Clause 19 (Statements about Bills containing new environmental law) and Clause 43 (Meaning of environmental law) in so far as it relates to clause 19

- Part 3 – Waste and Resource Efficiency – clauses 47 and 48 (Producer Responsibility) and Schedules 4 and 5, clauses 49 – 52 (Resource efficiency), clause 55 (Electronic wastes tracking: Great Britain), clause 57 (Hazardous waste England and Wales), clause 60 (Regulations under the Environmental Protection Act 1990), clause 61 (Powers to make charging schemes), clause 63 (Enforcement powers), clause 65 (Littering enforcement), clause 66 (Fixed Penalty notices), clause 67 (Regulation of polluting activities)
- Part 4 – Air quality and Environmental recall – clause 69 (Local air quality management framework), clause 70 (Smoke control areas: amendments of the Clean Air Act 1993)
- Part 5 – Water – clauses 75 and 76 (plans and proposals), clause 77 (Authority’s power to require information), clause 79 (Electronic service of documents), clause 81 (Water quality: powers of Secretary of State), clause 82 (Water quality: powers of Welsh Ministers), clause 85 (Water quality: interpretation), clauses 87 – 89 (Land drainage),
- Part 8 – Miscellaneous and General Provisions – Clause 125 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation)

Update on position since the publication of the first Legislative Consent Memorandum

7. We laid a legislative consent memorandum on 26 February 2020, based on the Bill as introduced 30 January 2020.
8. On 26 November, the Bill concluded its Commons Committee stage having been through 21 sessions where none of the 261 [non-government] amendments tabled were conceded. 77 Government amendments were made to the Bill, the majority of which were technical in nature, such as amendments to update the name change of the legislature in Wales from ‘Welsh Assembly’ to ‘Senedd Cymru’ following the coming into force of the name change provisions of the Senedd and Elections (Wales) Act 2020. Other Government amendments did not relate to the legislative competence of the Senedd.
9. A Government amendment for a provision covering ‘Use of forestry risk commodities in commercial activity’ was tabled on 11 November 2020.
10. Minister Pow wrote to me on 17 August 2020 to inform me of consultation taking place on proposals to establish a due diligence requirements on companies trading in the UK, to reduce the risk of illegal deforestation and land conversion within their supply chains. The UK Government sought to consider how and when to introduce such a provision before COP26.
11. In my response of 8 September 2020 I indicated that we are supportive of such a policy and recognised the risks of failure to shift to more

sustainable production of key commodities. I confirmed that we consider this provision is within competence.

12. Defra assert the provision relates to the reservation in section C1, paragraph 65 of Schedule 7A to GOWA 2006 – the creation, operation, regulation and dissolution of types of business association. However, we maintain the provision relates primarily to the environment, the protection of forestry environments and tackling climate change, all of which are devolved.
13. In correspondence dated 4 December, I confirmed my intention to lay a supplementary legislative consent memorandum.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

14. Clause 107: 'Use of forest risk commodities in commercial activity' which requires large businesses to ensure the 'forest risk' commodities they use, those which can cause wide-scale deforestation, have been produced legally.
15. The provision makes it illegal for businesses within scope to use, either in production or trade within the UK, forest risk commodities which have not been produced in accordance with relevant laws in the country where they are grown.
16. The provision places an obligation on businesses within scope to conduct due diligence to ensure that forest risk commodities which have not been legally produced do not enter their supply chain, and they should report on the exercise publicly.
17. The provision further enables the UK Government to levy fines and other civil sanctions against businesses which continue to use forest risk commodities which have not been produced legally or which do not have a robust system of due diligence in place.

Welsh Government position on the Bill as amended.

18. We acknowledge the amendment made at Commons Committee stage.
19. We support the policy position provided by the provision but disagree with Defra's contention that this provision falls within reserved competence as set out in Schedule 7A GOWA.
20. It is our view that these provisions, as drafted, make provision in relation to Wales for a purpose within the legislative competence of the Senedd. The clauses would be *relevant provision* for the purposes of Standing Order 29.1.

Financial implications

21. There are currently no additional financial implications for the Welsh Government or the Senedd as a result of taking these powers in this bill.

Conclusion

22. In our view it is appropriate to use this Bill as a vehicle to take forward initiatives likely to be required to progress the circular economy strategy, particularly where these require a joined up approach with other UK administrations. Similarly, the effective management of water quality and the regulation of chemicals post EU Exit are appropriate matters to be taken forward in this Bill. The proposed legislative changes in air quality and land drainage allow for the clarification of the Welsh Ministers' responsibilities or are administrative in nature and the Bill provides a timely opportunity to take these forward.

23. We are of the view that the additional provision relating to 'Use of forest risk commodities in commercial activity' falls within the competence of the Senedd and thus is a relevant provision for the purposes Standing Order 29.1 requiring a legislative consent memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
December 2020

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