Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 22 June 2020
Meeting time: 10.00

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

Informal pre-meeting (09:30-10:00)

1 Introduction, apologies, substitutions and declarations of interest

10:00

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

10:00-10:05

Negative Resolution Instruments

2.1 **SL(5)556 – The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**

(Pages 1 – 50)

CLA(5)-19-20 – Paper 1 – Report

CLA(5)-19-20 – Paper 2 – Regulations

CLA(5)-19-20 – Paper 3 – Explanatory Memorandum

CLA(5)-19-20 – Paper 4 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 8 June 2020

3 Paper(s) to note

10:05-10:10

3.1 **Letter from the First Minister: Senedd Cymru (Representation of the People) (Amendment) Order 2020**

(Pages 51 – 53)

CLA(5)-19-20 – Paper 5 – Letter from the First Minister, 15 June 2020

CLA(5)-19-20 – Paper 6 – Welsh Government written statement

3.2 **Letter from the Minister for Housing and Local Government: Draft regulations in relation to the 2020 Electoral Register**

(Pages 54 – 56)

CLA(5)-19-20 – Paper 7 – Letter from the Minister for Housing and Local Government, 16 June 2020

CLA(5)-19-20 – Paper 8 – Welsh Government written statement

3.3 **Letter from the Counsel General: Guidance on drafting legislation**

(Pages 57 – 91)

CLA(5)-19-20 – Paper 9 – Letter from the Counsel General, 17 June 2020

CLA(5)-19-20 – Paper 10 – Parts 2 and 3 of the Legislation (Wales) Act 2019: Guidance for preparing legislation

CLA(5)-19-20 – Paper 11 – Senedd and Elections (Wales) Act 2020: Guidance on the legislative drafting implications of Part 2

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

10:10

5 Legislative Consent Memorandum on the Environment Bill – consideration of draft report

10:10–10:40 (Pages 92 – 141)

CLA(5)-19-20 – Paper 12 – Draft report

CLA(5)-19-20 – Paper 13 – Letter from the Minister for Environment, Energy and Rural Affairs, 14 May 2020 (Revised)

6 Supplementary Legislative Consent Memorandum on the Agriculture Bill

10:40–10:50 (Pages 142 – 147)

CLA(5)-19-20 – Paper 14 – Legal Advice Note

Supplementary Legislative Consent Memorandum

Date of the next meeting – 29 June 2020

SL(5)556 – The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

Background and Purpose

These Regulations place a requirement on certain categories of people arriving in Wales:

- To provide information about where they will reside in Wales and other related matters;
- To isolate for a period of 14 days.

Subject to certain exceptions, regulation 4 requires persons arriving in Wales by ship or aircraft to provide information electronically to the Secretary of State. Where a person is accompanied by a child for whom they are responsible, they must also provide the child's information.

Regulations 7 and 8 require, subject to certain exceptions, the following categories of persons to isolate for a period of 14 days upon their arrival in Wales:

- A person arriving in Wales by ship or aircraft from outside the common travel area;
- A person arriving in Wales from the Republic of Ireland, the Channel Islands or the Isle of Man who has, within a period of 14 days ending with the person's arrival in Wales, arrived in the common travel area from a place outside that area;
- A person who arrives in Wales from elsewhere in the United Kingdom who has in the previous 14 days arrived from a place outside the common travel area.

Regulation 19 provides that the necessity and proportionality of these Regulations must be reviewed by the Welsh Ministers every 21 days. The first review must therefore take place by 29 June 2020, as the Regulations came into force on 8 June 2020.

Regulation 20 provides that these Regulations will expire at the end of the period of 12 months beginning with the day on which they come into force.

Procedure

Negative.

Technical Scrutiny

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

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

Regulation 9 states that regulations 7 and 8 do not apply to a person described in paragraph 1(1)(a) to (k) of Schedule 2, so long as the conditions in paragraph 2 of that Schedule are satisfied. The reference to paragraph 2 of Schedule 2 in relation 9(a) should instead refer to paragraph 1(2) of Schedule 2.

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

Regulation 17(10) states that "personal data" and "data protection legislation", as used in regulation 17(8), have the same meanings as in section 3 of the Data Protection Act 2018. However, this appears to be a cross-referencing error, as these terms are actually used in regulation 17(9) of the Regulations, rather than 17(8). For the sake of completeness, it should be noted that the reference to section 3 of the Data Protection Act 2018 is correct.

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

These Regulations were made on 5 June 2020 and came into force at 12:01am on 8 June 2020. They were laid before the Senedd at 11:00am on 8 June 2020. This means that the Regulations were laid before the Senedd after they had come into force, and also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

These Regulations are being introduced on the same timeline imposing the equivalent requirements in relation to England, Scotland and Northern Ireland as part of a UK-wide approach.

The Welsh Government explains in the Explanatory Memorandum to these Regulations that, in response to the COVID-19 pandemic, it considers that *"urgent action is needed to limit the number of cases of COVID-19 imported into the UK and ensure these will not have a material impact on the domestic incidence of the virus."* The Welsh Government states that this is particularly important as the rate of domestic infections slows.

Furthermore, the Welsh Government explains that, *"If legislation is delayed, people arriving in Wales in the short-term will not be required to isolate for 14 days and will not, therefore, be required to significantly reduce their social contact […]. Accordingly, the risk of them transmitting the virus onward to the domestic population is increased, if they have contracted it or are infectious. Any delay will also mean that people arriving in Wales are not required to provide their contact details which are needed to support contact tracing and thereby reduce transmission of the virus. Both measures are designed to reduce the incidence of COVID-19 in the UK. Delaying their implementation could materially increase the incidence of the disease in the UK just as the number of domestic cases is falling."*

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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum explains that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response and, as such, the need to put these Regulations in place urgently.

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

Paragraph 17(2)(b) of Schedule 2 to the Regulations defines *"sewerage licensee"* as the meaning given in section 17BA(6) and 219(1) of the Water Industry Act 1991. However, it is noted that the definition cannot be found in section 17BA of the 1991 Act, as section 4(1) of the Water Act 2014, which inserts section 17BA into the 1991 Act, is only partially in force. As such, section 17BA(6) has not yet been inserted into the 1991 Act. This leaves the reader heavily reliant on the footnote in the Regulations, which points them to the Water Act 2014.

The Welsh Government are asked to provide a response as to whether it knows when section 17BA(6) will be inserted into the Water Industry Act 1991 by the Water Act 2014 and whether, in the absence of this, consideration was given to including the full definition on the face of the Regulations.

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

By requiring certain categories of persons arriving in Wales to isolate at a specified address for 14 days, and to provide information about where they will reside in Wales and other related matters, the Regulations engage the right to private and family life under Article 8 of the Convention.

Article 8 is a qualified right and interference with this right is permitted where necessary in a democratic society in the interest of public safety or for the protection of health.

The necessity of the situation that has given rise to these Regulations is the likely basis relied upon to justify the interference with these rights as a proportionate means of achieving the legitimate aim of protecting the citizens of Wales. However, the Explanatory Memorandum does not contain an acknowledgement of or justification for the interference with human rights. The Committee would like to see the Welsh Government set out their justifications on how these Regulations engage but do not breach human rights.

Until the end of the transition period, the European Union Charter of Fundamental Rights will continue to apply in the United Kingdom. There are corresponding protections to those above contained in the Charter. Subject to the principle of proportionality, limitations which affect the rights under the Charter may be made if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

Implications arising from exiting the European Union

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

Government Response

A Welsh Government response is required to the technical points, and the third and fourth merits point.

Legal Advisers
Legislation, Justice and Constitution Committee
16 June 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 574 (W. 132)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in response to the danger to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. Section 45B of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of (amongst other things) preventing danger to public health from "vessels, aircraft, trains or other conveyances arriving at any place".

The Regulations place a requirement on certain categories of people arriving in Wales from outside the common travel area—

- to provide information about where they will reside in Wales and other related matters, and
- to isolate for a period of 14 days.

Regulation 4 requires persons arriving in Wales by ship or aircraft to provide information electronically to the Secretary of State. In practice this will be done by completing an online form on www.gov.uk for this purpose. Where a person is accompanied by a child for whom they are responsible, they must also provide the child's information.

Regulation 5 provides that a person must notify the Secretary of State of any changes to the information provided as soon as reasonably practicable. This will also be done using the same online facility.

Schedule 1 sets out the types of information required to be provided under regulation 4 or 5. This will be the information that must be included when filling in the online form.

In some cases the information required in Schedule 1 will depend on the circumstances (for example, under paragraph 1(d) the person must provide passport details or details of the other travel document that permits the person to travel if they do not possess a passport). Persons who fall into one of the categories set out in Part 1 of Schedule 2 are not required to provide information under regulations 4 and 5. If the person does not hold the information they do not have to provide it (regulation 6).

Regulations 7 and 8 require the following categories of persons to isolate for a period of 14 days upon their arrival in Wales—

(a) a person arriving in Wales by ship or aircraft from outside the common travel area,

(b) a person arriving in Wales from the Republic of Ireland, the Channel Islands or the Isle of Man who has, within a period of 14 days ending with the person's arrival in Wales, arrived in the common travel area from a place outside that area, or

(c) a person who arrives in Wales from elsewhere in the United Kingdom who has in the previous 14 days arrived from a place outside the common travel area.

These persons must not leave or be outside of the premises where they are isolating before the end of the last day of isolation (other than for reasons set out in regulation 10).

Regulation 8 further provides that where a person arrives in Wales from another part of the United Kingdom who has in the previous 14 days arrived from a place outside the common travel area, they must notify the Secretary of State prior to, or as soon as practicable after arriving in Wales, of the address at which they will reside (again using the online form).

Schedule 2 (introduced by regulation 9) sets out the categories of person who are exempt from the requirement to isolate. Regulation 10 provides that the requirement to isolate ceases to apply if the person travels to leave Wales (paragraph (3)), sets out the limited circumstances in which a person may be permitted to be temporarily outside the place at which they are isolating (paragraph (4)), permits a person to change the place where they are isolating if they have to do so for legal reasons or are otherwise unable to stay at the original place (paragraph (5)) and provides that the requirement to isolate does not apply to a person subject to certain requirements imposed under the Coronavirus Act 2020 or immigration legislation.

Regulation 13 provides police officers with powers to direct or remove persons to a place where they are

isolating if they reasonably suspect that the person is in breach of a requirement to isolate.

Regulation 14 provides that contravention of a requirement imposed by these Regulations is an offence, as is the obstruction of a person exercising functions under these Regulations. A person found guilty of an offence under these Regulations may be fined and there is no limit on the fine that may be imposed.

Regulation 16 provides that fixed penalties may be imposed on persons who are suspected of committing an offence under these Regulations as an alternative to prosecution. Where the alleged offence relates to a breach of a requirement to isolate the penalty is £1000, in other cases the penalty is £60 (£30 if paid within 14 days) rising each time a similar fixed penalty notice is issued up to a maximum of £1920.

Regulation 17 sets out the circumstances in which information provided under these Regulations (and equivalent Regulations made as respects England, Scotland or Northern Ireland) may be disclosed or used. Regulation 18 prevents information provided under these Regulations from being used to incriminate a person in proceedings for any offence other than one under these Regulations of the offence of making a false statement other than under oath.

The necessity and proportionality of these Regulations must be reviewed every 21 days (regulation 19).

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

WELSH STATUTORY INSTRUMENTS

2020 No. 574 (W. 132)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

Made	*5 June 2020*
Coming into force	*at 12.01 a.m. on 8 June 2020*
Laid before Senedd Cymru	*at 11.00 a.m. on 8 June 2020*

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

PART 1

General

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

(2) These Regulations come into force at 12.01 a.m. on 8 June 2020.

General interpretation

2.—(1) In these Regulations –

"child" ("*plentyn*") means a person under 18 years of age and any reference to an "adult" ("*oedolyn*") is to be interpreted accordingly;

(**1**) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

"coronavirus" ("*coronafeirws*") means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);

"Immigration Acts" ("*y Deddfau Mewnfudo*") has the meaning given by section 61 of the UK Borders Act 2007(**1**);

"immigration officer" ("*swyddog mewnfudo*") means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(**2**);

"passenger information" ("*gwybodaeth am deithiwr*") means the information specified in Schedule 1;

"premises" ("*mangre*") includes any garden, yard, passage, stair, garage, outhouse, or other appurtenance of such premises.

(2) For the purpose of these Regulations, a person has responsibility for a child if—

(a) the person has custody or charge of the child, or

(b) the person has parental responsibility for the child (within the meaning of the Children Act 1989)(**3**).

(3) In these Regulations—

"aircraft" ("*awyren*")(**4**);

"the common travel area" ("*yr ardal deithio gyffredin*")(**5**);

"port" ("*porthladd*")(**6**);

"ship" ("*llong*")(**7**),

have the same meaning as they have in the Immigration Act 1971.

PART 2

Requirement to provide information

Persons arriving from outside the common travel area

3.—(1) In this Part, references to "P" are to—

(**1**) 2007 c. 30. Section 61 was amended by section 73(5) of the Immigration Act 2014 (c. 22) and section 92(5) of the Immigration Act 2016 (c. 19).
(**2**) 1971 c. 77. Paragraph 1 was amended by paragraph 3 of Schedule 3 to the Health Protection Agency Act 2004 (c. 17), and by S.I. 1993/1813.
(**3**) 1989 c. 41.
(**4**) See section 33(1).
(**5**) See section 1(3). It provides that the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland are collectively referred to in that Act as "the common travel area".
(**6**) See section 33(1).
(**7**) See section 33(1).

(a) a person who arrives in Wales by ship or aircraft from a place outside the common travel area, or

(b) a person who—

(i) arrives in Wales by ship or aircraft from the Republic of Ireland, the Channel Islands or the Isle of Man, and

(ii) has, within the period of 14 days ending with the person's arrival, been in a place outside the common travel area.

(2) But references to P do not include a person described in Part 1 of Schedule 2.

Requirement to provide passenger information

4.—(1) P must submit the following information to the Secretary of State electronically as soon as reasonably practicable upon arriving in Wales, using a facility provided by the Secretary of State for this purpose—

(a) P's passenger information, and

(b) where P arrives in Wales accompanied by a child for whom P has responsibility, the child's passenger information.

(2) Where P arrives in Wales at a port—

(a) P must comply with paragraph (1) before leaving the port, and

(b) an immigration officer at the port must provide P with any assistance the officer considers necessary to enable P to comply with paragraph (1).

(3) P is not required to comply with paragraph (1) if the passenger information has, before P's arrival in Wales, been provided electronically to the Secretary of State using a facility provided by the Secretary of State for this purpose.

(4) But where paragraph (3) applies P must, if requested by an immigration officer to do so, provide the officer with evidence that the passenger information has been provided.

(5) Where P is a child in respect of whom passenger information has been provided by a person with responsibility for P in accordance with paragraph (1)(b), P is not required by paragraph (1)(a) to provide P's passenger information.

Requirement to notify changes to passenger information

5.—(1) Paragraph (2) applies where—

(a) P is required by regulation 7 or 8 to reside in (and not leave or be outside of) premises until

the end of the last day of P's isolation (within the meaning given by regulation 12), and

(b) before the end of that day, P's passenger information changes.

(2) Where this paragraph applies, P must provide updated passenger information to the Secretary of State electronically as soon as is reasonably practicable, using a facility provided by the Secretary of State for this purpose.

(3) Where P is a child for whom another person has responsibility—

(a) P is not required to provide updated passenger information under paragraph (2), and

(b) the other person is required to provide the updated passenger information on behalf of P.

Passenger information not in a person's possession or control

6. Nothing in regulation 4 or 5 requires a person to provide passenger information if the information is not within the person's possession or under the person's control.

PART 3

Requirement to isolate etc.

Requirement to isolate: arrivals from outside the United Kingdom

7.—(1) This regulation applies to a person ("P")—

(a) who arrives in Wales by ship or aircraft from a place outside the common travel area, or

(b) who—

(i) arrives in Wales by ship or aircraft from the Republic of Ireland, the Channel Islands or the Isle of Man, and

(ii) has, within the period of 14 days ending with the day of P's arrival in Wales, arrived in the common travel area from a place outside that area.

(2) P must—

(a) travel directly to specified premises in Wales suitable for P to reside in until the end of the last day of P's isolation, or

(b) travel directly to a part of the United Kingdom other than Wales.

(3) Where P travels to specified premises in Wales to reside in, as required by paragraph (2)(a), P may not leave or be outside the premises before the end of the last day of P's isolation unless—

(a) authorised by regulation 10(4) (temporary departure from premises) to do so, or

(b) this paragraph ceases to apply in relation to P by virtue of regulation 10(3) (leaving Wales).

(4) For the purposes of paragraphs (2) and (3), the specified premises are—

(a) the premises specified in P's passenger information as the premises at which P intends to reside for the purposes of this regulation (unless sub-paragraph (d) applies to P);

(b) if P is a person described in—

(i) paragraph 1(1)(a) to (k) of Schedule 2 who has not satisfied the conditions in paragraph 1(2) of that Schedule, or

(ii) paragraph 1(1)(l) of that Schedule,

premises at which P intends to reside for the purposes of this regulation;

(c) if P's passenger information does not specify premises at which P intends to reside for the purposes of this regulation, the premises arranged by P under paragraph (5);

(d) if P is subject to a requirement imposed under or by virtue of the Immigration Acts to reside at particular premises in Wales, those premises.

(5) Where P's passenger information does not specify premises at which P intends to reside for the purposes of this regulation, P must, as soon as is reasonably practicable—

(a) make arrangements to reside at premises in Wales suitable for P to reside in until the end of the last day of P's isolation, and

(b) notify the Secretary of State of the address of those premises electronically using a facility provided by the Secretary of State for this purpose.

(6) But where P arrived in Wales at a port, P must comply with the requirements of paragraph (5) before leaving the port.

(7) Where paragraph (5) applies, the Welsh Ministers must provide or secure the provision of such assistance as they consider necessary (if any) to ensure P is able to make the arrangements mentioned in paragraph (5)(a).

Requirement to isolate: arrivals from another part of the United Kingdom

8.—(1) This regulation applies to a person ("P") —

(a) who arrives in Wales from elsewhere in the United Kingdom, and

(b) has within the period of 14 days ending with the day of P's arrival in Wales, arrived in the common travel area from a place outside that area.

(2) But references to P do not include—

(a) a person—

(i) who arrives in Wales for the purpose of returning to the premises in Wales at which the person is residing for the purposes of regulation 7(3), and

(ii) who left Wales temporarily, for one or more of the reasons authorised by regulation 10(4);

(b) a person—

(i) who is required to reside at premises elsewhere in the United Kingdom by provision in Regulations made as respects England, Scotland or Northern Ireland (as the case may be) that are equivalent to these Regulations,

(ii) who is permitted to leave that other part of the United Kingdom temporarily by virtue of those Regulations, and

(iii) who remains in Wales for no longer than is necessary.

(3) P must—

(a) travel directly to premises in Wales that are suitable for P to reside in until the end of the last day of P's isolation, and

(b) may not leave or be outside the premises before the end of the last day of P's isolation unless—

(i) authorised by regulation 10(4) (temporary departure from premises) to do so, or

(ii) this paragraph ceases to apply in relation to P by virtue of regulation 10(3) (leaving Wales).

(4) P must also—

(a) before arriving in Wales, or

(b) as soon as practicable after arriving,

notify the Secretary of State of the address of the premises at which P intends to reside for the purposes of paragraph (3) electronically using a facility provided by the Secretary of State for this purpose.

Isolation requirements: exemptions

9. Regulations 7 and 8 do not apply to a person described in —

(a) paragraph 1(1)(a) to (k) of Schedule 2 who satisfies the conditions in paragraph 2 of that Schedule;

(b) paragraphs 2 to 36 of Schedule 2.

Isolation requirements: exceptions

10.—(1) This regulation applies where a person ("P") is required to reside in (and not leave or be outside of) premises in Wales by an isolation requirement.

(2) "Isolation requirement" in relation to P means a requirement imposed by—

(a) regulation 7(3);

(b) regulation 8(3)(b).

(3) An isolation requirement ceases to apply in relation to P if P leaves Wales, unless P is temporarily outside Wales for a purpose authorised by paragraph (4)(b) to (j).

(4) P may leave and be outside of the premises for as long as is necessary—

(a) to travel for the purpose of leaving Wales in the manner described by paragraph (3);

(b) to obtain basic necessities (including for other persons at the premises or any pets at the premises), where it is not possible or practicable—

(i) for another person at the premises to obtain them on P's behalf, or

(ii) to obtain them by delivery to the premises from a third party;

(c) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;

(d) to receive a health service provided by a registered medical practitioner, where the provision of the service was arranged before P's arrival in the United Kingdom;

(e) to assist a person receiving a health service described in paragraph (d), or to accompany that person if P is a child for whom the person has responsibility;

(f) to access veterinary services where—

(i) they are required urgently for a pet at the premises, and

(ii) it is not possible for another person at the premises to access those services;

(g) to carry out specified activities in relation to edible horticulture, but only if P is residing at the premises in connection with those activities;

(h) to avoid illness or injury or to escape a risk of harm;

(i) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;

(j) to access public services (including social services or victims' services) where—

(i) access to the service is critical to P's well-being, and

(ii) the service cannot be provided if P remains at the premises;

(k) for compassionate reasons, including to attend the funeral of—

(i) a member of P's family;

(ii) a close friend.

(5) Where—

(a) a legal obligation requires P to change the premises at which P resides for the purpose of an isolation requirement, or

(b) P is otherwise unable to remain at the premises at which P is residing for the purpose of an isolation requirement,

P may travel directly to alternative premises in Wales that are suitable for P to reside in until the end of the last day of P's isolation; and references in this Part to premises, in relation to an isolation requirement, are to be read accordingly.

(6) Where paragraph (5) applies, P must notify the Secretary of State of the address of the alternative premises electronically as soon as is reasonably practicable using a facility provided by the Secretary of State for this purpose.

(7) An isolation requirement does not apply in relation to any period during which P is—

(a) removed to, directed to go to or directed to remain at a place by an immigration officer, constable or public health officer under Schedule 21 to the Coronavirus Act 2020(**1**);

(b) detained at a place by virtue of a requirement imposed under the Immigration Acts.

(8) For the purposes of this regulation—

(a) "edible horticulture" ("*garddwriaeth fwytadwy*") means growing—

(i) protected vegetables grown in glasshouse systems,

(ii) field vegetables grown outdoors, including vegetables, herbs, leafy salads and potatoes,

(**1**) 2020 c. 7.

(iii) soft fruit grown outdoors or under cover,

(iv) trees that bear fruit,

(v) vines and bines, or

(vi) mushrooms;

"health service" ("*gwasanaeth iechyd*") means a service provided for or in connection with—

(i) the prevention, diagnosis or treatment of illness, or

(ii) the promotion or protection of public health;

"registered medical practitioner" ("*ymarferydd meddygol cofrestredig*") means a fully registered person within the meaning of the Medical Act 1983(**1**) who holds a licence to practise under that Act;

"specified activities" ("*gweithgareddau penodedig*"), in relation to edible horticulture, means—

(i) crop maintenance,

(ii) crop harvesting,

(iii) tunnel construction and dismantling,

(iv) irrigation installation and maintaining,

(v) crop husbandry,

(vi) packing and processing of crops on employers premises,

(vii) preparing and dismantling growing areas and media,

(viii) general primary production work in edible horticulture,

(ix) activities relating to supervising teams of horticulture workers.

Requirement on persons with responsibility for children

11. Where a requirement is imposed under regulation 7, 8 or 10 on a child, a person with responsibility for the child must take all reasonable measures to ensure that the child complies with the requirement.

Last day of isolation

12. For the purposes of regulations 7, 8 and 10, the last day of P's isolation is the last day of the period of 14 days beginning with the day on which P arrived in the common travel area from a place outside that area.

(**1**) 1983 c. 54. see section 55(1). The definition of "fully registered person" was amended by S.I. 2006/1914, S.I. 2007/3101 and S.I. 2008/1774

PART 4

Enforcement and offences

Enforcement of requirement to isolate

13.—(1) Where a constable has reasonable grounds for suspecting that a person ("P") is contravening regulation 7(3) or 8(3)(b), the constable may—

(a) direct P to return to the premises where P is residing,

(b) remove P to the premises, or

(c) where it is not practicable or appropriate in the circumstances to take the action in sub-paragraph (a) or (b), remove P to premises secured by the Welsh Ministers which are suitable for P to reside in for the purposes of regulation 7(3) or 8(3)(b).

(2) A constable exercising the power in paragraph (1)(b) or (c) may use reasonable force, if necessary, in the exercise of the power.

(3) Where P is a child accompanied by a person who has responsibility for the child—

(a) the constable may direct the person with that responsibility to take the child to the premises where the child is residing, and

(b) the person must, so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the constable to the child.

(4) A constable may take such other action as the constable considers necessary and proportionate to facilitate the exercise of a power conferred on the constable by this regulation.

(5) A constable may not exercise a power conferred on the constable by this regulation unless the constable considers that it is necessary and proportionate to do so.

Offences

14.—(1) An adult who contravenes a requirement in regulation—

(a) 4(1) or (4),

(b) 5(2),

(c) 7(2), (3) or (5),

(d) 8(3) or (4),

(e) 10(6), or

(f) 11,

commits an offence.

(2) It is an offence for an adult to provide false or misleading information to the Secretary of State for the

purposes of regulation 4, 5, 7(5), 8(4) or 10(6) where—

(a) the person knows the information is false or misleading, or

(b) the person is reckless as to whether the information is false or misleading.

(3) An adult who fails to comply with a direction given by a constable under regulation 13 commits an offence.

(4) An adult who intentionally obstructs any person exercising functions under these Regulations commits an offence.

(5) It is a defence to a charge of committing an offence under paragraph (1) or (3) to show that the person had a reasonable excuse for the contravention, or failure to comply, in question.

(6) A person who commits an offence under this regulation is liable on summary conviction to a fine.

(7) Section 24 of the Police and Criminal Evidence Act 1984(**1**) applies in relation to an offence under this regulation as if the reasons in subsection (5) of that section included—

(a) to maintain public health;

(b) to maintain public order.

Prosecutions

15. No proceedings for an offence under these Regulations may be brought other than by the Director of Public Prosecutions or any person designated by the Welsh Ministers.

Fixed penalty notices

16.—(1) An immigration officer may issue a fixed penalty notice to any adult the officer reasonably believes has committed an offence—

(a) under regulation 14(1) or (2)—

(i) in relation to a requirement in regulation 4(1) or (4), 5(2) or 7(5), or

(ii) in relation to a contravention of the requirement in regulation 11 which relates to the requirement in regulation 7(5), or

(b) under regulation 14(4) where the person is believed to have intentionally obstructed a person carrying out a function in relation to one of those requirements.

(**1**) 1984 c. 60. Section 24 was substituted by s.110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).

(2) A constable may issue a fixed penalty notice to any adult the constable reasonably believes has committed an offence under these Regulations.

(3) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

(a) the Welsh Ministers, or

(b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation.

(4) Where a person is issued with a notice under this regulation in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 28 days beginning with the date the notice is issued;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A fixed penalty notice must—

(a) describe the circumstances alleged to constitute the offence,

(b) state the period during which (because of paragraph (4)(a)) proceedings will not be taken for the offence,

(c) specify the amount of the fixed penalty,

(d) state the name and address of the person to whom the fixed penalty may be paid, and

(e) specify permissible methods of payment.

(6) Where the fixed penalty notice is issued in respect of an offence—

(a) of contravening a requirement imposed by regulation 7(2) or (3), 8(3) or 11,

(b) under regulation 14(3), or

(c) under regulation 14(4) where the person is believed to have intentionally obstructed a person carrying out a function in relation to regulation 7(2) or (3), 8(3) or 11,

the amount specified under paragraph (5)(c) must be £1000.

(7) Where the fixed penalty notice is issued in respect of an offence (an "information or notification offence")—

(a) of contravening a requirement imposed by regulation 4(1) or (4), 5(2), 7(5), 8(4) or 10(6), or

(b) under regulation 14(4) where the person is believed to have intentionally obstructed a person carrying out a function in relation to one of those requirements,

the amount specified under paragraph (5)(c) must be £60 (subject to paragraphs (8) and (9)).

(8) A fixed penalty notice issued in respect of an information or notification offence may specify that if £30 is paid before the end of the period of 14 days beginning with the day after the date the notice is issued, that is the amount of the fixed penalty.

(9) But if the person to whom a fixed penalty notice in respect of an information or notification offence is issued has already received a fixed penalty notice in respect of such of such an offence—

(a) paragraph (8) does not apply, and

(b) the amount specified as the fixed penalty is to be—

(i) in the case of the second fixed penalty notice received, £120;

(ii) in the case of the third fixed penalty notice received, £240;

(iii) in the case of the fourth fixed penalty notice received, £480;

(iv) in the case of the fifth fixed penalty notice received, £960;

(v) in the case of the sixth and any subsequent fixed penalty notice received, £1920.

(10) Whatever other method may be specified under paragraph (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(11) Where a letter is sent as mentioned in paragraph (10), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(12) In any proceedings, a certificate that—

(a) purports to be signed by or on behalf of—

(i) the Welsh Ministers, or

(ii) a person designated by the Welsh Ministers under paragraph (3)(b), and

(b) states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

PART 5

Information sharing

Use and disclosure of information

17.—(1) In this regulation and regulation 18, "relevant information" means—

(a) Welsh passenger information;

(b) other UK passenger information.

(2) For the purposes of this regulation—

(a) "Welsh passenger information" means—

(i) passenger information provided to the Secretary of State for the purpose of regulation 4 or 5;

(ii) information provided to the Secretary of State in a notification given under regulation 7(5)(b), 8(4) or 10(6);

(b) "other UK passenger information" means information provided to a person under provision in Regulations made as respects England, Scotland or Northern Ireland (as the case may be) that is equivalent to provision mentioned in sub-paragraph (a).

(3) In this regulation, any reference to the holder of information is a reference to—

(a) the Secretary of State;

(b) a person to whom the information was disclosed under paragraph (4) or (5).

(4) The holder of Welsh passenger information may disclose it to another person (the "recipient") in circumstances where it is necessary for the recipient to have the information—

(a) for the purpose of carrying out a function of the recipient under—

(i) these Regulations, or

(ii) Regulations made as respects England, Scotland or Northern Ireland (as the case may be) that are equivalent to these Regulations;

(b) for the purpose of—

(i) preventing danger to public health as a result of the spread of infection or contamination with coronavirus,

(ii) monitoring the spread of infection or contamination with coronavirus, or

(iii) giving effect to any international agreement or arrangement relating to the spread of infection or contamination with coronavirus;

(c) for a purpose connected with, or otherwise incidental to, a purpose described in sub-paragraph (a) or (b).

(5) The holder of other UK passenger information may disclose it to another person (the "recipient") in circumstances where it is necessary for the recipient to have the information—

(a) for the purpose of carrying out a function of the recipient under these Regulations;

(b) for the purpose of—

(i) preventing danger to public health in Wales as a result of the spread of infection or contamination with coronavirus,

(ii) monitoring the spread of infection or contamination with coronavirus in Wales, or

(iii) giving effect in Wales to any international agreement or arrangement relating to the spread of infection or contamination with coronavirus;

(c) for a purpose connected with, or otherwise incidental to, a purpose described in sub-paragraph (a) or (b).

(6) A holder of relevant information may not use the information otherwise than—

(a) for the purpose of carrying out a function of the holder under these Regulations;

(b) in the case of Welsh passenger information, for a purpose described in paragraph (4)(b);

(c) in the case of other UK passenger information, for a purpose described in paragraph (5)(b);

(d) for a purpose connected with, or otherwise incidental to, a purpose described in sub-paragraph (a), (b) or (c).

(7) Despite paragraphs (4), (5) and (6), this regulation does not limit the circumstances in which information may otherwise lawfully be disclosed or used under any other enactment or rule of law.

(8) Disclosure which is authorised by this regulation does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(9) Nothing in this regulation authorises the disclosure of personal data where doing so contravenes the data protection legislation.

(10) In paragraph (8), "data protection legislation" and "personal data" have the same meanings as in section 3 of the Data Protection Act 2018(**1**).

Self-incrimination

18.—(1)Relevant information may be used in evidence against the person to whom the information relates in criminal proceedings.

(2) Where the information is used in proceedings other than for an offence under these Regulations or section 5 of the Perjury Act 1911(**2**) (false statements made otherwise than on oath)—

(a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and

(b) no question relating to the information may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if, in the proceedings—

(a) evidence relating to the information is adduced by or on behalf of the person who provided it, or

(b) a question relating to the information is asked by or on behalf of that person.

PART 6

Review and expiry

Review of requirements

19. The Welsh Ministers must review the need for the requirements imposed by these Regulations, and whether those requirements are proportionate to what the Welsh Ministers seek to achieve by them—

(a) by 29th June 2020,

(b) at least once in the period of 21 days beginning with the day after that date, and

(c) at least once in every subsequent period of 21 days.

Expiry of Regulations

20.—(1) These Regulations expire at the end of the period of 12 months beginning with the day on which they come into force.

(**1**) 2018 c. 12.
(**2**) 1911 c. 6. Section 5 was amended by section 1(2) of the Criminal Justice Act 1948 (c. 58).

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

Mark Drakeford
The First Minister, one of the Welsh Ministers
5 June 2020

SCHEDULE 1 Regulation 2(1)

Passenger information

1. Personal details—

(a) full name,

(b) sex,

(c) date of birth,

(d) passport number, or travel document reference number (as appropriate), issue and expiry dates and issuing authority,

(e) telephone number,

(f) home address,

(g) email address.

2. Journey details—

(a) if applicable, the address of suitable premises in Wales at which P intends to reside as required by regulation 7(3),

(b) if applicable, the address of suitable premises in the United Kingdom at which P intends to reside as required by equivalent provision in Regulations made as respects England, Scotland or Northern Ireland,

(c) the date, or planned date, as appropriate of arrival at an address specified in sub-paragraph (a) or (b),

(d) the operator P is travelling, or travelled, with or through which P's booking was made,

(e) travel booking reference,

(f) flight number, train number, or ticket number (as appropriate),

(g) the name of any organised travel group with whom P is travelling, or travelled,

(h) the location at which P will arrive, or has arrived, in the United Kingdom,

(i) the country P is travelling, or travelled, from,

(j) the date and time, or planned date and time, as appropriate, of P's arrival in the United Kingdom,

(k) whether P is connecting through the United Kingdom to a destination outside the United Kingdom and, if so—

(i) the location at which P will depart from in the United Kingdom,

(ii) P's final destination country,

(iii) the operator P is travelling with or through which the booking was made for the onward journey,

(iv) the travel booking reference for the onward journey,

(v) the flight number, train number, or ticket number (as appropriate) of the onward journey.

3. Whether the person providing passenger information is doing so on behalf of another person.

4. Where P is travelling with a child for whom they have responsibility—

(a) the full name and date of birth of that child,

(b) the relationship of the passenger to that child.

5. The full name and telephone number of an emergency contact.

SCHEDULE 2 Regulations 3(2), 7(4)(b) and 9

Persons not required to comply with regulation 3 or 4

PART 1

Persons not required to comply with regulation 3 or regulation 4

1.—(1) A person ("P") who is—

(a) a member of a diplomatic mission in the United Kingdom;

(b) a member of a consular post in the United Kingdom;

(c) an officer or servant of an international organisation;

(d) employed by an international organisation as an expert or on a mission;

(e) a representative to an international organisation;

(f) a representative at an international or United Kingdom conference who is granted privileges and immunities in the United Kingdom;

(g) a member of the official staff of a representative to an international organisation, or of a person falling within paragraph (f);

(h) described in paragraph (a) or (b) who is passing through the United Kingdom commence or continue their functions at a diplomatic mission or consular post in another country or territory, or to return to the country of their nationality;

(i) a representative of a foreign country or territory travelling to the United Kingdom to conduct official business with the United Kingdom;

(j) a representative of the government of a British overseas territory;

(k) a diplomatic courier or a consular courier;

(l) a member of the family forming part of the household of a person falling within any of paragraphs (a) to (k).

(2) The conditions referred to in regulation 9(a) (persons exempt from regulation 7 or 8) are that—

(a) the relevant head of the mission, consular post, international organisation, or conference, office representing a foreign territory in the United Kingdom or a Governor of a British

overseas territory (as the case may be), or a person acting on their authority, confirms in writing to the Foreign and Commonwealth Office that—

(i) P is required to undertake work which is essential to the functioning of the mission, consular post, international organisation, conference, or office, or to undertake work which is essential to the foreign country represented by the mission or consular post, the foreign territory represented by the office or the British overseas territory and

(ii) that work cannot be undertaken whilst P is complying with regulation 7 or 8, and

(b) prior to P's arrival in the United Kingdom the Foreign and Commonwealth Office—

(i) has confirmed in writing to the person giving the confirmation referred to in paragraph (a) that it has received that confirmation, and

(ii) where P is a representative of a foreign country or territory, has then confirmed in writing to the person giving the confirmation referred to in paragraph (a) that P is travelling to the United Kingdom to conduct official business with the United Kingdom and is not required to comply with regulation 7 or 8.

(3) For the purposes of this paragraph—

(a) "consular courier" means a person who has been provided by the State on behalf of which they are acting with an official document confirming their status as a consular courier in accordance with Article 35(5) of the Vienna Convention on Consular Relations of 1963,

(b) "consular post" means any consulate-general, consulate, vice-consulate or consular agency,

(c) "diplomatic courier" means a person who has been provided by the State on behalf of which they are acting with an official document confirming their status as a diplomatic courier in accordance with Article 27(5) of the Vienna Convention on Diplomatic Relations of 1961,

(d) "international organisation" means an international organisation accorded privileges and immunities in the United Kingdom,

(e) "member of a consular post" means a "consular officer", "consular employee" and "member of the service staff" as defined in Schedule 1 to the Consular Relations Act

1968(**1**), and head of consular post" has the meaning given in that Schedule,

(f) "member of a diplomatic mission" means the "head of the mission", "members of the diplomatic staff", "members of the administrative and technical staff" and "members of the service staff" as defined in Schedule 1 to the Diplomatic Privileges Act 1964(**2**).

(4) This paragraph is without prejudice to any immunity from jurisdiction or inviolability which is accorded to any person described in sub-paragraph (1) under the law of England and Wales apart from these Regulations.

2.—(1) A Crown servant or government contractor—

(a) who is required to undertake essential government work related to the United Kingdom border in the United Kingdom within 14 days of arriving in the United Kingdom, or

(b) who is undertaking essential government work related to the United Kingdom border outside the United Kingdom but—

(i) is required to return to the United Kingdom temporarily, and

(ii) will subsequently depart to undertake essential government work related to the United Kingdom border outside the United Kingdom.

(2) For the purposes of sub-paragraph (1) and paragraph 3—

(a) "Crown servant" has the meaning given in section 12(1)(a) to (e) of the Official Secrets Act 1989(**3**);

(b) "essential government work" means work which has been designated as such by the relevant Department or employer;

(c) "government contractor" has the meaning given in section 12(2) of that Act.

(**1**) 1968 c. 18. There are amendments but none is relevant.
(**2**) 1964 c. 81. There are amendments but none is relevant.
(**3**) 1989 c. 6. Section 12 was amended by paragraph 22 of Schedule 10 to the Reserve Forces Act 1996 (c. 14), by paragraph 30 of Schedule 12 to the Government of Wales Act 1998 (c. 38), by paragraph 26 of Schedule 8 to the Scotland Act 1998 (c. 46), by paragraph 9(3) of Schedule 13 to the Northern Ireland Act 1998 (c. 47), by paragraph 9 of Schedule 6 to the Police (Northern Ireland) Act 2000 (c. 32), by paragraph 6 of Schedule 14 to the Energy Act 2004 (c. 20), by paragraph 58 of Schedule 4 to the Serious Organised Crime and Police Act 2005, by paragraph 34 of Schedule 10, and paragraph 1 of Schedule 12, to the Government of Wales Act 2006 (c. 32) and by paragraph 36 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).

3.—(1) A person who is a Crown servant, a government contractor, or a member of a visiting force, who—

(a) is required to undertake work necessary to the delivery of essential defence activities, or

(b) has, immediately before the person's arrival, been aboard a vessel operated by or in support of Her Majesty's Naval Service for a continuous period of at least 14 days and that vessel has not taken on any persons or docked in any port outside the common travel during that period.

(2) For the purposes of sub-paragraph (1)—

(a) "defence" has the meaning given in section 2(4) of the Official Secrets Act 1989(**1**),

(b) "visiting force" means a visiting force within the meaning given in section 12(1) of the Visiting Forces Act 1952(**2**), where that force is from a country which is listed under section 1(1)(a) or designated under section 1(1)(b) or 1(2) of the Visiting Forces Act 1952(**3**), or which is a country member of the North Atlantic Treaty Organisation.

4. An official of a foreign Government required to travel to the United Kingdom to undertake essential border security duties, or a contractor directly supporting these essential border security duties where—

(a) the official or contractor is in possession of a written notice signed by a senior member of the foreign Government confirming that they are required to undertake essential border security duties in the United Kingdom within 14 days of arrival and that that work cannot be undertaken whilst the person is complying with regulation 7 or 8, or

(b) the official's or contractor's deployment is pursuant to a standing bilateral or multilateral agreement with Her Majesty's Government on

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(**1**) 1989 c. 6.

(**2**) 1952 c. 67. The definition of "visiting force" in section 12(1) was amended by paragraph 14(1) of Schedule 15 to the Criminal Justice Act 1988 (c. 33).

(**3**) Section 1(a) has been amended numerous times. The countries listed are: Canada, Australia, New Zealand, South Africa, India, Pakistan, Ceylon, Ghana, Malaysia, the Republic of Cyprus, Nigeria, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, Kenya, Zanzibar, Malawi, Zambia, Malta, The Gambia, Guyana, Botswana, Lesotho, Singapore, Barbados, Mauritius, Swaziland, Tonga, Fiji, the Bahamas, Bangladesh, Solomon Islands, Tuvalu, Dominica, St. Lucia, Kiribati, St Vincent and the Grenadines, Papua New Guinea, Western Samoa and Nauru, Zimbabwe, the New Hebrides, Belize, Antigua and Barbuda, Saint Christopher and Nevis, Brunei, Maldives, Namibia, Cameroon and Mozambique.

the operation of border controls within the United Kingdom.

PART 2

Persons not required to comply with regulation 4

5. A person who, on arrival in the United Kingdom, passes through to another country or territory without entering the United Kingdom.

6.—(1) A road haulage worker or a road passenger transport worker.

(2) For the purposes of this paragraph—

(a) "driver" includes a person who is travelling in a vehicle as a relief driver,

(b) "goods vehicle" has the meaning given in section 192 of the Road Traffic Act 1988(**1**),

(c) "public service vehicle" has the meaning given in section 1 of the Public Passenger Vehicles Act 1981(**2**),

(d) "road haulage worker" means—

(i) the driver of a goods vehicle that is being used in connection with the carriage of goods, other than goods for non-commercial personal use by the driver, or

(ii) a person who is employed by the holder of a Community licence issued under Article 4 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council(**3**), and who is acting in the course of their employment,

(e) "road passenger transport worker" means—

(i) the driver of a public service vehicle, or

(ii) a person who is employed by the holder of a Community licence issued under Article 4 of Regulation (EC) No 1073/2009 of the European Parliament and of the Council(**4**), and who is acting in the course of their employment.

7.—(1) Masters and seamen, as defined in section 313(1) of the Merchant Shipping Act 1995(**5**), where they have travelled to the United Kingdom in the course of their work or have been repatriated to the

(**1**) 1988 c. 52. There are amendments to section 192 but none is relevant.
(**2**) 1981 c. 14. Section 1 was amended by section 139(3) of the Transport Act 1985 (c. 67).
(**3**) OJ No. L 300, 14.11.2009, p. 72.
(**4**) OJ No. L 300, 14.11.2009, p. 88.
(**5**) 1995 c. 21. There are amendments to section 313(1) but none is relevant.

United Kingdom in accordance with the Maritime Labour Convention 2006 or the Work in Fishing Convention 2007.

(2) For the purposes of sub-paragraph (1) and paragraph 8—

(a) "the Maritime Labour Convention 2006" means the Convention adopted on 23 February 2006 by the General Conference of the International Labour Organisation(**1**),

(b) "the Work in Fishing Convention 2007" means the Convention adopted at Geneva on 14 June 2007 by the International Labour Organisation(**2**).

8. A pilot, as defined in paragraph 22(1) of Schedule 3A to the Merchant Shipping Act 1995(**3**), where the pilot has travelled to the United Kingdom in the course of the pilot's work or has been repatriated to the United Kingdom in accordance with the Maritime Labour Convention 2006 or the Work in Fishing Convention 2007.

9. An inspector or a surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995(**4**), where they have travelled to the United Kingdom in the course of their work.

10. A person falling within the definition of crew, in paragraph 1 of Schedule 1 to the Air Navigation Order 2016(**5**), where the person has travelled to the United Kingdom in the course of their work.

11. A civil aviation inspector as defined in Annex 9 to the Convention on International Civil Aviation signed at Chicago on 7 December 1944(**6**), where the inspector has travelled to the United Kingdom when engaged on inspection duties.

12.—(1) Any of the following persons who have travelled to the United Kingdom in the course of their work—

(a) drivers and crews on shuttle services and on services for the carriage of passengers or goods by way of the tunnel system,

(b) operational, rail maintenance, safety and security workers working on the tunnel system,

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(**1**) Cm. 7049. ISBN 978 010 1889 766.
(**2**) Cm 7375.
(**3**) Schedule 3A was inserted by Schedule 1 to the Marine Safety Act 2003 (c. 16).
(**4**) There are amendments to section 256 but none is relevant.
(**5**) S.I. 2016/765. There are amendments to Schedule 1 but none is relevant.
(**6**) The latest edition of Annex 9, which is published by the International Civil Aviation Organization, is the 15th edition, which applied from 23 February 2018 (ISBN 978-92-9258-301-9).

(c) other workers carrying out essential roles for the safe or efficient operation of the tunnel system, shuttle services or services for the carriage of passengers or goods by way of the tunnel system, or relating to the security of the tunnel system or any such services.

(2) For the purposes of sub-paragraph (1)—

(a) "shuttle service" has the meaning given in section 1(9) of Channel Tunnel Act 1987(**1**),

(b) "tunnel system" has the meaning given in section 1(7) of that Act.

13.—(1) A Crown servant or government contractor—

(a) who is required to undertake essential policing or essential government work in the United Kingdom within 14 days of arriving, or

(b) who is undertaking essential policing or essential government work outside the United Kingdom but—

(i) is required to return to the United Kingdom temporarily,

(ii) will subsequently depart to undertake essential policing or essential government work outside the United Kingdom, or

(c) who is conducting bi-lateral or multilateral discussions with another state or international organisation.

(2) For the purposes of sub-paragraph (1)—

(a) "Crown servant" has the meaning given in section 12(1)(a) to (e) of the Official Secrets Act 1989,

(b) "essential government work" means work that has been designated as such by the Welsh Ministers or the relevant Department or employer, and includes, in particular, work related to national security, the work of the National Crime Agency in pursuance of its statutory functions, immigration, coronavirus and any other crisis response, but does not include work of the kind specified in paragraph 2(1) of Part 1 of this Schedule,

(c) "essential policing" means policing that has been designated as such by the relevant chief officer or chief constable,

(d) "government contractor" has the meaning given in section 12(2) of the Official Secrets Act 1989.

(**1**) 1987 c. 53.

14. A person designated by the relevant Minister under section 5(3) of the Repatriation of Prisoners Act 1984(**1**).

15. A person responsible for escorting a person sought for extradition pursuant to a warrant issued under Part 3 of the Extradition Act 2003(**2**) or sought for extradition pursuant to any other extradition arrangements.

16. A representative of any territory travelling to the United Kingdom in order to take into custody a person whose surrender has been ordered pursuant to any provision of the Extradition Act 2003.

17.—(1) A worker engaged in essential or emergency works—

(a) related to water supplies and sewerage services, and

(b) carried out by, for, or on behalf of a water undertaker, sewerage undertaker, water supply licensee, sewerage licensee or local authority,

where the worker has travelled to the United Kingdom in the course of the work.

(2) For the purposes of sub-paragraph (1)—

(a) "essential or emergency works" includes—

(i) inspections, maintenance, repairs, and asset replacement activities,

(ii) monitoring, sampling and analysis of water supplies under the Private Water Supplies (Wales) Regulations 2017(**3**), the Water Supply (Water Quality) Regulations 2018(**4**), the Private Water Supplies (England) Regulations 2016(**5**) or the Water Supply (Water Quality) Regulations 2016(**6**),

(b) "sewerage licensee" has the meaning given in section 17BA(6) and 219(1) of the Water Industry Act 1991(**7**),

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(**1**) 1984 c. 47.
(**2**) 2003 c. 41.
(**3**) S.I. 2017/1041 (W. 270); amended by S.I. 2018/647 (W. 121), S.I. 2019/460 (W. 110) and S.I. 2019/463 (W. 111).
(**4**) S.I. 2018/647 (W. 121); amended by S.I. 2019/463 (W. 111).
(**5**) S.I. 2016/618; relevant amending instruments are S.I. 2017/506, S.I. 2018/707 and S.I. 2019/558.
(**6**) S.I. 2016/614; relevant amending instruments are S.I. 2017/506, S.I. 2018/706, S.I. 2018/378, S.I. 2019/526 and S.I. 2019/558.
(**7**) 1991 c. 56. Section 17BA(6) was inserted by section 4(1) of the Water Act 2014 (c. 21). The reference to "sewerage licensee" was inserted in section 219(1) by paragraph 120(2)(f) of Schedule 7 to the Water Act 2014.

(c) "sewerage services" has the meaning given in section 219(1) of the Water Industry Act 1991(**1**),

(d) "sewerage undertaker" means a company appointed as a sewerage undertaker under section 6 of the Water Industry Act 1991(**2**),

(e) "water supply licensee" has the meaning given in sections 17A(7) and 219(1) of the Water Industry Act 1991(**3**),

(f) "water undertaker" means a company appointed as a water undertaker under section 6 of the Water Industry Act 1991.

18.—(1) A worker engaged in essential or emergency works—

(a) related to—

(i) a generating station,

(ii) an electricity interconnector,

(iii) a district heat network as defined in regulation 2 of the Heat Network (Metering and Billing) Regulations 2014(**4**),

(iv) communal heating as defined in regulation 2 of the Heat Network (Metering and Billing) Regulations 2014,

(v) automated ballast cleaning and track re-laying systems on a network, or

(vi) the commissioning, maintenance and repair of industrial machinery for use on a network, or

(b) carried out by, for, or on behalf of—

(i) the national system operator,

(ii) a person holding a transmission licence,

(iii) a person holding a distribution licence,

(iv) a person holding a licence under section 7 and 7ZA of the Gas Act 1986(**5**),

(v) a LNG import or export facility as defined in section 48 of the Gas Act 1986(**6**), or

(vi) a person holding a network licence under section 8 of the Railways Act 1993,

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(**1**) The definition of "sewerage services" was amended by paragraph 120 of Schedule 7 to the Water Act 2014.
(**2**) Section 6 was amended by section 36(2) of and Schedule 8 to the Water Act 2003 (c. 37), Schedule 23 to the Deregulation Act 2015 (c. 20), and Schedule 7 to the Water Act 2014.
(**3**) Section 17A was inserted by section 1 of the Water Act 2014.
(**4**) S.I. 2014/3120. There are no relevant amending instruments.
(**5**) 1986 c. 44. Section 7ZA was inserted by section 149(6) of the Energy Act 2004.
(**6**) The definition was inserted by S.I. 2011/2704.

where the worker has travelled to the United Kingdom for the purposes of the work.

(2) For the purposes of sub-paragraph (1)—

(a) "distribution licence" means a licence granted under section 6(1)(c) of the Electricity Act 1989(**1**),

(b) "essential or emergency works" includes commissioning, inspections, maintenance, repairs, and asset replacement activities,

(c) "national system operator" means the person operating the national transmission system for Great Britain,

(d) "network" has the meaning given in section 83(1) of the Railways Act 1993(**2**),

(e) "transmission licence" means a licence granted under section 6(1)(b) of the Electricity Act 1989,

(f) "electricity interconnector", "generating station" and "transmission system" have the meanings given in section 64(1) of the Electricity Act 1989(**3**).

19.—(1) A person who is—

(a) nuclear personnel, and who is essential to the safe and secure operation of a site in respect of which a nuclear site licence has been granted,

(b) a nuclear emergency responder,

(c) an agency inspector, or

(d) a Euratom inspector, provided that the inspector arrives in the United Kingdom before implementation period completion day,

where the person travelled to the United Kingdom in the course of the person's work.

(2) For the purposes of sub-paragraph (1)—

(a) "agency inspector" has the meaning given in section 1(1) of the Nuclear Safeguards Act 2000(**4**),

(b) "nuclear emergency responder" means a person providing assistance to the United Kingdom in accordance with the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency done at Vienna on 26 September 1986, who has been

(**1**) 1989 c. 29.
(**2**) 1993 c. 43. There are amendments to section 83(1) but none is relevant.
(**3**) The definition of "electricity interconnector" was inserted by section 147(7) of the Energy Act 2004. The definition of "transmission system" was substituted by paragraph 15 of Schedule 19 to the 2004 Act.
(**4**) 2000 c. 5

duly notified to and accepted by the United Kingdom, where the United Kingdom has requested assistance under that Convention,

(c) "Euratom inspector" means an inspector sent to the United Kingdom by the Commission of the European Union in accordance with Articles 81 and 82 of the Euratom Treaty,

(d) "nuclear personnel" means—

(i) a worker who is employed to carry out work on or in relation to a site in respect of which a nuclear site licence has been granted, or

(ii) an employee of the Nuclear Decommissioning Authority(**1**),

(e) "nuclear site licence" has the meaning given in section 1 of the Nuclear Installations Act 1965(**2**).

20. An inspector from the Organisation for the Prohibition of Chemical Weapons, within the meaning given to "inspector" by section 24(e) of the Chemical Weapons Act 1996(**3**), who has travelled to the United Kingdom for the purposes of an inspection.

21.—(1) A person —

(a) carrying out a critical function at a space site,

(b) is a spacecraft controller who is responsible for command and control of a launch vehicle or spacecraft for nominal operations, collision avoidance or anomalies, or

(c) employed by, or contracted to provide services to, a person who operates or maintains space situational awareness capabilities,

where the person has travelled to the United Kingdom in the course of the work.

(2) For the purposes of sub-paragraph (1)—

(a) "space site" has the meaning given in paragraph 5(3) of Schedule 4 to the Space Industry Act 2018(**4**),

(b) "space situational awareness capabilities" means the sensors, systems and analytical services needed to provide time-sensitive warnings of space weather events, orbital collisions, orbital fragmentations or the re-entry of man-made objects from orbit,

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(**1**) The Nuclear Decommissioning Authority was established by section 1 of the Energy Act 2004.

(**2**) 1965 c. 57. Section 1 was substituted by paragraph 17 of Schedule 2 to the Energy Act 2013 (c. 32); by virtue of section 1(2), a licence described in section 1(1) is referred to as a "nuclear site licence".

(**3**) 1996 c. 6.

(**4**) 2018 c. 5.

(c) "spacecraft" has the meaning given in section 2(6) of the Space Industry Act 2018,

(d) "spacecraft controller" means a person competent, authorised and responsible for maintaining the safe and secure operation of spacecraft through monitoring the status of a spacecraft, issuing manoeuvre commands or controlling other aspects of the spacecraft that influence its behaviour including its motion in space.

22.—(1) A specialist aerospace engineer, or a specialist aerospace worker, where the engineer or worker has travelled to the United Kingdom in the course of their work.

(2) For the purposes of sub-paragraph (1)—

(a) "specialist aerospace engineer" means a person who is employed or otherwise engaged to provide engineering services for the purpose of ensuring the continued operation of aviation activities (including but not limited to the provision of maintenance and repair services for production lines, aviation components, grounded aircraft and new aircraft),

(b) "specialist aerospace worker" means a person who is employed or otherwise engaged to provide services for the purpose of ensuring safety management and quality assurance as required by relevant standards, guidance and publications on aviation safety produced by the Civil Aviation Authority or the European Union Aviation Safety Agency(**1**).

23.—(1) A person engaged in operational, maintenance or safety activities of a downstream oil facility that has a capacity in excess of 20,000 tonnes, where—

(a) the downstream oil facility is engaged in a specified activity carried on in the United Kingdom in the course of a business, and contributes (directly or indirectly) to the

(**1**) The Civil Aviation Authority was established under section 1(1) of the Civil Aviation Act 1971 (c.75). That Act was replaced by a consolidating statute, the Civil Aviation Act 1982 (c.16), section 2(1) of which provides for the continued existence of the Civil Aviation Authority. There are amendments to section 2 but none is relevant. The European Union Aviation Safety Agency was established by Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91.

supply of crude oil based fuels to consumers in the United Kingdom or persons carrying on business in the United Kingdom, and

(b) the activities are required to ensure continued safe operation of the facility,

where the person has travelled to the United Kingdom in the course of the person's work.

(2) For the purposes of sub-paragraph (1)—

(a) a facility has a capacity in excess of 20,000 tonnes at any time if it was used in the previous calendar year for the purposes of downstream oil sector activities in relation to more than that number of tonnes of oil,

(b) "specified activities" are—

(i) storing oil,

(ii) handling oil,

(iii) the carriage of oil by sea or inland water,

(iv) conveying oil by pipes,

(v) refining or otherwise processing oil.

24.—(1) A worker undertaking, or required to commence—

(a) activities on or in relation to offshore installations,

(b) activities on or in relation to upstream petroleum infrastructure,

(c) critical safety work on offshore installations and wells that are being decommissioned or which are being preserved pending demolition or reuse, or

(d) activities for the provision of workers, goods, materials or equipment or other essential services required to support the safe operation of the activities referred to in paragraphs (a) to (c).

(2) For the purposes of sub-paragraph (1)—

(a) "offshore installations" has the meaning given in section 44 of the Petroleum Act 1998(**1**),

(b) "upstream petroleum infrastructure" has the meaning given in section 9H of the Petroleum Act 1998 (**2**),

(c) "wells" has the meaning given in section 45A(10) of the Petroleum Act 1998 (**3**).

(**1**) 1998 c. 17. Section 44 was amended by paragraph 11 of Schedule 1 to the Energy Act 2008 (c. 32).

(**2**) Section 9H was substituted by section 74(2) of the Energy Act 2016 (c. 20).

(**3**) Section 45A was inserted by section 75(1) of the Energy Act 2008. There are amendments to section 45A(10) but none is relevant.

25. A postal operator, as defined in section 27(3) of the Postal Services Act 2011(**1**), where the operator has travelled to the United Kingdom in the course of their work.

26. A worker with specialist technical skills, where those specialist technical skills are required for essential or emergency works or services (including commissioning, maintenance and repairs and safety checks) to ensure the continued production, supply, movement, manufacture, storage or preservation of goods, where the worker has travelled to the United Kingdom in the course of their work or otherwise to commence or resume their work.

27. A worker with specialist technical skills, where those specialist technical skills are required for essential or emergency works (including commissioning, maintenance, repairs and safety checks) or to fulfil contractual obligations or warranty specifications in, or in connection with, waste management facilities used for the management, sorting, treatment, recovery, or disposal of waste (including energy from waste), where the worker has travelled to the United Kingdom in the course of their work.

28.—(1) A person who has travelled to the United Kingdom for the purpose of transporting, to a provider of health services (within the meaning of regulation 10(8)) in the United Kingdom, material which consists of, or includes, human cells or blood which are to be used for the purpose of providing health services.

(2) For the purposes of sub-paragraph (1), "blood" includes blood components.—

29. A person who has travelled to the United Kingdom who is—

(a) required to undertake work as a health or care professional in the United Kingdom within 14 days of their arrival, and

(b) eligible to practise a profession regulated by any of the bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**2**).

30. A person who is an "inspector" within the meaning given in regulation 8(1) of the Human Medicines Regulations 2012(**3**) who has travelled to

(**1**) 2011 c. 5.
(**2**) 2002 c. 17. Section 25(3) was amended by paragraph 17(2) and (3) of Schedule 10 to the Health and Social Care Act 2008, by paragraph 56(b) of Schedule 15 to the Health and Social Care Act 2012, by paragraph 2(2) of Schedule 4 to the Children and Social Work Act 2017 (c. 16) and by S.I. 2010/231.
(**3**) S.I. 2012/1916.

the United Kingdom to undertake activities in relation to their role as such a person.

31.—(1) A person who—

(a) has travelled to the United Kingdom to—

(i) conduct a clinical trial within the meaning of "conducting a clinical trial" in regulation 2(1) of the Medicines for Human Use (Clinical Trials) Regulations 2004(**1**),

(ii) undertake such activities as are necessary or expedient to prepare for the conduct of a clinical trial, or

(iii) carry out any necessary compliance activity in relation to a clinical trial that cannot be conducted remotely,

(b) is a "qualified person" within the meaning of regulation 43 of those Regulations, where they have travelled to the United Kingdom in order to undertake activities in relation to their role as such a person, or

(c) is a "sponsor" within the meaning given in regulation 2(1) of those Regulations of a clinical trial, or carries out the functions or duties of such a sponsor, and has travelled to the United Kingdom to undertake activities in relation to the clinical trial.

(2) For the purposes of sub-paragraph (1), "clinical trial" has the meaning given in regulation 2(1) of the Medicines for Human Use (Clinical Trials) Regulations 2004.

32. A person who has travelled to the United Kingdom to conduct a "clinical investigation" within the meaning of the Medical Devices Regulations 2002(**2**), or to undertake such activities as are necessary or expedient to prepare for the conduct of a clinical investigation or carry out any other necessary compliance activity in relation to a clinical investigation that cannot be conducted remotely.

33.—(1) A person who is—

(a) a "qualified person" within the meaning of regulation 41(2) of the Human Medicines Regulations 2012(**3**),

(b) a "responsible person" within the meaning of regulation 45(1) of those Regulations, or

(c) "an appropriately qualified person responsible for pharmacovigilance" within the meaning of regulation 182(2)(a) of those Regulations,

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(**1**) S.I. 2004/1031, to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2002/618.
(**3**) S.I. 2012/1916.

where the person has travelled to the United Kingdom in order to undertake activities in relation to their role as such a person.

34.—(1) A person who has travelled to the United Kingdom for the purposes of their work in essential infrastructure industries including—

(a) a person involved in essential maintenance and repair of data infrastructure required to reduce and resolve outages, or in the provision of goods and services to support these activities, and

(b) an information technology or telecommunications professional (including information technology consultant, quality analyst, software tester, systems tester, and telecommunications planner), whose expertise is required to—

(i) provide an essential or emergency response to threats and incidents relating to the security of any network and information system, and

(ii) ensure the continued operation of any network and information system.

(2) For the purposes of sub-paragraph (1), "network and information" system has the meaning in regulation 1(2) of the Network and Information Systems Regulations 2018(**1**).

35. A person who is engaged in urgent or essential work—

(a) that is necessary for the continued operation of—

(i) electronic communications networks and services as defined in section 32 of the Communications Act 2003(**2**), including work relating to maintenance and repair of submarine cables connecting the United Kingdom with other countries, or

(ii) the BBC's broadcasting transmission network and services,

(b) in supply chain companies that maintain the confidentiality, integrity, and availability of the electronic communications networks and services and the BBC transmission network and services,

where the person has travelled to the United Kingdom in the course of their work.

36. A person—

(**1**) S.I. 2018/506.
(**2**) 2003 c. 21. The definition of "electronic communications network" was amended by S.I. 2011/1210.

(a) pursuing an activity as an employed or self-employed person in the United Kingdom and who resides in another country to which they usually return at least once a week, or

(b) residing in the United Kingdom and who pursues an activity as an employed or self-employed person in another country to which they usually go at least once a week.

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020.

Vaughan Gething,
Minister for Health and Social Services

8 June 2020

1. Description

Subject to specified exemptions, these Regulations require all passengers (i) arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland); or (ii) arriving in Wales from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to provide their contact details and travel information.

2.2 Subject to specified exemptions, these Regulations also require all passengers (i) arriving in Wales from outside of the Common Travel Area; or (ii) arriving in Wales from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to isolate themselves for a period of 14 days.

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

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

In response to the COVID-19 pandemic, urgent action is needed to limit the number of cases of COVID-19 imported into the UK and ensure these will not have a material impact on the domestic incidence of the virus. This is particularly important as the rate of domestic infections slows. If legislation is delayed, people arriving in Wales in the short-term will not be required to isolate for 14 days and will not, therefore, be required to significantly reduce their social contact as provided by these Regulations. Accordingly, the risk of them transmitting the virus onward to the domestic population is increased, if they have contracted it or are infectious. Any delay will also mean that people arriving in Wales are not required to provide their contact details which are needed to support contact tracing and thereby reduce transmission of the virus. Both measures are designed to reduce the incidence of COVID-19 in the UK. Delaying their implementation could materially increase the incidence of the disease in the UK just as the number of domestic cases is falling.

Regulations are being introduced on the same timeline imposing the equivalent requirements in relation to England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from Covid-19 via any imported infections via travellers.

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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

Section 45F of the 1984 Act contains supplementary provision relating to regulations made under section 45B of that Act. Regulations made under section 45B may enable the delivery of the policy objective by: the creation of offences, for a court to order a convicted person to take or pay for remedial action, the execution and enforcement of restrictions and requirements imposed by the regulations, appeals, the levy of charges, compensation, incentive payments, and expenses.

In accordance with section 45T(6) of the 1984 Act, the “appropriate Minister” for the purposes of exercising functions under these sections, as respects Wales, is the Welsh Ministers.

4. Purpose and intended effect of the legislation

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

In response to this threat in Wales, the Welsh Ministers have already made certain regulations to reduce levels of social contact within Wales. Specifically, on 26th March 2020 they made the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 to close businesses and premises; to restrict

movement; and to restrict gatherings for the length of the coronavirus emergency, in exercise of the powers conferred on them by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act . These regulations were amended on 21st March, 7th April, 25th April, 11th May, 22nd May and 1st June 2020.

In response to the same serious and imminent threat to public health, the UK Government introduced the Coronavirus Act 2020, which received Royal Assent on 25th March 2020. The Coronavirus Act provides powers for the Secretary of State for Health and Social Care to give a direction in writing to an operator of a port requiring the operator to suspend such relevant port operations. The Coronavirus Act also provides certain powers for public health officers in relation to potentially infectious persons. For the purposes of that Act, a person is "potentially infectious" if they are or may be infected or contaminated with coronavirus, and there is a risk they might infect or contaminate others; or the person has been in an infected area (as defined in the Act) within the past 14 days. Where a person is potentially infectious, a public health officer may require them to undergo screening and assessment. Where such a person has been screened and assessed for the virus (whether or not the screening is conclusive) or has been otherwise assessed by a public health officer and is suspected of being potentially infectious, the public health officer may impose further requirements and restrictions. These may include requiring the person to provide information and contact details, to undergo further screening, to remain in a certain place (including for self-isolation) or for the person's movement to be otherwise restricted.

These Regulations are made under sections 45B, 45F(2) and 45P(2) of the 1984 Act to enable certain additional public health measures to be taken for the purpose of reducing the public health risks arising from the coronavirus.

Regulation 4 requires any person arriving in Wales from outside the Common Travel Area to provide the passenger information set out in Schedule 1 to the Regulations. The information that must be provided includes, (i) personal details, such as name, passport details and contact details; (ii) journey details, such as accommodation details or address (for the purposes of isolating), and date and time of arrival; and (iii) emergency contact details to aid contact tracing. The regulations also require any person arriving in Wales from within the Common Travel Area who has been outside the Common Travel Area in the preceding 14 days to provide the prescribed information. Where a person is travelling with a child for whom they have responsibility, they must ensure that the relevant information is provided in relation to the child. There are specified exemptions from the requirement to provide the prescribed information for certain people and certain categories of person, for example, diplomats and certain persons carrying out essential defence activities (as set out in Part 1 of Schedule 2 to the instrument). Regulation 5 requires any person to notify the Secretary of State of any changes to the passenger information already provided.

Regulations 7 to 10 require any person arriving in Wales from outside the Common Travel Area, and any person arriving in Wales from elsewhere in the Common Travel Area where they have been outside the Common Travel Area in the preceding 14 days, to isolate at suitable premises for a period of 14 days

from the date of their arrival in the Common Travel Area, or until their departure from Wales (whichever is earlier). The regulations provide specified exceptions from the requirement to isolate. These include, for example, leaving the place of isolation to obtain basic necessities once a day, to seek medical assistance whether urgently or advice from a registered medical practitioner, or to fulfil a legal obligation. Where the requirement to isolate falls upon a child, any person who has responsibility for the child during the period of isolation must take reasonable measures to ensure that the child isolates in accordance with the regulations. There are specified exemptions from the isolation requirement for certain people and categories of person, for example, people travelling to maintain essential supply chains, critical national infrastructure or to contribute to the crisis response (as set out in Parts 1 and 2 of Schedule 2 to the instrument).

The regulations provide that a failure to provide the prescribed information; providing false or misleading information or being reckless as to whether the information provided is false or misleading; and obstructing an immigration officer when exercising functions in relation to provision of passengers information, is an offence (regulation 14). Similarly, the regulations provide that a failure to comply with the requirements in relation to isolation are offences (regulation 14). Any such offences will be punishable on summary conviction by a fine.

As an alternative to prosecution, Regulation 16 provides that a fixed penalty notice may be issued by a police or immigration officer to persons over 18 whom they reasonably believe have committed an offence under the Regulations. For offences relating to the requirement to isolate, the amount of the fixed penalty will be £1,000 for the first and all subsequent fixed penalty notices. For offences relating to the provision of prescribed information, the amount of the fixed penalty will be £60 (£30 where payment is made within the period of 14 days from issue), doubling in amount with each subsequent fixed penalty notice, up until the sixth and subsequent notice, for which the penalty will be £1,920.

Regulation 17 sets out the parameters for the use and disclosure of information gathered in compliance with the requirements of these regulations. The purposes for which information can be used and shared is limited to:

(i) preventing danger to public health in Wales as a result of the spread of infection or contamination with coronavirus,

(ii) monitoring the spread of infection or contamination with coronavirus in Wales, or

(iii) giving effect in Wales to any international agreement or arrangement relating to the spread of infection or contamination with coronavirus;

In order to facilitate the effective operation of the Regulations and meet the health protection objectives of the Regulations, information sharing is essential. The information provided will be used to protect the public's health and reduce transmission of COVID-19 in the UK. Once someone is confirmed as infected with COVID-19 who has travelled to Wales recently, the data will be rapidly interrogated to identify the people around them as they travelled i.e. their contacts. The information will then be used to inform those identified of their contact status, what it means, the actions that will follow, and what to do if they

develop symptoms. Contacts will also be provided with information about prevention of the disease i.e. social distancing, hand hygiene, etc. If symptomatic, the contact will be informed of the self-isolation requirements and testing process. The data will continue to be used to allow for follow-up by public health officials to monitor for symptoms. The details will also be used to enforce the 14 day isolation requirement for passengers.

The Welsh Ministers consider that requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

In accordance with regulation 19 the Welsh Ministers are required to keep the need for the requirements introduced by the Regulations under review every 21 days, and the Regulations expire at the end of the period of twelve months beginning with the day on which they come into force (regulation 20).

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.

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

Llywodraeth Cymru
Welsh Government

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

8 June 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006), I am notifying you that this Statutory Instrument will come into force less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

In order to prevent the spread of infection or contamination from coronavirus or coronavirus disease, the Regulations impose requirements on travellers arriving into Wales from outside the common travel area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland).

The Regulations place a duty on relevant travellers to (i) provide prescribed information, including contact details and travel information; and (ii) isolate for a period of 14 days.

Not adhering to the 21 day convention allows the Regulations to come into force on 8 June 2020 and, in view of the circumstances surrounding this disease, the reduced period is considered necessary and justifiable in this case. Equivalent Regulations are being introduced within the same timeframe imposing the same requirements in relation to England, Scotland and Northern Ireland as part of a 4 nations approach to avoiding the spread of infection or contamination from coronavirus or coronavirus disease in the UK via any imported infections via travellers.

This instrument will come into force before it can be laid in the Senedd. This is necessary to enable the restrictions to be in place across the UK at the same time to provide clarity and simplicity for the public. As Table Office is not open over the weekend, the first opportunity to lay the instrument following its registration arises after it come into force.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSMFT@gov.wales

Due to the immediacy of the Regulations, they have not been subject to consultation, however, the Welsh Government has been in regular contact with the UK Government and the other Devolved Administrations in connection with the development and introduction of the Regulations.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

I am copying this letter 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,

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

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

15 June 2020

Dear Chair

I am pleased to inform you that a consultation document seeking views on the Senedd Cymru (Representation of the People) (Amendment) Order 2020 has been published on the Welsh Government website today.

Ahead of each Senedd election the National Assembly for Wales (Representation of the People) Order 2007, which sets out the manner in which the election and election campaign is conducted and includes provision for legal challenge, is reviewed and amended to take account of any policy or legislative changes since the last election.

The consultation seeks views on the proposed amendments to the National Assembly for Wales (Representation of the People) Order 2007 which largely arise as a result of changes to the franchise and disqualification arrangements made by the Senedd and Elections (Wales) Act 2020 as well as some consequential amendments arising from the naming provisions.

The draft Order also contains more significant amendments which reflect changes made elsewhere in the United Kingdom to allow candidates the option of not publishing their home address at an election, along with the issue of payment to returning officers fees for services rendered, as well as other general updates reflecting changes since the last amending Order was made.

The main purpose of this consultation is to ensure we have identified the relevant issues and the resulting amendments are clear and workable. We are not consulting on the merits of policies which have already been subject to consultation and debate.

The consultation on these proposals will run until 8 September 2020. Details of how to respond are set out in the consultation document.

Best wishes

Mark Drakeford

MARK DRAKEFORD

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Consultation on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020**
DATE	**15 June 2020**
BY	**Rt Hon Mark Drakeford MS, First Minister of Wales**

In the event that some measures relating to the Coronavirus pandemic need to remain in place, arrangements for the Senedd elections in 2021 may need to be adjusted. The Welsh Government has set up an Elections Planning Group, comprising key stakeholders and Welsh Government officials, to consider the potential impact on the administration of elections and any impact on legislative provision.

However, work on the enabling legislation to allow the Senedd elections to be held still needs to be taken forward and therefore a consultation document seeking views on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 has been published on the Welsh Government website today.
https://gov.wales/the-draft-senedd-cymru-representation-of-the-people-amendment-order-2020

Section 13 of the Government of Wales Act 2006, as amended by the Wales Act 2017, transferred particular powers from the Secretary of State for Wales to the Welsh Ministers to make provision for the conduct of Senedd elections. Ahead of each Senedd election the National Assembly for Wales (Representation of the People) Order 2007, which sets out the manner in which the election and election campaign is conducted and includes provision for legal challenge, is reviewed and amended to take account of any policy or legislative changes since the last election.

This consultation seeks views on the proposed amendments to the National Assembly for Wales (Representation of the People) Order 2007 which largely arise as a result of changes to the franchise and disqualification arrangements made by the Senedd and Elections (Wales) Act 2020 as well as some consequential amendments arising from the naming provisions.

The draft Order also contains more significant amendments which reflect changes made elsewhere in the United Kingdom to allow candidates the option of not publishing their home

address at an election, along with the issue of payment to returning officers fees for services rendered, as well as other general updates reflecting changes since the last amending Order was made.

I am keen to hear the views of stakeholders and will consider these carefully before the final draft of the Order is prepared. The consultation on these proposals will run until 8 September 2020. Details of how to respond are set out in the consultation document. Following consideration of the responses, the draft Order will be brought forward for the Senedd's approval. Officials will also be considering the scope of developing a new consolidated Order in readiness for the election in 2026.

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Llywodraeth Cymru
Welsh Government

Our ref: MA/JJ/1741/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

16 June 2020

Dear Mick,

I want to inform you of my intention to lay draft regulations for approval by the Senedd, which would allow Electoral Registration Officers flexibility in relation to the publication of the revised 2020 electoral register arising from the conduct of the annual canvass of electors.

Electoral registration is a year round process and the annual canvass presents the opportunity for Electoral Registration Officers to contact households and ensure electoral registers are as complete as possible. The canvass can take up to five months to complete and can include a canvass visit to the property in some cases. Where registration activities are carried out alongside, this can also necessitate verification of identity via key paperwork such as sight of passports. The annual canvass conventionally begins on the 1 July each year, although this is not set out in legislation. The timetable is driven by the legislative requirement to publish the revised electoral register, as a consequence of conducting the annual canvas on the 1 December each year. Exceptionally, where an election is held between July and December during the period of the annual canvas, publication of the revised electoral register for that year must occur no later than the 1 February of the following year.

I intend to lay the draft regulations before summer recess which would allow Electoral Registration Officers more time to publish the 2020 electoral register up to the 1 February 2021 if necessary. This change will apply to the publication of the 2020 electoral register only.

I am of the view that in the current circumstances brought about by the Covid-19 pandemic there should be some flexibility for Electoral Registration Officers to carry out the canvass in a way which is commensurate with public health requirements and this can be achieved by

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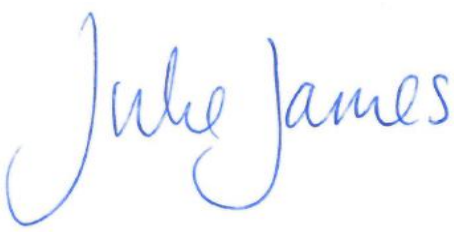
extending the date by which the 2020 electoral register must be published. This does not mean that electoral registers may only be published on the 1 February 2021. Electoral Registration Officers may choose to publish their 2020 electoral register on 1 December 2020 as usual or on any other date up to, and including, the 1 February 2021.

The legislation will follow the draft affirmative procedure and I will be grateful for your consideration and report in due course.

Yours sincerely



Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **Publication of the 2020 Electoral Register**

DATE **16 June 2020**

BY **Julie James MS, Minister for Housing and Local Government**

I want to inform you of Welsh Government's intention to lay draft regulations for approval by the Senedd, which would allow Electoral Registration Officers in Wales flexibility in relation to the publication of the 2020 electoral register, arising from the conduct of the annual canvass of electors. This is so that appropriate arrangements can be made to ensure the canvass is carried out in the safest way possible.

The electoral canvass is carried out every year and whilst registration of electors is a year round process, the canvass presents the opportunity for Electoral Registration Officers to ensure the accuracy of the register. The canvass conventionally begins on the 1 July each year and can take up to five months to complete. The canvass culminates in the publication of the revised electoral register on the 1 December of that year. The date for the publication of the register is set out in legislation and I intend to lay draft regulations which would allow Electoral Registration Officers to publish the 2020 electoral register at a later date if necessary, up to the 1 February 2021. This change would apply only to the publication of the 2020 electoral register.

I am of the view that in the current circumstances brought about by the Covid-19 pandemic there should be some flexibility for Electoral Registration Officers to carry out the canvass in a way which is commensurate with public health requirements and this can be achieved by moving the final date by which the 2020 electoral register must be published. This does not mean that registers may only be published on the 1 February 2021, Electoral Registration Officers may choose to publish on 1 December 2020 as usual or on any other date up to, and including, the 1 February 2021. Electoral Registration Officers would be free to commence work on the annual canvass in July as usual but will have more time available to them to ensure that appropriate arrangements to safely conduct the canvass can be put in place.

My intention is to lay the draft regulations, which will follow the draft affirmative procedure, before the summer recess and have written to the Chair of the Legislation, Justice and Constitution Committee today to inform the Committee of my intentions.

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/CG/0700/20

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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17 June 2020

Dear Mick,

GUIDANCE ON DRAFTING LEGISLATION

I am pleased to enclose copies of two new guidance documents which the Government has published. The first covers the implications for those drafting legislation in light of Parts 2 and 3 of the Legislation (Wales) Act 2019 – you will recall that we committed to prepare and publish this when the Bill was being considered.

The second guidance document reflects the matters which should be considered by drafters of legislation following the coming into force of Part 2 of the Senedd and Elections (Wales) Act 2020.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
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Welsh Government

Parts 2 and 3 of the Legislation (Wales) Act 2019

Guidance for preparing Welsh legislation

SWYDDFA'R CWNSLERIAID DEDDFWRIAETHOL
OFFICE OF THE LEGISLATIVE COUNSEL

Introduction

What is this guidance about?

This document gives guidance to drafters of Welsh legislation on the implications of Parts 2 and 3 of the Legislation (Wales) Act 2019 (the 2019 Act). It does not give a full explanation of the purpose or legal effect of the provisions of the 2019 Act: for that, see the Explanatory Notes to the Act[1]. Nor does it give a full account of the Welsh Government's approach to drafting legislation: for guidance on that, see *Writing Laws for Wales: a guide to legislative drafting*[2].

Terminology used in the 2019 Act and in this guidance

Part 2 of the Senedd and Elections (Wales) Act 2020 changes the name of the National Assembly for Wales to Senedd Cymru with effect from 6 May 2020. Schedule 1 to that Act amends the 2019 Act to replace references to Assembly Acts with references to Acts of Senedd Cymru, and to insert a definition of "Act of Senedd Cymru" which includes Acts passed both before and after the name of the legislature was changed.

The same approach is used in this guidance, which uses the term "Acts of Senedd Cymru" wherever the intention is to include Acts that were passed both before and after the name change. However, "Assembly Acts" is used where the intention is to refer only to Acts passed when the legislature was still known as the National Assembly for Wales.

There is separate guidance on the implications of Part 2 of the Senedd and Elections (Wales) Act 2020 for legislative drafting.

[1] Available at: www.legislation.gov.uk/anaw/2019/4/notes/contents
[2] Available at: gov.wales/sites/default/files/publications/2019-11/writing-laws-for-wales-guidance-on-drafting-legislation.pdf

Part 2 – Contents

WG38937 Digital ISBN: 978-1-83933-923-3

What does Part 2 of the 2019 Act do?

Part 2 of the 2019 Act contains default provisions about the interpretation and operation of Welsh legislation – that is, Acts of Senedd Cymru and subordinate legislation made by the Welsh Ministers and other devolved Welsh authorities.

The default provisions deal with a variety of issues, including the meaning of certain words and phrases when they are used in legislation, the exercise of certain types of statutory power, the effect of legislation which amends or repeals other legislation, and whether legislation applies to the Crown.

Part 2 of the 2019 Act takes the place of the Interpretation Act 1978 (the 1978 Act) for Welsh legislation. Most of the default provisions in Part 2 are based on provisions in the 1978 Act, which previously applied to all Welsh legislation (and will continue to apply to Welsh legislation made before Part 2 was in force). However, the 1978 Act pre-dates devolution, and a number of its provisions are irrelevant to Wales. As a result, Part 2 of the 2019 Act is different in some respects from the 1978 Act.

Part 2 of the 2019 Act does not contain all of the rules that govern the interpretation of Welsh legislation. Some of those rules are found in other statutes; most obviously, the Government of Wales Act 2006 (GoWA 2006) places general limits on the powers of Senedd Cymru and the Welsh Ministers to make legislation, and requires legislation to be interpreted in accordance with those limits.

Further, a range of common law principles of statutory interpretation have also been developed by the courts in considering disputes that involve questions about the meaning of legislation. Part 2 of the Act reverses the common law presumption that Welsh legislation does not bind the Crown, but does not change the effect of any of the other common law principles of interpretation.

Who needs to understand Part 2?

This guidance is mainly relevant to:

- lawyers and officials within Welsh Government who draft Bills and statutory instruments for the Welsh Ministers;
- officials within Welsh Government who prepare subordinate legislation;
- lawyers and other officials who draft subordinate legislation for devolved Welsh authorities (such as byelaws and schemes made by county and county borough councils).

It will also be relevant to those who are involved in the scrutiny of Bills and statutory instruments by Senedd Cymru, and to anyone who needs to understand or apply Welsh legislation.

When did Part 2 of the Act Come Into Force?

The provisions of Part 2 of the 2019 Act that apply to the interpretation and operation of the 2019 Act itself came into force on 11 September 2019. For the purposes of the interpretation and operation of other legislation, the provisions of Part 2 came into force on 1 January 2020 and apply to Welsh legislation enacted on or after that date.

Legislation to which Part 2 applies

With a few minor exceptions, Part 2 of the 2019 Act applies to all legislation made in Wales from 1 January 2020 onwards. Section 3(1) provides that Part 2 applies to the 2019 Act itself, Acts that receive Royal Assent on or after 1 January 2020, and Welsh subordinate instruments that are made on or after 1 January 2020.

The key date is the date of making the instrument. For subordinate legislation, it is the date the instrument is signed by one of the Welsh Ministers, not the date it is laid before the Senedd. The key date for byelaws will be the date when a devolved Welsh authority takes the last step in the required process, generally by applying the common seal of the authority to the document after approving it.

Meaning of a "Welsh subordinate instrument"

Section 3(2) of the 2019 Act sets out the definition of a Welsh subordinate instrument, which captures the following:

Subordinate legislation which is –

i. made on or after 1 January 2020,

ii. made under Acts of Senedd Cymru and Assembly Measures (whenever the Act or Measure received Royal Assent or approval), and

iii. made by the Welsh Ministers or any other person.

The definition also captures:

Subordinate legislation which –

i. is made on or after 1 January 2020,

ii. is made under an Act of the UK Parliament (whenever that Act received Royal Assent) or under retained direct EU legislation,

iii. is made only by the Welsh Ministers or another devolved Welsh authority (not acting with other types of authority), and

iv. applies only in relation to Wales.

Accordingly, Part 2 applies to subordinate legislation made by devolved Welsh authorities, such as county and county borough councils, National Park Authorities, and Natural Resources Wales.[3] So it is important to be aware that Part 2 of the 2019 Act will apply to any byelaws, schemes or orders made by such bodies, whether the powers to make them are contained in Acts of Senedd Cymru, Assembly or Acts of the UK Parliament.

If however the subordinate legislation does not fall within this definition it will not be considered a "Welsh subordinate instrument," and will be subject to the 1978 Act.

For example, an instrument will not be a "Welsh subordinate instrument" if it contains subordinate legislation made under an Act of the UK Parliament or retained direct EU legislation by a person or body that is not a devolved Welsh authority.

This means a "Welsh subordinate instrument" will not include instruments made jointly by the Welsh Ministers and a Secretary of State, or "composite" instruments in which the Welsh Ministers legislate for Wales and the Secretary of State legislates for England.

[3] A definition of devolved Welsh authority is found at section 157A of GoWA 2006, and a list of such bodies is set out in Schedule 9A to GoWA 2006.

Continuing application of the 1978 Act

Part 2 of the 2019 Act does not apply to all of the legislation that is relevant to Wales. There will continue to be legislation applying in Wales that is subject to the 1978 Act.

Part 2 of the 2019 Act does not apply to:

a. any legislation enacted before 1 January 2020;
b. any legislation made by a body that is not a devolved Welsh authority (even if it is also made partly by a devolved Welsh authority), or
c. any legislation that applies otherwise than in relation to Wales (even if it also applies in relation to Wales or part of Wales).

The 1978 Act will therefore continue to apply to legislation of the following kinds:

a. Assembly Acts[4] which received Royal Assent before 1 January 2020;
b. all Assembly Measures;
c. all subordinate legislation made before 1 January 2020 which was made under an Assembly Act or Measure, or made under an Act of the UK Parliament by a devolved Welsh authority;
d. Acts of the UK Parliament;
e. subordinate legislation made by Ministers of the Crown and other reserved authorities;
f. joint and composite instruments made under an Act of the UK Parliament or retained direct EU legislation by the Welsh Ministers or a devolved Welsh authority acting with another authority (for example, a Minister of the Crown).

Part 2 of the 2019 Act will also not apply to any EU legislation, even if that legislation is retained in UK law following withdrawal from the EU.

Considering the 1978 Act when drafting Welsh legislation

There will still be many cases where it is necessary to consider the 1978 Act when drafting and interpreting new Welsh legislation, in particular when the Welsh legislation is subordinate legislation.

For the foreseeable future, most Welsh subordinate instruments will be made under Acts of the UK Parliament, under Assembly Measures, or under Assembly Acts enacted before 2020. In these cases:

- the 1978 Act will apply to the parent Act or Measure, but
- Part 2 of the 2019 Act will apply to the Welsh subordinate instrument.

Welsh legislation may also need to amend legislation to which Part 2 of the 2019 Act does not apply (such as an Act of the UK Parliament, UK subordinate legislation, or any Welsh legislation enacted before 2020). In that case:

- Part 2 of the 2019 Act will apply to the provisions of the amending legislation, but
- the 1978 Act will apply to any material that is inserted into the other legislation.

[4] The expression "Assembly Act" is used here because the reference is only to Acts that were enacted before the change in the name of the legislature, which were all Acts of the National Assembly for Wales rather than Acts of Senedd Cymru. Likewise, all Assembly Measures were enacted long before the name change.

Conversely, if an Act of the UK Parliament or UK subordinate legislation is amending any Welsh legislation to which Part 2 of the 2019 Act applies (i.e. Welsh legislation enacted from 1 January 2020), then:

- the 1978 Act will apply to provisions of the amending Act or instrument, but
- Part 2 of the 2019 Act will apply to material inserted into the Welsh legislation.

Although it will be necessary consider both the 1978 Act and the 2019 Act in these cases, most of the provisions of the two Acts have the same effect.

Which interpretation provisions apply if Welsh legislation is amending other legislation?

Welsh legislation to which Part 2 of the 2019 Act applies will sometimes amend other legislation by inserting new provisions or replacing existing ones. Material that is inserted into existing legislation is normally interpreted on the basis that it forms part of that existing legislation, and this position is confirmed in section 32 of the 2019 Act.

Where an Act or instrument to which Part 2 applies amends another Act or instrument to which Part 2 applies, there should be no difficulties because Part 2 will apply equally to both pieces of legislation.

Where an Act of Senedd Cymru or Welsh subordinate instrument is amending legislation to which Part 2 does not apply – such as an Act of the UK Parliament, a piece of UK subordinate legislation, or any pre-2020 Welsh legislation – the position is slightly more complicated. Part 2 of the 2019 Act will not apply to the legislation that is being amended. That legislation will instead be subject to the 1978 Act, and to the common law presumption that legislation does not bind the Crown.

Material that is inserted into an Act of the UK Parliament or a piece of UK subordinate legislation will need to be drafted by reference to the rules that apply to that legislation rather than Part 2 of the 2019 Act. This will also be true where an Act or instrument to which Part 2 of the 2019 Act applies is amending an Assembly Act that received Royal Assent before January 2020, an Assembly Measure, or a Welsh subordinate instrument made before January 2020. Welsh legislation enacted before January 2020 remains subject to the rules of interpretation that applied when it was enacted, including the 1978 Act, and material inserted into that legislation should be drafted by reference to those rules.

So when drafting amendments to other legislation, it is important to check which interpretation provisions apply to the legislation being amended, and to draft any inserted text in accordance with those rules. That may mean that an inserted provision needs to use different words from those that would have been used in a free-standing provision appearing in the amending Act or instrument. But in most cases this won't be necessary as the two sets of interpretation provisions have the same effect.

The position may be more complicated when drafting a non-textual modification of an enactment to which Part 2 of the 2019 Act does not apply, and the correct approach may depend on the way in which the non-textual modification is drafted. The more closely the modification resembles a textual amendment, the more likely that it should be drafted on the basis that it forms part of the enactment being modified. For example, if the modification requires an existing enactment to be read as if an alternative version of subsection (1) were substituted for the existing subsection (1), the intention will normally be that the alternative version should read as if it formed part of the existing enactment. It should therefore normally be drafted by reference to the terms used in the existing enactment. On the other hand, if the modification simply requires subsection (1) to be read as if references to an existing concept were references to an alternative concept, it may be more appropriate to define that alternative concept in the legislation that makes the modification.

Effect of provisions in Part 2

Part 2 of the 2019 Act contains a set of default provisions that will govern aspects of the interpretation and operation of Welsh legislation in the absence of any intention to the contrary. But those default provisions do not limit the powers under which legislation is made, and therefore they do not prevent individual pieces of legislation adopting different rules where that is within the relevant powers. If a different rule is intended, that will generally displace the provisions in Part 2.

Section 4 of the 2019 Act provides that nearly all of the provisions of Part 2 have effect except so far as an express provision is made to the contrary or the context requires otherwise. This reflects the position under the 1978 Act where nearly every section of that Act provides that it applies "unless the contrary intention appears". Section 4 of the 2019 Act simply deals with the issue in one place, and identifies the two ways in which a contrary intention may be found (i.e. from a specific provision to the contrary, or by implication from the context).

An express provision to the contrary will be a provision setting out a different position from the one provided for in Part 2. For example, section 15(1) of the 2019 Act provides that statutory powers may be exercised more than once; but if that is not the policy for a particular power, the legislation conferring the power can state that it may be exercised only once. (This is likely to be clearer and more helpful than stating that section 15(1) of the 2019 Act does not apply to the power.)

It can be appropriate to rely on the context where a contrary intention is completely clear. For example, if the nature of a power means that there is no way that the power could be exercised more than once, it may be appropriate to rely on the context to displace section 15(1) of the 2019 Act.

However, section 4(2) does not allow Welsh legislation to displace the rule in section 5 of the 2019 Act which establishes the equal status of the two language texts of bilingual legislation.

Further section 4(3) provides that context cannot disapply the effect of the following provisions of Part 2 (so that only an express provision to the contrary is sufficient):

a) section 10 (references to time of day are to GMT or BST);
b) section 28 (Welsh legislation binds the Crown);
c) section 33 (repeals and revocations do not revive law previously repealed, revoked or abolished).

Definitions of terms used in Welsh legislation

Part 2 of the 2019 Act will affect the way in which definitions are used in Welsh legislation. For general guidance on the use of definitions, see chapter 4 of *Writing Laws for Wales*. Paragraphs 4.10 to 4.12 are particularly relevant to the issues arising from Part 2 of the 2019 Act, and they take account of the changes made by the 2019 Act.

General definitions of terms: Section 6 and Schedule 1

Schedule 1 to the 2019 Act contains standard definitions of terms that are likely to be used in Welsh legislation. Section 6 of the Act provides that the words and expressions listed in Schedule 1 have the meaning given in that Schedule where they are used in Acts and Welsh subordinate legislation to which Part 2 of the 2019 Act applies.

Although Schedule 1 gives the listed terms the meanings they are usually intended to have in Welsh legislation, those terms may be given different meanings where that is necessary or appropriate. The definitions in Schedule 1 may be excluded or modified by any express provision made to the contrary, or if the context requires a different effect. However, if you are proposing to give a common

term a different meaning from the one that it would usually have, that may be a sign that you should consider using a different term.

Many of the definitions in Schedule 1 are the same as the corresponding definitions in Schedule 1 to the 1978 Act, including the definitions of "land," "month," "person" and "writing" as well as definitions relating to UK institutions. Some definitions are worded differently from definitions in the 1978 Act but are intended to have the same effect as those in the 1978 Act, including the definitions relating to criminal offences and some definitions relating to exiting the EU.

Schedule 1 lists some words and expressions that do not appear in Schedule 1 to the 1978 Act but that are likely to be relevant to Welsh legislation. These include a standard definition of "working day" as well as the names of various devolved bodies, which are defined by reference to the legislation establishing or naming the body.

Some of the definitions in Schedule 1 authorise the use of shorthand versions of the statutory names of public authorities. For example, there are definitions which mean that Welsh legislation may refer to "Natural Resources Wales" rather than using its statutory name (the Natural Resources Body for Wales), and to the "Charity Commission" rather than the Charity Commission for England and Wales.

There are in addition certain definitions that appear in Schedule 1 to the 2019 Act that differ from the definitions provided in Schedule 1 to the 1978 Act:

- The definitions of various courts in the 2019 Act include only the courts that operate within the jurisdiction of England and Wales, whereas the definitions in the 1978 Act also include the equivalent courts in Northern Ireland. If for any reason Welsh legislation needs to refer to a court in Northern Ireland, it will need to include wording to make that clear (e.g. "the High Court in Northern Ireland").
- "Financial year" is defined for all purposes in the 2019 Act, whereas the definition is limited to circumstances relating to public money in the 1978 Act.
- The definition of 'Wales' in the 2019 Act reproduces the effect of the definition in section 158(1) of GoWA 2006. This means the definition is broader than that contained in the 1978 Act, which includes only the council areas in Wales. The default definition of "Wales" now includes *"the sea adjacent to Wales out as far as the seaward boundary of the territorial sea."* If you do not want your definition of 'Wales' to include the sea out as far as the seaward boundary of the territorial sea, a definition of 'Wales' limited to the land boundary may need to be inserted into your Bill or Instrument. However, this may not be necessary if the other provisions of the legislation make clear that it applies only to things that happen on land or within a certain distance of the shore.
- Schedule 1 to the 2019 Act contains a comprehensive definition of "enactment" which is intended to cover all of the types of legislation that are relevant to Wales. This means that there should generally be no need to define an "enactment" in Welsh legislation (although provision may still be needed where references to an enactment are intended to cover future enactments which become law after the Welsh legislation containing the reference).
- Schedule 1 to the 2019 Act defines "subordinate legislation" for the purposes of all Welsh legislation, whereas the 1978 Act gives a definition which applies only to the 1978 Act itself. This means it will no longer be necessary to define "subordinate legislation" by reference to the definition in the 1978 Act.

Some definitions in the 1978 Act have not been replicated in Schedule 1 to the 2019 Act, for example, 'British overseas territory' and 'London Borough' as these terms are unlikely to be used in a Welsh context. Should you wish to include such terms in your legislation, think about whether they need to be defined on the face of your legislation.

Schedule 1 to the Senedd and Elections (Wales) Act 2020 contains a number of amendments to Schedule 1 to the 2019 Act, to reflect the renaming of the National Assembly for Wales and related changes of terminology (which came into force on 6 May 2020). There are also amendments

to Schedule 1 relating to the UK's withdrawal from the European Union in the European Union (Withdrawal Agreement) Act 2020 and the Direct Payments to Farmers (Legislative Continuity) Act 2020.

Section 6(2)(a)-(c) of the 2019 Act also provides Welsh Ministers with the power to insert new definitions of words or expressions, remove definitions of words or expressions, or amend definitions of words or expressions contained in Schedule 1.

Relationship between the meaning of terms in primary and subordinate legislation

The 2019 Act contains no equivalent to section 11 of the 1978 Act. That section provides that words and expressions used in subordinate legislation have the same meaning as in the Act under which the subordinate legislation was made. It means that subordinate legislation may use terms defined in the parent legislation without needing to define those terms or identify the relevant definition, but it may be a trap for readers of the subordinate legislation who are unaware of section 11.

Because the 2019 Act does not contain a provision like section 11 of the 1978 Act, drafters of Welsh subordinate instruments will need to consider how best to ensure that words used in their instrument have the same meaning as in the primary legislation (where that is the intention).

In doing so, drafters should consider what will be most helpful to the reader of the subordinate legislation. If all that is needed is to apply a definition in the parent Act or Measure, the most helpful approach will generally be to copy out the definition in the subordinate legislation. This will mean that the reader does not have to refer to the Act or Measure to understand the instrument, and in the case of subordinate legislation made under Acts of the UK Parliament, it will also mean that the definition will be available in Welsh as well as English.

If you are repeating definitions from the parent Act, check whether any of those definitions need to be amended (for example, so as to relate only to Wales if the parent Act is a UK Act) and whether they use other terms that are defined in the Act; if so, it may be necessary to repeat those other definitions as well. Also bear in mind that if the definitions in the parent Act are amended in the future, it may be necessary to make corresponding amendments to the definitions in the subordinate legislation.

Repeating definitions from the parent Act will not always be appropriate, for example if it would result in a disproportionate increase in the size of the instrument or draw disproportionate attention to a technical definition that may only be relevant in limited circumstances. Another option is for the subordinate legislation to provide that a term has the meaning given in the parent Act. If you adopt this approach, try to identify the provision in the parent Act that defines the term, so that the reference is as helpful as possible. This approach will mean that future amendments to the definition in the parent Act also apply to the subordinate legislation, unless there is provision to the contrary or the context requires otherwise (see section 25 of the 2019 Act).

Where instruments are made under Acts of the UK Parliament or retained direct EU legislation, the parent legislation will not contain Welsh language versions of terms. In this case the Welsh language text should provide that expressions used in the instrument have the same meaning as the corresponding English language expressions in the parent legislation.

It will not always be practicable to repeat or even refer to specific definitions in the parent Act. In those cases, drafters may consider adding words to the instrument reproducing the effect of section 11 of the 1978 Act. This may also be appropriate if the intention is not just to apply definitions in the parent Act but also to rely on other ways in which terms in that parent Act have acquired meanings, such as through the common law.

Paragraphs 4.11 and 4.12 of *Writing Laws for Wales* contain examples of how provisions adopting each of these approaches may be drafted.

Application of definitions to related terms

Section 9 of the 2019 Act is a new provision. It makes clear that where an Act or instrument defines a word or expression, parts of speech relating to the word or expression also carry the definition.

For example, if the word 'walk' is defined, then the parts of speech relating to 'walk', such as 'walking' and 'walker', are to be interpreted in the light of that definition.

Further, section 9 puts beyond doubt that a definition of a word or expression applies despite any variation of that word or expression arising due to the operation of grammatical rules. In relation to Welsh language text of legislation, this section will make it clear that a definition or meaning applies regardless of any mutations, or variations of an expression arising as a result of word order and sentence structure.

Section 9 means that it is generally unnecessary for Welsh legislation that defines a word or expression to provide that "cognate expressions are to be read accordingly". However, you should always consider whether section 9 gives the right result, and whether it will provide a sufficiently clear and precise meaning for a related term.

Service of documents by post and electronically

Sections 13 and 14 of the 2019 Act contain basic provisions about the service of documents by post and electronically. They do not themselves authorise or require any type of document to be served using postal services or electronic communications. They apply only where an Act or instrument provides for service by either or both of those methods. It is for individual Acts and instruments to determine whether those methods of service, or any others, are permitted in particular contexts.

When drafting, you can choose to say nothing about how service is to be carried out, and adopt the provisions in the 2019 Act. But that will often be insufficient. If you wish to deviate from the provisions of the 2019 Act, or include further detail, you should include bespoke service provisions on the face of the Bill or Welsh subordinate instrument.

Service of documents by post

Section 13(1) provides that if the person who is to serve the document properly addresses, pre-pays and posts a letter containing the document to the recipient, the person will be regarded as having served the document.

Properly addressing the letter containing the document is intended to mean that the postal address of the intended recipient appears correctly on the letter. If it is necessary to specify which of a recipient's addresses can be used, for example in relation to a company with multiple offices, it will be for the relevant Act or instrument to make provision about that issue.

Section 14 provides that a document which is served by post is treated as being served 'on the day on which the letter containing the documents would arrive in the ordinary course of post'. The time of deemed service by post will therefore depend on the postal service used, which may include first or second class post, or some other means of expedited postal delivery. In each case, when post is used, the sender can determine the day on which service is deemed to take place by reference to normal delivery times for the service chosen. This presumption can be rebutted by evidence to the contrary.

Service of documents electronically

Section 13(2) takes a similar approach to subsection (1), but in relation to service of documents using methods of electronic communication. The sender must properly address and send to the recipient an electronic communication consisting of, or containing the document, or to which the document is attached; and must send the document in an electronic form which is capable of being accessed and retained by the recipient.

Subsection (2) will only apply where an Act or instrument provides that a document may or must be sent electronically. This will include sending documents by email, fax or any other method of electronic communication. Subsection (2) does not of itself allow electronic communications.

Properly addressing an electronic communication as required by subsection (2)(a) means the sender must make sure the email, fax or other communication is sent to an email address, fax number or other electronic address that is valid and which the recipient can be reasonably expected to access, and that the address has been entered accurately. If additional requirements are wanted in particular cases, such as prior consent for service by electronic communications, they will need to be set out in the relevant Act or instrument.

Further, subsection (2) is not intended to allow service to be effected electronically by sending a link to a document hosted on the internet, which the recipient must then take further steps to access.

Section 14 also deals with the deemed date of service of documents served using electronic communications. In order to reflect the near instantaneous nature of most electronic communication, the document is deemed to be served on the day it is sent. This presumption can be rebutted by evidence to the contrary.

Exercising powers and duties under Welsh legislation before it comes into force

Subsections (1) and (2) of section 16 provide that powers and duties under provisions of Acts of Senedd Cymru and Welsh subordinate instruments may be exercised before those provisions come into force. This power may be required where it is necessary to bring the provisions into force, or for giving full effect to the provisions at or after the time when they come into force.

By virtue of subsection (1)(a), the section applies to provisions of Acts if they come into force at a time which is specified in the Act and is more than one day after the day of Royal Assent (but not to provisions which come into force sooner or are brought into force by order or regulations).

Section 16(3) sets out the purposes for which the power or duty can be exercised before the relevant provision comes into force.

Section 16(4) and (5) ensure that the power or duty operates in the same way as it would when the relevant provision was in force. They allow for reliance on other provisions which are not in force but which are incidental or supplementary to the power or duty. They also make clear that any limitations or conditions which would apply to the exercise of the power or discharge of the duty if the Act or instrument were fully in force, also apply when the power or duty is exercised in reliance on section 16.

This section is equivalent to section 13 of the 1978 Act, but it is narrower in its application. In particular, section 16 does not apply where a power or duty is to be brought into force by order or regulations; it makes clear exactly when it enables the power or duty to be exercised; and it provides that the power or duty is to be exercised in the same way as if the provisions conferring or imposing it were in force.

Section 13 of the 1978 Act will continue to apply to powers and duties conferred or imposed by Acts that receive Royal Assent before Part 2 of this Act comes into force, and by subordinate legislation made before then, even if these powers are exercised to make subordinate legislation after Part 2 has come into force.

It is necessary to consider the possible impact section 16 of the 2019 Act both when drafting the "coming into force" section of a Bill or Welsh subordinate instrument, and when considering the exercise of commencement powers and other powers and duties before provisions come into force. The fact that section 16 does not apply where provisions of an Act are to be brought into force by order may affect decisions about which provisions should be brought into force by commencement order, and may affect how many commencement orders are needed to bring powers into force. For example, a Part of an Act may contain powers to make subordinate legislation which will need to be exercised before

the substantive provisions to which they relate are brought into force. If the Act provides for all of that Part to be brought into force by order, there may need to be more than one commencement order. If that is considered undesirable, an alternative could be for the Act to provide that the powers to make subordinate legislation come into force shortly after Royal Assent.

References to other legislation which is amended

Section 25 of the 2019 Act addresses the situation where an Act or instrument refers to other legislation, and that other legislation is amended, whether before or after the Act or instrument is enacted.

Section 25 is equivalent to section 20(2) of the 1978 Act, but it seeks to clarify the extent to which its effect is "ambulatory" (i.e. the extent to which it applies to a reference to legislation which is later amended). It makes clear that a reference to an enactment includes later amendments to it, including amendments made after the Act or instrument containing the reference is enacted.

Section 25 applies to any reference to an enactment. An "enactment" is defined in Schedule 1 to the 2019 Act to include various types of primary and secondary legislation, and is also to include retained direct EU legislation. Section 25 therefore applies to references to direct EU legislation retained in domestic law on and after the implementation period completion day.

This means that from the end of the implementation period onwards a reference in an Act or instrument to a piece of direct EU legislation as it has been retained in domestic law will include any amendments made to that legislation in domestic law, whether before or after the Act or instrument was enacted.

This section extends the definition of "enactment" given in Schedule 1, meaning that it will also apply to references in Acts of Senedd Cymru and Welsh subordinate instruments to Scottish and Northern Ireland legislation, and therefore covers the full range of legislation existing across the United Kingdom.

Application to the Crown

The question of whether an Act or subordinate legislation binds the Crown (that is, whether or not the Crown is subject to any duty or burden imposed by an Act) can be problematic. The common law rule is that Acts and subordinate legislation do not bind the Crown unless:

a. the Act expressly provides that it binds the Crown,
b. the Crown is bound by necessary implication (though what amounts to a "necessary implication" for the purposes of the rule is not totally clear), or
c. other exceptions to the rule apply (for example where the Crown is a litigant in civil proceedings, it follows from the Crown Proceedings Act 1947 that the Crown will be bound by all relevant statutes relating to civil proceedings).

This means that in the absence of an express provision binding the Crown, the question of whether an Act binds the Crown needs to be considered by looking at the rule and its limits, and then determining whether the nature, context and content of the Act in question mean that the UK Parliament or Senedd Cymru must have meant for the Crown to be bound. The Supreme Court gave guidance on the operation of the rule in *R (Black) v Secretary of State for Justice* [2017] UKSC 81.

Section 28(1) of the 2019 Act replaces the common law rule with a statutory rule. In relation to Acts to which Part 2 applies, it reverses the common law position so that the rule is that an Act does bind the Crown.

In accordance with section 4(3) of the 2019 Act, this default rule has effect except so far as legislation expressly provides otherwise (for example, by stating that provisions in a particular Act do not bind the Crown). The context of a particular Act in and of itself will not be sufficient to rebut this presumption.

The situation is more complex in relation to subordinate legislation. Section 28(2) provides that a Welsh

subordinate instrument to which Part 2 applies binds the Crown if it is made under an enactment which binds the Crown or which confers a power to bind the Crown. So the rule for Welsh subordinate instruments is that they bind the Crown wherever it is possible for them to do so. However, by virtue of section 4(3) the operation of this default rule is still subject to any express provision that is made to the contrary.

To understand the effect of section 28(2), it is necessary to determine whether the legislation under which a Welsh subordinate instrument is made binds the Crown or confers a power to bind the Crown. If the parent legislation is an Act to which Part 2 of the 2019 Act applies, this will be determined by section 28(1) of the 2019 Act (subject to any express provision to the contrary). Where a Welsh subordinate instrument is made under legislation to which Part 2 of the 2019 Act does not apply (such as an Act of the UK Parliament), determining the effect of section 28(2) will involve considering of the application of the common law rule to the parent legislation.

Where legislation provides that it binds the Crown, it usually also includes provision making clear that it does not make the Crown criminally liable, though this does not prevent persons in the service of the Crown being criminally liable. Section 28(3) makes general provision to this effect in relation to Acts of Senedd Cymru and Welsh subordinate instruments (again, subject to any express provision to the contrary). Further provisions about the Crown may be needed in some cases. These may include an express statement that the Act will not affect the Queen in her private capacity, or that a power of entry may not be exercised in relation to Crown land without permission.

For further information on Crown application, see paragraph 10.4 of *Writing laws for Wales*.

Equal status of the Welsh and English language texts

Section 5 of the 2019 Act restates section 156(1) of the Government of Wales Act 2006. It provides that, where an Act of Senedd Cymru or a Welsh subordinate instrument is enacted in both Welsh and English, the two language texts have equal status for all purposes. This means that the full expression of the law is contained in both texts, not merely one.

If there is any doubt about the meaning of Welsh legislation, it will be necessary to take both language versions into account to determine what the legislation means. This is something that affects all those concerned with the making, implementation, administration and interpretation of Welsh legislation.

Section 156(1) of GoWA 2006 will continue to apply to Assembly Measures, Assembly Acts enacted before 1 January 2020, and Welsh subordinate legislation to which Part 2 of the 2019 Act will not apply.

Annex

Part 2 compared to the 1978 Act

The table below outlines the similarities and differences between Part 2 of the 2019 Act and the 1978 Act. For a more detailed explanation and comparison, see the Explanatory Notes to the 2019 Act.

2019 Act	Commentary
Section 7 Words in the singular include the plural and vice versa	Equivalent to section 6(c) of the 1978 Act.
Section 8 Words denoting a gender are not limited to that gender	Equivalent to section 6(a) and (b) of the 1978 Act, but it does not refer expressly to the male and female genders and therefore has a wider scope.
Section 9 Variations of a word or expression due to grammar etc.	No equivalent in the 1978 Act.
Section 10 References to time of day	Equivalent to section 9 of the 1978 Act.
Section 11 References to the Sovereign	Equivalent to section 10 of the 1978 Act.
Section 12 Measurement of distance	Equivalent to section 8 of the 1978 Act.
Section 13 Service of documents by post or electronically	Corresponds to section 7 of the 1978 Act but also covers electronic service.
Section 14 Day on which service is deemed to be effected	Corresponds to section 7 of the 1978 Act but also covers electronic service.
Section 15 Continuity of powers and duties	Equivalent to section 12 of the 1978 Act.
Section 16 Exercise of a power or duty that is not in force	Corresponds to section 13 of the 1978 Act, but it contains a number of differences intended to clarify its scope (which is in some respects narrower) and its effect.
Section 17 Inclusion of sunset provisions and review provisions in subordinate legislation	Equivalent to section 14A of the 1978 Act.
Section 18 Revoking, amending and re-enacting subordinate legislation	Equivalent to section 14 of the 1978 Act, but applies to a slightly wider range of subordinate legislation.

2019 Act	Commentary
Section 19 Amendment of subordinate legislation by an Act of Senedd Cymru	No equivalent in the 1978 Act.
Section 20 Varying and withdrawing directions	No equivalent in the 1978 Act.
Section 21 References to portions of enactments, instruments and documents	Equivalent to section 20(1) of the 1978 Act, but applies to references to a wider range of instruments and documents.
Section 22 Edition of Act of Senedd Cymru or Assembly Measure referred to	Equivalent to section 19(1) of the 1978 Act (when read with section 23B of that Act) but with updated drafting.
Section 23 Edition of Act of the Parliament of the United Kingdom referred to	Equivalent to section 19(1) of the 1978 Act, but the citations to which it applies are described in more general terms.
Section 25 References to enactments are to enactments as amended	Equivalent to section 20(2) of the 1978 Act, but makes clear that references to other legislation are “ambulatory” (i.e. cover legislation which is later amended).
Section 26 References to EU instruments	Equivalent to section 20A of the 1978 Act.
Section 27 Duplicated offences	Equivalent to section 18 of the 1978 Act, so far as it relates to duplication of offences in different pieces of Welsh legislation.
Section 28 Application of Welsh legislation to the Crown	No equivalent in the 1978 Act.
Section 29 Time when Welsh legislation comes into force	Equivalent to section 4(a) of the 1978 Act.
Section 30 Day on which an Act of Senedd Cymru comes into force	Corresponds to section 4(b) of the 1978 Act, but changes the default day on which an Act comes into force from the day on which it receives Royal Assent to the day after the day on which the Act receives Royal Assent.
Section 31 Orders and regulations bringing Acts of Senedd Cymru into force	No equivalent in the 1978 Act.

2019 Act	Commentary
Section 32 Amendments made to or by Welsh legislation	No equivalent in the 1978 Act.
Section 33 Repeals and revocations do not revive law previously repealed, revoked or abolished	Equivalent to section 15 of the 1978 Act, but extended to apply to the repeal of legislation which abolished a common law rule.
Section 34 General savings in connection with repeals and revocations	Equivalent to section 16 of the 1978 Act, but does not apply to the repeal of an enactment which previously abolished a rule of common law (dealt with at section 33 of the 2019 Act).
Section 35 Effect of re-enactment	Equivalent to section 17(2) of the 1978 Act, but extended to apply where the repeal and re-enactment are provided for in different Acts or instruments.
Section 36 Referring to an Act of Senedd Cymru by its short title after repeal	Equivalent to section 19(2) of the 1978 Act.

In addition, note that section 11 of the 1978 Act (which provides for the construction of subordinate legislation) is not replicated in the 2019 Act. This is dealt with above under the heading *Relationship between the meaning of terms in primary and subordinate legislation*.

Part 3 – Contents

What does Part 3 of the Legislation (Wales) Act 2019 do?

Part 3 of the Act gives the Welsh Ministers a power to amend legislation to replace descriptions of dates with references to the actual dates once they are known, and it contains provisions which make it easier for the Welsh Ministers to combine subordinate legislation made under different powers in a single statutory instrument.

Who needs to understand Part 3?

Part 3 is mainly relevant to lawyers and officials in the Welsh Government who draft statutory instruments for the Welsh Ministers. It will also be relevant to those who are involved in the scrutiny of statutory instruments by Senedd Cymru and to other readers of Welsh statutory instruments.

For guidance on the drafting of Welsh statutory instruments, see also the Welsh Government's legislative drafting guidance, *Writing Laws for Wales: A Guide to Legislative Drafting*.

When did Part 3 come into force?

Part 3 came into force on 11 September 2019. The provisions in Part 3 may be relied upon in statutory instruments that the Welsh Ministers make from that date onwards (or that they lay before the Senedd in draft on or after that date, in the case of instruments subject to affirmative procedure).

Section 38: Power to replace descriptions of dates and times in Welsh legislation

What does section 38 of the Act enable the Welsh Ministers to do?

The power in section 38 is a free-standing power to make regulations that replace a description of a date in legislation (e.g. "the day on which Part 2 of this Act comes fully into force") with a reference to the actual date once it is known (e.g. "1 January 2020"). Its purpose is to make legislation more accessible and easier to understand. It can be used to amend Acts of Senedd Cymru and Assembly Measures, subordinate legislation made under devolved powers, and provisions that devolved legislation has inserted into any other legislation. It does not matter when the legislation in question was enacted.

The Explanatory Notes to the Act contain a more detailed account of section 38.

When should the power in section 38 to insert actual dates be used?

The most common situation in which the power is likely to be used is when making a commencement order to bring provisions of an Act into force. At the same time as the provisions are brought into force, any legislation that refers to the date on which those provisions come into force can be amended to refer to the actual commencement date that is set by the order. (These amendments can be included in the order by virtue of section 39 of the Act, which allows regulation-making powers to be used to make orders.)

When drafting a commencement order, consider whether there are any amendments of this kind that could be included in the order. Amendments of this kind should be made wherever they would help readers of the legislation by removing the need for them to search for commencement orders to understand the meaning of provisions.

It may not be helpful for a commencement order to include amendments under section 38 if the coming into force of a provision is particularly complicated (for example, if it comes into force on a number of different days for different purposes).

The power in section 38 could also be used in any other statutory instrument where the opportunity arises, or even in a free-standing instrument that only makes amendments under section 38.

What drafting considerations may arise when making amendments under section 38?

If a commencement order or other statutory instrument includes amendments to other legislation under section 38, it will need to make provision about when those amendments come into force.

Section 38 can be used both to replace a description of a date with the actual date, and to add an explanation of that date to the amended legislation. This may make it easier for people to see the significance of the date that is mentioned.

For example, section 38 could be used to replace a reference to things done "before the date on which section X of the Y Act comes into force" with a simple reference to things done "before 1 April 2019" (or whatever the actual date was). However, the reader of the amended legislation might then wonder what happened on 1 April 2019 or might need to find out what the legal position was from 1 April 2019 onwards. Drafters should therefore consider whether it would be helpful to include an explanation such as "1 April 2019 (the day on which section X of the Y Act came into force)".

If section 38 is used to make amendments to primary legislation, those amendments will need to be cleared by the Office of the Legislative Counsel in the usual way.

How will including amendments under section 38 affect the form of a statutory instrument or the procedure for making it?

If a statutory instrument includes amendments under section 38, the preamble will need to cite section 38 of the Legislation (Wales) Act 2019 as one of its enabling powers.

Where amendments under section 38 are included in a commencement order, the preamble should not cite the power in section 39 of the Act (which allows regulation-making powers to be used to make orders). However, the footnote accompanying the reference to section 38 should include an explanation of the effect of section 39. The following wording is suggested for the footnote:

> 2019 anaw 4. The power to make regulations under section 38 of the Legislation (Wales) Act 2019 may be exercised to make an order by virtue of section 39 of that Act.

Including amendments under section 38 in a commencement order or other statutory instrument will not affect the procedure for the instrument. The power in section 38 is not subject to any Senedd procedure.

Section 39: Power to make subordinate legislation in different forms

What does section 39 of the Act enable the Welsh Ministers to do?

Section 39 applies where the Welsh Ministers have a power to make subordinate legislation by statutory instrument, and the power specifies that the subordinate legislation is to be made in the form of regulations, rules or an order. Section 39 enables the subordinate legislation to be made in any of those forms, regardless of which is specified. For example, a power to make an order may be used to make regulations, or vice versa. The main purpose of section 39 is to facilitate the combination of provisions made under different powers in the same statutory instrument. See the Explanatory Notes to the Act for a fuller account.

Section 39 applies to any power or duty of the Welsh Ministers to make regulations, rules or an order by statutory instrument, regardless of how or when the power or duty was created. It applies to powers and duties under both devolved and UK legislation, and under legislation enacted both before and after the section came into force – although this is subject to some limits which are discussed below.

When should the power in section 39 to make subordinate legislation in different forms be used?

The power in section 39 may be used when making a statutory instrument containing subordinate legislation under different powers, or when making a set of related statutory instruments. It means that decisions about how to organise the material will not be dictated by the often arbitrary distinction between regulations, rules and orders. Drafters will therefore have greater freedom to decide whether material belongs together in the same instrument or should be put into separate instruments.

The power in section 39 should be used wherever it seems appropriate to do so. Whether it is appropriate to combine provisions made under different powers in the same instrument can depend on a variety of factors, such as their subject-matter, audience or legal effect. Generally, our intention should be to organise the subordinate legislation in a way that is logical and accessible to the user of the legislation Section 39 should also be considered with section 40, which deals with the combination in one statutory instrument of provisions that attract different Senedd procedures.

Are there any limits on the use of the power in section 39?

The power in section 39 can be used in any statutory instrument made under any Act of Senedd Cymru or Assembly Measure. However, there are some additional points to consider when making subordinate legislation under an Act of the UK Parliament (or in future under any powers inserted into retained direct EU legislation).

a. **Geographical application.** Section 39 is not available when making subordinate legislation that applies otherwise than in relation to Wales. Most of the Welsh Ministers' functions under Acts of the UK Parliament are exercisable only in relation to Wales, but they do have some powers to make subordinate legislation in relation to the "Welsh zone" (which includes the sea beyond the seaward boundary of Wales) and "cross-border areas" (which include parts of England adjacent to the border). Section 39 does not apply to subordinate legislation of these kinds.

b. **Extent.** Section 39 extends only to England and Wales, but some powers of the Welsh Ministers under Acts of the UK Parliament also extend to Scotland or Northern Ireland (even if their practical application is limited to Wales). Section 39 will not apply to a power to make subordinate legislation insofar as it forms part of the law of Scotland or Northern Ireland.

   If subordinate legislation made under such a power needs to extend beyond the jurisdiction of England and Wales, section 39 should not be relied on when making the subordinate legislation.

   In some cases, it may be possible to use a power that extends beyond England and Wales to make an instrument that extends only to England and Wales. If so, that may be achieved by including a provision in the instrument limiting its extent, and it should then be possible to use section 39. However, even if it is possible to limit the extent of the instrument, it may not be appropriate to do so, for example if things done under the instrument need to be recognised in the law of every part of the UK. It will be necessary to consider whether there could be any adverse effects.

   To determine whether these issues arise, it will be necessary to check the extent provisions in the Act of the UK Parliament that confers the power to make subordinate legislation (which are normally found near the end of the Act) and consider what extent is appropriate for the instrument.

Can section 39 be used in a joint or composite instrument?

Section 39 applies only to subordinate legislation made by the Welsh Ministers, but Ministers of the Crown have a corresponding power to make subordinate legislation in different forms under section 105 of the Deregulation Act 2015.

In principle, section 39 could be used when the Welsh Ministers make a statutory instrument jointly with a Minister of the Crown, or when they make a "composite" instrument containing subordinate legislation made by the Welsh Ministers in relation to Wales, and by a Minister of the Crown in relation to England or in relation to matters that are not devolved. But in practice, issues about geographical application and extent may cause difficulties.

It is unlikely that section 39 could be used in a joint instrument, because a joint instrument is likely to contain provision made by both the Welsh Ministers and UK Ministers in relation to an area that reaches beyond Wales. The issues relating to legal extent discussed above may also be relevant.

In a composite instrument, the Welsh Ministers will generally be making provision only in relation to Wales, so there may not be any problem about geographical application. But it will still be necessary to consider whether there are any difficulties relating to the legal extent of the instrument.

Should an instrument that relies on section 39 be called an order or rules or regulations?

Section 39 simply provides that a power to make regulations, rules or an order can be used to make subordinate legislation in any other of those forms; it does not create a presumption that a combined instrument should be made in a particular form.

Drafters will need to consider in each case whether it is more appropriate for an instrument to be an order, a set of rules or a set of regulations. It may be relevant to consider how much of the instrument will be made under powers to make each form of subordinate legislation, and the titles of any existing instruments in the relevant policy area.

Since 2014, both UK and devolved Acts have generally conferred powers to make subordinate legislation in the form of regulations. If other considerations do not point clearly towards making a combined instrument in a particular form, the default should be to make regulations.

The form and title of the subordinate legislation should normally correspond to at least one of the powers under which it is made. For example, if all of the provisions in an instrument are made under powers to make orders and rules, it will probably not be a good idea to call the instrument regulations.

How will relying on section 39 affect the content of an instrument or the supporting documents?

If a statutory instrument contains provisions that are made in a different form from that specified in the enabling legislation (for example, if a set of regulations contains provisions made under an order-making power), the preamble to the instrument should not cite the power in section 39. However, the footnote accompanying the reference to the relevant enabling power should explain that the power is being used to make subordinate legislation in a different form by virtue of section 39. The following form of words may be used, with appropriate adaptations:

> The power to make [an order] under section [x] of the [Y] Act may be exercised to make [regulations] by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4).

Relying on section 39 will mean that an instrument contains provisions that would otherwise have been made in a different form. The section of the Explanatory Memorandum to the instrument dealing with matters of special interest to the Legislation, Justice and Constitution Committee should explain briefly why this is considered appropriate.

The legislative background section of the Explanatory Memorandum should, in addition to identifying the powers to make rules, regulations or orders under which the instrument is made, mention that section 39 enables those powers to be used to make provision in a different form.

Will using section 39 affect the procedure for making an instrument?

The fact that provisions are made in a different form under section 39 does not, in itself, affect the Senedd procedure for making those provisions: see section 39(2) of the Act. For example, if an order-making power is used to make regulations, the regulations will still be subject to the Senedd procedure that applies to the order-making power.

However, combining provisions under different powers in the same statutory instrument may affect the Senedd procedure for some of those provisions by virtue of section 40 of the Act.

Section 40: Combining subordinate legislation subject to different Senedd procedures

What does section 40 do?

Section 40 applies where a statutory instrument made by the Welsh Ministers contains subordinate legislation that would be subject to more than one type of Senedd procedure. It ensures that the instrument is only subject to the "stricter" of those procedures. For example, if an instrument contains some provisions that would attract affirmative procedure and others that would attract negative procedure, the whole instrument is subject only to affirmative procedure.

Section 40 also applies where an instrument contains some provisions that would be subject to an Senedd procedure and others that would be subject to no procedure. For example, if an instrument contains some provisions that would attract negative procedure and others that would not be subject to any Senedd procedure, the whole instrument is subject to negative procedure.

Section 40 applies to any statutory instrument made by the Welsh Ministers, containing any form of subordinate legislation, and regardless of how or when the power or duty to make the instrument was created. It applies to powers and duties under both devolved and UK legislation, and under legislation enacted both before and after the Legislation (Wales) Act 2019 – although this is subject to limits discussed below.

Section 40 may be used together with section 39, which enables the Welsh Ministers to make subordinate legislation in different forms (e.g. by using an order-making power to make a set of regulations). For example, if the Welsh Ministers have a power to make an order subject to affirmative procedure, and a power to make regulations subject to negative procedure, sections 39 and 40 enable them to combine the powers in one statutory instrument (which may be an order or regulations) that will be subject to affirmative procedure.

Are there any limits on the use of the power in section 40?

Section 40 will apply to any statutory instrument made under an Act of Senedd Cymru or Assembly Measure.

However, there are some limits on its application when making an instrument under an Act of the UK Parliament (or in future under any powers inserted into retained direct EU legislation).

a. **Geographical application.** Section 40 does not apply to an instrument containing any subordinate legislation that applies otherwise than in relation to Wales. Most of the Welsh Ministers' functions under UK Acts are exercisable only in relation to Wales, but they do have some powers to make subordinate legislation in relation to the "Welsh zone" (which includes the sea beyond the seaward boundary of Wales) and "cross-border areas" (which include parts of England adjacent to the border). Section 40 does not apply to an instrument containing subordinate legislation of these kinds.

b. **Extent.** Section 40 extends only to England and Wales, but some powers of the Welsh Ministers under Acts of the UK Parliament also extend to Scotland or Northern Ireland (even if their practical application is limited to Wales). Section 40 will not apply to a statutory instrument insofar as it forms part of the law of Scotland or Northern Ireland.

   If subordinate legislation made by the Welsh Ministers needs to extend beyond the jurisdiction of England and Wales, section 40 should not be relied on when making the subordinate legislation.

In some cases, it may be possible to use a power that extends beyond England and Wales to make an instrument that extends only to England and Wales. If so, that may be achieved by including a provision in the instrument limiting its extent, and it should then be possible to use section 40. However, even if it is possible to limit the extent of the instrument, it will be important to ensure that doing so will not have any adverse effects.

To determine whether these issues arise, it will be necessary to check the extent provisions in the Act of the UK Parliament that confers the power to make subordinate legislation (which are normally found near the end of the Act) and consider what extent is appropriate for the instrument.

Can section 40 be used in a joint or composite instrument?

Section 40 applies only to instruments containing subordinate legislation made by the Welsh Ministers, and only affects procedure in Senedd Cymru. There is no general provision of this kind applying to instruments containing subordinate legislation made by Ministers of the Crown, although there are similar provisions about subordinate legislation made under particular Acts. These include subordinate legislation made under the wide powers in the European Communities Act 1972 and the European Union (Withdrawal) Act 2018.

In principle, section 40 could be used when the Welsh Ministers make a joint or composite instrument with a Minister of the Crown. But in practice, issues about geographical application and extent may cause difficulties.

It is unlikely that section 40 could be relied on in a joint instrument, because a joint instrument is likely to contain provision made by both the Welsh Ministers and UK Ministers in relation to an area that extends beyond Wales. The issues relating to legal extent discussed above may also be relevant.

In a composite instrument, the Welsh Ministers will generally be making provision only in relation to Wales, so there may not be any problem about geographical application. But it will still be necessary to consider whether there are any difficulties relating to the legal extent of the instrument.

Relying on other provisions similar to section 40

Some UK Acts contain provisions similar to section 40, dealing with cases where more than one Senedd procedure would apply to an instrument made by the Welsh Ministers and applying the "higher" procedure. They include the European Communities Act 1972[5] and the European Union (Withdrawal) Act 2018[6].

Where those other provisions apply, it may be preferable to rely on them instead of section 40 in order to avoid the difficulties relating to geographical application and extent mentioned above.

How does relying on section 40 affect the contents of an instrument or the supporting documents?

The italic date information in a statutory instrument will need to reflect the procedural requirements that apply to the instrument (e.g. a negative instrument must include a "laid" date). Where section 40 applies to an instrument, the information should reflect the procedure that applies by virtue of section 40.

In an instrument subject to negative procedure, the provision of the parent Act that applies the negative procedure is not normally cited anywhere in the instrument, so there is no need to cite section 40 in either the preamble to the instrument or a footnote.

[5] See paragraph 2A of Schedule 2 to the 1972 Act, as applied to the Welsh Ministers by paragraph 35A of Schedule 11 to the Government of Wales Act 2006.

[6] See paragraph 38 of Schedule 7 and paragraph 4 of Schedule 8.

In an instrument subject to affirmative procedure, the preamble will recite that the instrument has been approved by resolution of Senedd Cymru in accordance with the provision imposing that procedure. Where an affirmative instrument contains provisions that would not otherwise attract the affirmative procedure, the reference to the procedural provision in the preamble should include a footnote explaining that section 40 applies[7]. For example:

> See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

The application of section 40 will mean that an instrument contains provisions which could have been made in an instrument subject to a "less strict" Senedd procedure. (For example, an affirmative instrument will contain provisions that could have been made in a negative instrument.) The section of the Explanatory Memorandum to the instrument dealing with matters of special interest to the Legislation, Justice and Constitution Committee should explain briefly why this is considered appropriate.

The legislative background section of the Explanatory Memorandum should, in addition to identifying the procedure under which the instrument is made, state that it includes provisions that would otherwise be subject to a different procedure and explain the effect of section 40.

Does section 40 affect consultation requirements and "enhanced" Senedd procedures?

Section 40 deals only with the Senedd procedures that would otherwise apply to different provisions contained in a statutory instrument. It does not affect any requirements for the Welsh Ministers to undertake consultation or have regard to views or advice before making subordinate legislation. And for instruments subject to "enhanced" or "super-affirmative" procedures, section 40 does not affect any steps that must be taken before the final version of an instrument is laid before the Senedd.

If an instrument contains provisions made under a number of different powers, only some of which are subject to consultation requirements, those consultation requirements will continue to apply in the same way as before. That may mean that the Welsh Ministers are required to consult on some of the provisions they propose to include in the instrument, but not others.

In practice, it might not be easy to differentiate between the provisions that required consultation and those that did not. It might therefore make most sense to carry out a consultation on all of the provisions to be included in the instrument. And the Welsh Ministers might wish to consult on all of the provisions anyway.

[7] The same approach would be appropriate if for any reason any instrument (including a negative instrument) to which section 40 applied were to cite the provision applying the scrutiny procedure.

Llywodraeth Cymru
Welsh Government

Senedd and Elections (Wales) Act 2020

Guidance on the legislative drafting implications of Part 2

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 WG40020 Digital ISBN: 978-1-80038-591-7

Contents

Introduction

Part 2 of the Senedd and Elections (Wales) Act 2020 (SEWA 2020) renames the National Assembly for Wales, Acts of the Assembly and various bodies and offices relating to the Assembly. These changes took effect on 6 May 2020. This note contains guidance on the implications of the changes for the drafting of Bills and subordinate legislation.

Summary of changes to names made by SEWA 2020

Part 2 of SEWA 2020 makes the following changes.

- The name of the legislature is changed from "National Assembly for Wales or Cynulliad Cenedlaethol Cymru" to "Senedd Cymru or the Welsh Parliament".
- "Acts of the National Assembly for Wales" ("*Deddfau Cynulliad Cenedlaethol Cymru*") are renamed "Acts of Senedd Cymru" ("*Deddfau Senedd Cymru*").
- The members of the legislature are given the formal title "Members of the Senedd" ("*Aelodau o'r Senedd*").
- The "Clerk of the Assembly" ("*Clerc y Cynulliad*") is renamed the "Clerk of the Senedd" ("*Clerc y Senedd*").
- The "National Assembly for Wales Commission" ("*Comisiwn Cynulliad Cenedlaethol Cymru*") is renamed the "Senedd Commission" ("*Comisiwn y Senedd*").
- The "National Assembly for Wales Commissioner for Standards" ("*Comisiynydd Safonau Cynulliad Cenedlaethol Cymru*") is renamed the "Senedd Commissioner for Standards" ("*Comisiynydd Safonau y Senedd*").
- The "National Assembly for Wales Remuneration Board" ("*Bwrdd Taliadau Cynulliad Cenedlaethol Cymru*") is renamed the "Independent Remuneration Board of the Senedd" ("*Bwrdd Taliadau Annibynnol y Senedd*").

These changes are made by amending the text of the legislation that created the various bodies and offices, in particular the Government of Wales Act 2006 (GoWA 2006). The relevant provisions are identified in the Annex to this document.

Paragraph 5 of Schedule 1 to SEWA 2020 also amends Schedule 1 to the Legislation (Wales) Act 2019 (LWA 2019) to insert generally-applicable definitions of:

- "Senedd Cymru" (the term used in both language versions of the Schedule)
- "Act of Senedd Cymru" ("*Deddf gan Senedd Cymru*")
- "Member of the Senedd" ("*Aelod o'r Senedd*")
- "Senedd Commission" ("*Comisiwn y Senedd*")

These definitions operate alongside the provisions in section 150A of GoWA 2006, as amended by paragraph 2(7) of Schedule 1 to SEWA 2020. Section 150A(2) provides that references to Senedd Cymru, Acts of Senedd Cymru and the Senedd Commission by their old names include the new names given by Part 2 of the SEWA 2020[1]. Section 150A(3) provides that references to them by their new names include the previous names. (See below for discussion and examples.)

[1] This is referred to in the heading of the section as a "translation" from one term to another, which is not to be confused with translation between languages.

How should legislation refer to the legislature after its name changes?

Welsh Government drafting policy is to use the name "Senedd Cymru" in both the Welsh and English language texts of legislation, and **not** to use the name "Welsh Parliament" in the English language text. For example, a provision for a statutory instrument to be subject to negative procedure will state in the English language text that the instrument is "subject to annulment in pursuance of a resolution of Senedd Cymru". See below for the application of this policy to amendments to UK legislation and existing Welsh legislation.

In the past, legislation has sometimes used shortened versions of the name of the National Assembly for Wales in order to make provisions easier to read. For example, a provision might use the full name the first time that it mentions the institution, and then use "the Assembly" or "the National Assembly" in later references; or an Act or instrument might use the term "the Assembly" and define it to mean the National Assembly for Wales.

Legislation that refers to the legislature often contains only a very small number of references to it (e.g. an Act might only mention the legislature in the section about procedures for subordinate legislation). In those cases, it will generally be simpler to use the full title "Senedd Cymru" in each reference. However, it may be appropriate to shorten this to "the Senedd" in an enactment that contains more references to the institution, and using "the Senedd" will be consistent with how the legislature generally refers to itself. If you adopt this approach, you will need to make clear that "the Senedd" means Senedd Cymru. You may do that by including a definition (as in section 1 of GoWA 2006 and section 41 of SEWA 2020) or by using the full name the first time the institution is mentioned in a section or regulation (and the shortened form for later references in the same section or regulation).

In addition, legislation has sometimes used defined terms that contain shorthand references to the National Assembly for Wales, rather than its full title, such as "Assembly procedure". This approach may still be helpful. Following the name change, a label of this kind could contain a shorthand reference to the Senedd, so the phrase "Senedd procedure" could be used.

Senedd Cymru is the same institution that was established by section 1 of GoWA 2006 and was previously known as the National Assembly for Wales. So a reference to "Senedd Cymru" will include the National Assembly for Wales where that is relevant, unless the context requires otherwise (see section 150A(3) of GoWA 2006 and the definition of "Senedd Cymru" in Schedule 1 to LWA 2019).

How should legislation refer to members of the legislature after the change of name?

As originally enacted, Part 1 of GoWA 2006 made provision about membership of the National Assembly for Wales and referred to its members as "Assembly members", but it did not give members a statutory title to be used in other legislation.

Section 4 of SEWA 2020 inserts a new section 1(2A) into GoWA 2006, which provides that members are to be known as "Members of the Senedd or Aelodau o'r Senedd". Accordingly, on 6 May 2020 members of the legislature will acquire those statutory titles, which should always be used when referring to them.

Note that the statutory title in English is "Member of the Senedd" and not "Member of Senedd Cymru" or "Member of the Welsh Parliament". Similarly, the title in Welsh is "Aelod o'r Senedd" and not "Aelod o Senedd Cymru". In the new titles, "Member" and "Aelod" always begin with capital letters.

How should legislation refer to devolved Acts and Measures after the change of name?

Following the name change, a general reference to devolved Acts should refer to "Acts of Senedd Cymru" in English and "Deddfau Senedd Cymru" in Welsh. In the singular, a general reference should be to "an Act of Senedd Cymru" or "Deddf gan Senedd Cymru". These references will include Acts of the National Assembly for Wales passed before the name of the legislature changed, unless the context requires otherwise (see section 150A of GoWA 2006 and the definition of "Act of Senedd Cymru" in Schedule 1 to LWA 2019).

For example, if an Act provides that regulations are subject to affirmative Senedd procedure if they amend "an Act of Senedd Cymru," that provision will apply equally to regulations which amend an Act passed by the National Assembly for Wales before its name was changed.

In the past, legislation sometimes referred to "Assembly Acts" rather than using the full title "Acts of the National Assembly for Wales" (and Schedule 1 to LWA 2019 endorsed the use of "Assembly Act" by including a general definition of that phrase). Following the name change, there should be less need to describe Acts using a shortened version of their name, because "Acts of Senedd Cymru" is already significantly shorter than the previous name.

A specific Act can only be either an Act of Senedd Cymru or an Act of the National Assembly for Wales. (Part 2 of SEWA 2020 does not convert individual Acts that were passed by the Assembly into Acts of Senedd Cymru.) In any event, a reference to a specific Act will normally use the title of the Act, which will be unaffected by the changes of terminology in Part 2 of SEWA 2020.

Measures of the National Assembly for Wales, which were all enacted between 2008 and 2011, are not renamed by Part 2 of SEWA 2020. A general reference to Measures should therefore still refer to "Assembly Measures" or "Mesurau Cynulliad". That shorthand name is defined for general purposes in Schedule 1 to LWA 2019.

If you need to refer to all of the primary legislation passed by the devolved legislature (for example, if imposing affirmative procedure for regulations which amend primary legislation), you will need to refer to both Acts of Senedd Cymru and Assembly Measures.

How does the change of name affect references to the Assembly etc in existing legislation?

Where existing legislation (or any other document) refers to the National Assembly for Wales, Acts of the Assembly or the Assembly Commission, from 6 May 2020 those references are to be read as including references to Senedd Cymru, Acts of Senedd Cymru and the Senedd Commission. This is the effect of section 150A of GoWA 2006, which applies to all enactments, whether made by devolved or UK institutions, including GoWA 2006 itself.

For example, a provision about the Assembly procedure for statutory instruments will become a provision about the corresponding Senedd procedure in relation to instruments made after the name change; and a reference in legislation to a person exercising functions under an Act of the National Assembly for Wales will include a person exercising functions under an Act of Senedd Cymru.

Which names should be used in amendments and references to existing legislation?

Where a new piece of legislation refers to or describes provisions in existing legislation which relate to the National Assembly for Wales, and those provisions are also relevant to Senedd Cymru, the reference or description should refer to Senedd Cymru. For example, section 76 of the Public Services Ombudsman (Wales) Act 2019 provides that the Assembly may delegate certain functions it has under that Act. From 6 May 2020, if another enactment were to amend section 76 and give a parenthetical description of its subject-matter, the description would need to refer to functions of Senedd Cymru rather than functions of the Assembly.

However, references to the titles of existing enactments, or quotations of the text of existing enactments, should use the words that actually appear in the enactments, even if they use the old names that relate to the Assembly.

If you are amending an enactment which contains references relating to the Assembly, any new material you are inserting into the enactment will need to use the new names relating to Senedd Cymru. For example, if an existing Act contains requirements for documents to be laid before the National Assembly for Wales, any new provisions about laying documents that are inserted into the Act should provide for the documents to be laid before Senedd Cymru.

When you are amending an enactment to insert new material that refers to Senedd Cymru, it is not necessary to update existing references to the Assembly in that enactment so that they use the new names. However, it may be appropriate to do so if it helps with the drafting of the amendments, or if the amended text would otherwise become confusing or difficult to read.

These policies apply whether you are amending Welsh legislation or UK legislation (including Acts of the UK Parliament and subordinate legislation made by Ministers of the Crown).

When considering issues of this kind, remember that references to the National Assembly for Wales in provisions enacted or amended before May 2007 meant the Assembly established by the Government of Wales Act 1998 (GoWA 1998), which was a different entity from the Assembly established by GoWA 2006. Most of those references now mean the Welsh Ministers rather than the devolved legislature: see paragraphs 30-32 of Schedule 11 to GoWA 2006. Those references are therefore unaffected by SEWA 2020 (which does not amend Schedule 11 to GoWA 2006).

Will it ever be appropriate to refer to the National Assembly for Wales?

Now that the National Assembly for Wales has been renamed, legislation should not refer to it by that name and should instead use Senedd Cymru.

There may still be cases where it is necessary to refer to the National Assembly for Wales that was established by GoWA 1998 (and abolished by GoWA 2006), and that Assembly should still be referred to as the National Assembly for Wales. For example, it is occasionally necessary to refer in general terms to subordinate legislation made by that Assembly or by the Welsh Ministers. And footnotes to statutory instruments may need to explain that the powers under which they are made were transferred from a Minister of the Crown to the National Assembly for Wales established by GoWA 1998 and then to the Welsh Ministers.

Should statutory instruments include footnotes to explain the change of name?

Where a statutory instrument is subject to affirmative procedure, the preamble to the instrument will need to record that a draft of the instrument has been laid before, and approved by resolution of, Senedd Cymru.

If the instrument is to be made under an Act or Measure that was enacted before the change of name, the procedural provisions in the Act or Measure will refer to the National Assembly for Wales. However, they will now have effect as if they referred to Senedd Cymru by virtue of the gloss in section 150A(2) of GoWA 2006. The reference to the procedural provisions in the preamble to the instrument should include a footnote explaining how they are affected by section 150A(2). For an instrument subject to the standard "draft affirmative" procedure, the following wording is suggested:

> The reference in [section x] 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).

It may also be appropriate to include a footnote of this kind where a provision in the body of a statutory instrument refers to Senedd Cymru and mentions a provision that contains a reference to the National Assembly for Wales that is affected by section 150A(2). If there are multiple references of this kind, a single footnote can deal with the matter generally the first time that Senedd Cymru is mentioned. For example:

> References in [the X Act] to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Where can I get more help?

If you come across a case where the glosses in section 150A of GoWA 2006 do not seem to do everything that is required to reflect the changes of name under SEWA 2020, please let the Legal Services Constitution Team know.

If you think that Part 2 of SEWA 2020 gives rise to a drafting issue that is not covered in this document, or that the guidance in this document is not appropriate for the particular situation you are dealing with, please get in touch with the Office of the Legislative Counsel.

Annex – Summary of name changes

Section 2 of SEWA 2020 amends section 1 of GoWA 2006 so that the reference to the "National Assembly for Wales or Cynulliad Cenedlaethol Cymru" is replaced by "Senedd Cymru or the Welsh Parliament". Welsh Government policy, however, is to refer to the legislature as "Senedd Cymru" (or, where appropriate, the "Senedd") in both the Welsh and English languages. This is reflected in the definition adopted in Schedule 1 to LWA 2019 (as amended by paragraph 5(7) of Schedule 1 to SEWA 2020).

Other name changes are as follows:

English		Welsh		Naming enactment	Amending provision in SEWA 2020
From	To	From	To		
Acts of the National Assembly for Wales	Acts of Senedd Cymru	Deddfau Cynulliad Cendlaethol Cymru	Deddfau Senedd Cymru	Plural forms in section 107 of GoWA 2006	Section 3
Act of the National Assembly for Wales	Act of Senedd Cymru	Deddf (gan) Cynulliad Cendlaethol Cymru	Deddf gan Senedd Cymru	Singular forms in Schedule 1 to LWA 2019	Schedule 1 para 5(7)
Member(s) of the National Assembly for Wales	Member(s) of the Senedd	Aelod(au) Cynulliad Cendlaethol Cymru	Aelod(au) o'r Senedd	New names in section 1(2A) of GoWA 2006 Also Schedule 1 to LWA 2019 No statutory title in GoWA 2006 as enacted	Section 4 Schedule 1 para 5(7)
Clerk of the Assembly	Clerk of the Senedd	Clerc y Cynulliad	Clerc y Senedd	Section 26(2) of GoWA 2006	Section 5
National Assembly for Wales Commission	Senedd Commission	Comisiwn Cynulliad Cendlaethol Cymru	Comisiwn y Senedd	Section 27(1) of GoWA 2006 Also Schedule 1 to LWA 2019	Section 6 Schedule 1 para 5(7)
National Assembly for Wales Commissioner for Standards	Senedd Commissioner for Standards	Comisiynydd Safonau Cynulliad Cenedlaethol Cymru	Comisiynydd Safonau y Senedd	Section 1(1) of the National Assembly for Wales Commissioner for Standards Measure 2009	Section 7
National Assembly for Wales Remuneration Board	Independent Remuneration Board of the Senedd	Bwrdd Taliadau Cynulliad Cenedlaethol Cymru	Bwrdd Taliadau Annibynnol y Senedd	Section 1(1) of the National Assembly for Wales (Remuneration) Measure 2010	Section 8

Document is Restricted

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Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

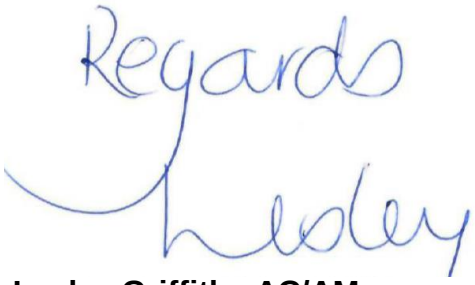
Mick Antoniw AM
Chair
Legislation, Justice and Constitution Committee

14 May 2020

Dear Mick,

Thank you for your letter of 9 April, regarding the Legislative Consent Memorandum for the Environment Bill. As you will be aware scrutiny of the Bill is currently paused and subsequently a revised reporting date has been agreed for the Committee's report. I am grateful for the Committee's understanding of the impact of the unprecedented circumstances we find ourselves in and for allowing me to submit my responses by correspondence.

I have provided additional information as requested in the attached document.



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Responses to Legislation, Justice and Constitution Committee questions on the Legislative Consent Memorandum for the UK Environment Bill

General

1. Do you consider that the Bill, and all of the provisions contained within it, are necessary? If so, could you explain why.

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of provisions included in the Bill for Welsh Ministers, I can confirm I consider these to be necessary.

The Environment Bill supports the UK's collective obligation to transpose the EU's Circular Economy Package (CEP). In addition to meeting the needs of the CEP provisions, the Bill will also support Wales's ambition to move to a more Circular Economy. It provides the legislative tools to support how we tackle waste crime, littering, improve recycling rates, incentivise resource efficiency and ensure producers pay for the end of life costs of the products and materials placed on the market.

In addition, the existing legislative provisions are within a single piece of legislation and to provide continuity and accessibility for users the Bill provides a single source to amend the existing legislation therefore reducing the number of amendments within the source legislation.

In relation to air quality Clause 70 and Part 2 of Schedule 12, amends Part III of the Clean Air Act 1993, in relation to Wales. The effect of the proposed amendment to the Clean Air Act 1993 is to create a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace which can be lawfully used in Wales' Smoke Control Areas and to switch away from the making of subordinate legislation for achieving this goal. The rationale for using the UK Environment Bill is to bring about benefits for both manufacturers and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced. The adoption of published lists will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. There will also be an environmental benefit as improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas.

The powers for Welsh Ministers in relation to water align with the commitments in the Welsh Government Water Strategy for Wales, including working with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Our aim is for sewerage and drainage systems to be resilient and well maintained both for present and for future generations, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.

Land drainage powers are necessary to allow for the revision and update of the methodology of calculating the split of income between special levies and drainage rates. The Bill also makes provision to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

2. Does the Bill equate to a Common Legislative Framework? Which provisions are necessary to achieve the Common Legislative Framework?

The Bill does not equate to a common legislative framework and does not establish any common legislative frameworks.

The UK Bill includes provisions for chemicals and extended producer responsibility, which are two areas with identified common frameworks. Whilst the Bill itself does not provide any provision for frameworks where administrations are jointly developing policies or legislation, which may apply across more than one administration, then an agreed common framework may provide an appropriate structure to discuss the policy and legislative development and address any differences of opinion.

3. What discussions have you had with the UK Government about the Bill? How often have those discussions been happening and what have the outcomes of the discussions been?

The regular Inter-Ministerial Group Meetings on Environment, Food and Rural Affairs include an agenda item on legislation and I have used these meetings to raise issues about the UK Environment Bill.

As a result of these discussions we have secured amendments to the Bill regarding the application of environmental principles to reflect the devolved nature of the environment. As such, Ministers of the Crown making policies in relation to Wales will not be required to have regard to the approach in the UK Bill but to the approach we will introduce in future Welsh legislation.

We have also secured the Secretary of State's agreement to amend the Bill, if required, to include a carve-out of paragraph 11 of Schedule 7B to the Government of Wales Act 2006 in relation to concurrent plus functions. We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

Discussions are continuing about the impact of clause 19 (non regression of environmental protection standards) on devolved competence and the duty on the Office of Environmental Protection (OEP) to consult devolved environmental governance bodies (clause 24(4)).

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the enviromental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint investigations to be undertaken and for the sharing of best practice and expertise between the bodies. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

4. Did you provide the UK Government with specific instructions as to what provision the Welsh Ministers would need for Wales in this Bill? Were you and Welsh Government legislative counsel involved in the drafting of the provisions? If not, how did you proceed?

Policy officials and legal services considered and, where appropriate, contributed to policy instructions produced by UK policy officials. Again in most cases, Welsh Legislative Counsel were not involved in the drafting of Welsh provisions in the Bill.

Clause 70 and Part 3 of Schedule 12 to the Bill is concerned with smoke control areas, which amends the Clean Air Act 1993. This provision is the exception as it is a Wales-only clause. This clause was subject to separate instructions prepared by legal services and drafted by Welsh Legislative Counsel.

5. Are you aware of any amendments which the UK Government is seeking to make to the Bill? If so, have you had an opportunity to consider the drafting of those amendments, to ensure that they meet the needs of Wales? If additional amendments are made to the Bill, which require the Assembly's consent, will you lay a further Supplementary LCM in respect of the Bill?

Prior to the pausing of the UK Environment Bill on 19 March, the UK Government had informed us of all of the amendments it proposed to the Bill. This enabled us to consider any potential impacts on Wales. The amendments up to the 19 March, were all technical in nature for example a number of amendments were tabled to amend the name of the National Assembly of Wales to Senedd Cymru. Once the Bill continues its scrutiny through Parliament, we expect the same level of involvement.

I can confirm I will lay a further Supplementary LCM in respect of the Bill if additional amendments are made which require the Senedd's consent.

6. The UK Government says that policy in the Bill has been informed by nine consultations with stakeholders. What consultations have you undertaken to inform policy in the Bill?

In 2019, the Welsh Government and UK Government jointly consulted on proposals for extended producer responsibility. The Welsh Government is currently consulting on its circular economy strategy, which includes producer responsibility proposals. The consultation states the Welsh Government will "work with other governments in the UK in developing legislation for an Extended Producer Responsibility (EPR) scheme…"

The 2019 consultation on a Circular Economy[1], Beyond Recycling, sets out the Welsh Government's intention for a mandatory electronic tracking system to be introduced to provide annual information on industrial and commercial waste produced in Wales.

Work continues on a joint basis with England and Northern Ireland to develop a Deposit Return Scheme. This work is currently on going with preparations being made for a second consultation on the detailed design and preferred workings of the scheme.

In 2016 the Welsh Government and Defra held a Call for Evidence on waste crime (https://gov.wales/proposals-amend-existing-powers-tackle-waste-crime-and-poor-performing-sites-waste-management). Following the call for evidence, the WG committed to developing measures to tackle waste crime, to help improve competence in the waste sector, review regulatory regimes which were susceptible to abuse such as the waste permitting exemptions and to create a level playing field for industry.

Since 2016 a number of Statutory Instruments have been introduced to tackle the issues identified and a subsequent consultation took place in January 2018 (https://gov.wales/reducing-crime-sites-handling-waste-and-introducing-fixed-penalties-waste-duty-care). These consultations and discussion with the Waste Regulator generated a number of new ideas and proposals to tackle illegal waste activity, some of which are being worked on, for example improvements to operator competence and a requirement to have financial provision for non-landfill sites. However, in some areas of waste crime it has been identified strengthened powers would help maximise the potential benefits and these are now proposed in the UK Bill. Some of these proposals have also been consulted on separately for example in our 2019 consultation on a Circular Economy, Beyond Recycling, we set out the intention to consider a mandatory electronic tracking system, and in the 2017 the Environment, Animal Health and Welfare Bill consultation we included proposals to amend the Powers of Entry in section 108 of the Environment act 1995, both of which are now proposed in the UK Bill.

The provisions in the Bill for single use plastics were shaped by wider concerns about the impacts of plastic in the environment. This was driven by consultations and evidence collected at EU level. Our consultation, *Beyond Recycling: A strategy to make the circular economy in Wales a reality* will help to shape the way the Welsh Government will tackle these challenges.

On the UK wide plastic packaging tax, the latest consultation round comes to a close in August and we are encouraging views and evidence from key Welsh plastics industry stakeholders. With regards to proposals on litter and single use plastics, consultation will be undertaken prior to the introduction of regulations.

Clause 70 and Part 3 of Schedule 12 to the Bill are concerned with smoke control areas and amend the Clean Air Act 1993. We intend to move from the use of subordinate legislation to the creation of a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace. This will enable an easier, more effective way of identifying which fuels and classes of fireplace may be lawfully used in Wales' Smoke Control Areas. We are also ensuring manufacturers can sell their products without hindrance. We did not consult stakeholders or the wider public on this provision as it does not change policy (rather it improves the operation of the existing smoke control regime in Wales). The move away from subordinate legislation to published lists will bring Wales in line with the position in England and Scotland. In the Clean Air Plan, where we outlined and sought views on the work we propose to undertake in relation to domestic burning (such as the regulatory and non-regulatory actions listed in the consultation), we referred to existing work which was being undertaken through the UK Environment Bill to exemplify actions taken to date.

Part 5 introduces a range of measures to strengthen the resilience of water and wastewater services by enhancing the water industry's long-term planning regime and to modernise the regulation of water and sewerage companies to make it more flexible and transparent.

The 21st Century Drainage Programme was set up by Water UK (a national body consisting of water and sewage undertakers across the UK and Ireland), to consider how to ensure water company planning, investment, delivery and regulatory policy relating to the design of the UK's sewerage infrastructure can be improved and updated to meet the needs of current and future generations.

It undertook research and developed tools to better understand the current and long term issues facing the drainage sector. The aim of the Programme was to understand the current and long term requirements of our drainage networks and to develop an evidence based, transparent and collaborative planning framework to ensure the provision of resilient and affordable drainage services. It adopted a partnership-based approach, working with water companies, regulators, local authorities, and NGOs. Welsh Government and Natural Resources Wales are members of the Programme Steering Group.

The programme recommended putting planning for drainage and wastewater services on a statutory footing, following a similar approach already in place for water resources planning. The approach taken by the project, and the proposals strongly aligned with commitments in the Welsh Government Water Strategy for Wales, including the following;

- We will work with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Long term collaborative planning for wastewater and sewerage management is critical to address urban flood risk and deliver Water Framework Directive and Urban Waste Water Treatment Directive outcomes.

- Our aim is for sewerage and drainage systems to be resilient and well maintained, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.

- The water company planning and regulatory framework for water and sewerage should include:

    - Embedding and aligning Water Company planning with our National natural resource policy and relevant area-based natural resource planning processes to

ensure planning for water services both informs and takes account of our priorities for natural resources management.
- Collaborative catchment management plans and investment.
- Resilience measures, such as climate change projections, population growth and new development.
- A presumption in favour of sustainable solutions, and evidence of their use in preference to expanding or renewing existing infrastructure capacity.
- A strategy for engaging with stakeholders.
- Evidence sustainable waste water and treatment solutions have been considered, strong justification where they are not used.
- Robust, up to date and credible evidence to demonstrate compliance with our mandatory domestic and European obligations.

The Water Strategy was extensively consulted on and laid before the National Assembly. Putting Drainage and Waste water Management Plans (DWMPs) on a statutory basis can ensure other planning processes have regard to the DWMP, and require the relevant stakeholders to engage with and share information with the undertakers for the purposes of preparing DWMPs and Ofwat taking them into account as part of the price review process and the development of the regulatory framework of the industry. It can ensure undertakers keep to their commitment to prepare and consult on DWMPs, enable the Welsh Government to ensure they align with Welsh Government policies and priorities, and provide a clear and transparent process and timetable for the plans. It can also give Natural Resources Wales a clear role to participate in the engagement of the development of the plans, to provide technical guidance to the undertakers and advise the Welsh Government on the quality and robustness of the plans. Without putting them on a statutory footing there is a risk NRW may not allocate or be provided with the resources to give the DWMP's a similar level of engagement as they do Water Resource Management Plans.

The Bill gives the Welsh Ministers powers to make regulations in respect of the content and procedures to be followed on the preparation and publication of the DWMP's. Before using the powers the Welsh Ministers would consult with stakeholders on proposed regulations.

In respect of land drainage, Clause 87 introduces a consultation provision which places a duty on Welsh Ministers to consult appropriate parties to ensure the mechanism for valuation is correct when appraising levies and drainage rates.

7. How does the Bill affect existing international obligations?

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of the provisions included in the Bill for Welsh Ministers, a number of will contribute to our general international obligations in relation to, for example, the Paris Agreement on climate change through the impact moving to a more circular economy has on decarbonisation. It will also contribute to the UN Sustainable Development Goals, particularly goal 12 Responsible Consumption and Production.

Improved resource efficiency helps us deliver our international commitments to the Sustainable Development Goals and sustainably use of our natural resources as under the Convention on Biological Diversity

Charges for single use plastics will contribute to the Welsh Government's international obligations relating to reducing marine litter, of which plastic is the largest material. It is the high levels of plastic in the marine environment, and the potential environmental impacts this is having, which is driving action on plastic at an international level. The UK Marine Strategy is an overarching framework covering several marine components including marine

litter. It is the UK and devolved administrations obligation to place measures and set targets in order to achieve 'Good Environmental Status'. The programme of measures is due to be reviewed in 2021 and will allow the opportunity for UK Government and devolved administrations to put in place necessary measures and reduce the amount of marine litter in our seas.

The Assembly's Legislative Competence

8. The UK Government's Explanatory Notes do not consider that clauses 19 and 43 of the Bill will require the Assembly's consent. In contrast, you state in your LCM that clause 19 and clause 43 (in so far as it relates to clause 19) do require the Assembly's consent. Could you please expand on the reasoning in the LCM as to why you consider that these clauses require the Assembly's consent? In particular, how can the National Assembly legislate to place a requirement on a Minister of the Crown to make certain statements during UK Parliament proceedings?

My determination of the requirement for consent in relation to clause 19 (and by association clause 43) is based on our assessment of the purpose of this clause. In my view, the purpose of this clause is environmental protection, a devolved subject matter. Parliamentary process is the means of delivering protection against non regression, not the purpose in itself.

It is doubtful the Senedd could replicate such a provision requiring the Minister of the Crown to carry out certain Parliamentary actions. However, an argument could be made for the Senedd to legislate for Wales to provide 'substantially the same effect' as clause 19. For example, requiring a Minister of the Crown to lay a similar statement before the Senedd when proposing to legislate in relation to Wales.

Unlike the rest of the Bill, 'environmental law' for the purposes of this clause includes devolved legislative provision. The effect of this is the above requirements apply equally to UK Bills involving 'environmental law' applying in Wales, in the same way as England.

9. Can you provide an update on the discussions taking place with UK Government around clauses 19 and 43? What is the Welsh Government's position if agreement cannot be reached on these clauses?

Discussions have continued on these clauses, but have slowed during the pausing of the Bill. We have continued to press the UK Government to recognise the need for Welsh Ministers to be consulted before such a statement is made.

I believe we can reach some form of agreement in relation to these provisions. If agreement cannot be reached we will need to take this into consideration, amongst other factors, when we consider if a future UK Bill is an appropriate vehicle for delivering Welsh policy.

10. What discussions have you had with UK Government around clause 24(4) of the Bill? Can you update us on the progress of those discussions? Will the UK Government be seeking to amend clause 24(4) to strengthen the co-operation duties of the Office of Environmental Protection with a future Wales governance body?

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the enviromental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint investigations to be undertaken and for the sharing of best practice and expertise between the bodies. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

Discussions have continued with Defra on how the bodies can cooperate to consider complaints together, share information and, where appropriate, undertake joint investigations.

11. The UK Government's Explanatory Notes do not consider that the general provisions in Part 8 of the Bill will require the Assembly's consent. In contrast, in your LCM, you note that the general provisions of the Bill will require the Assembly's consent. Could you please specify which general provisions you consider require the Assembly's consent? Could you provide an update as to any discussions you have had with the UK Government on this issue and whether the UK Government now agrees that these clauses will require the Assembly's consent? What is the Welsh Government's position if agreement cannot be reached?

We consider the general provisions of the Bill will require consent in so far as they pertain to the provisions of the Bill which require consent as follows:

Clause 21 in relation to Schedule 1 — The Office for Environmental Protection
Clause 45 in relation to Schedule 2 — Improving the natural environment: Northern Ireland
Clause 46 in relation to Schedule 3 — The Office for Environmental Protection: Northern Ireland
Clause 47 in relation to Schedule 4 — Producer responsibility obligations
Clause 48 in relation to Schedule 5 — Producer responsibility for disposal costs
Clause 49 in relation to Schedule 6 — Resource efficiency information in relation
Clause 50 in relation to Schedule 7 — Resource efficiency requirements
Clause 51 in relation to Schedule 8 — Deposit schemes
Clause 52 in relation to Schedule 9 — Charges for single use plastic items
Clause 63 in relation to Schedule 10 — Enforcement powers in relation
Clause 69 in relation to Schedule 11 — Local air quality management framework
Clause 70 in relation to Schedule 12 — Smoke control in England and Wales
Clause 78 in relation to Schedule 13 — Modifying water and sewerage undertakers' appointments: procedure for appeals
Clause 90 in relation to Schedule 14 — Biodiversity gain as condition of planning permission
Clause 100 in relation to Schedule 15 — Controlling the felling of trees in England
Clause 115 in relation to Schedule 16 — Discharge or modification of obligations under conservation
Clause 122 in relation to Schedule 17 — Application of Part 7 to Crown land
Clause 124 in relation to Schedule 18 — Consequential amendments relating to Part 7
Clause 125 in relation to Schedule 19 — Amendment of REACH legislation

These clauses are only relevant provisions (and thus requiring an LCM) insofar as the Schedules which they relate to make relevant provisions, those general provisions could be made by the Senedd.

Delegated powers

12. The Bill provides a number of delegated powers to the Welsh Ministers. Can you outline why all of these powers are necessary? Did the Welsh Government request these powers?

The powers are required primarily to ensure policies will continue to function in the long term, by providing some flexibility to accommodate future changes in evidence, approaches, policymaking, industries or technologies which are not necessarily predictable at this time.

In the case clause 66, to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care and clause 125 for REACH, the powers are required to replace those lost under of s2(2) of the European Communities Act, which enables us to update secondary legislation.

I can confirm in all cases Welsh Government requested these powers.

Clause 47 Schedule 4 Producer responsibility obligations - Provides the flexibility to state, in regulations, which producer or business to impose producer responsibility obligations on and on what products or materials and what steps are required in order to achieve those obligations.

Clause 48 Schedule 6 Producer responsibility for disposal costs - Facilitates the making of separate provision about enforcement for Wales. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Clause 49 and 50 Schedules 6 and 7 - Resource efficiency information - Allows the Welsh Government to develop policy proposals for, and make separate regulations for each type of product regulated.

It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Product-specific information requirements may be detailed and technical and thus more suitable for inclusion in regulations than in primary legislation.

Clause 51 Schedule 8 Deposit schemes - Allows Welsh Government to develop policy proposals for, and make, separate regulations for each product group regulated.

Clause 52 Schedule 9 Charges for single use plastic items - Although we work in conjunction with other administrations, Waste and recycling is a devolved matter. Having this devolved power allows Welsh Ministers to define items subject to any charge, the amount charged and the requirements and the appointment of any administrator to oversee the charge which reflect Welsh priorities.

Clause 55 Electronic waste tracking - Aligns waste tracking legislation with legislation for waste management, which is currently controlled through secondary legislation.

The waste tracking regulations will provide essential data to help develop a circular economy and future waste policy. Gathering data on wastes and those who are managing it will make it easier to determine who is (or was) responsible for the waste at any given time. This will support regulation of wastes and help identify those responsible for any illegal waste.

Clause 57 Hazardous waste: England and Wales - Aligns with the current regulatory system for hazardous waste, which is currently controlled through secondary legislation. See also the answer to Q13 below.

Schedule 10 (Linked to clause 63 enforcement powers) - There is a gap in the Welsh Ministers current powers in relation to waste enforcement. There are circumstances where rogue operators dump waste illegally with potentially severe consequences for local communities and the environment. There may also be situations where a waste collection contract fails, or a company or authority enters into receivership and it cannot carry out or pay for waste collection and removal liabilities which it is contracted to deliver which can also impose environmental costs and negatively affect communities.

Welsh Ministers can currently direct any person keeping waste on land to take the waste to a specified place and to direct waste operators to take and treat the waste. However, they cannot direct a waste carrier to collect waste from a specified place and take it to a specified waste site. This means in circumstances where waste has been dumped illegally and the landowner and/or criminal cannot be traced or the landowner cannot fund the removal, and in the case of major incidents, or where a waste collection contract fails, Welsh Ministers do not have the power to direct a waste carrier to remove the waste.

This provision would allow Welsh Ministers to give direction to authorised waste carriers to collect waste from a specified place and take it to a specified waste management site in circumstances where public health, communities or the environment are at risk. As with the current powers of direction, Welsh Ministers would also have the power to direct the keeper of the waste to pay the waste carrier's reasonable costs. If this is not possible, Welsh Ministers will also have the power to reimburse the waste carrier directly.

Clause 65 Littering enforcement - Welsh Ministers will need the flexibility to be able to change or update the prescribed conditions an authorised officer of a litter authority must meet to reflect changing needs and developments within the sector, meaning primary legislation would not be an appropriate vehicle for this power.

Whilst the existing regulations to deal with littering operate on an England & Wales basis and our guidance is broadly the same, there are some differences in how we implement our policies which warrants Welsh Ministers having delegated powers. For example, the Welsh Government works very closely with Local Authorities and the Third Sector to help develop and implement the educational and behavioural change aspects of tackling littering. We may, therefore, wish to have the flexibility to incorporate this type of approach into any new enforcement guidance we develop.

The power to issue statutory guidance is necessary to ensure the various litter authorities undertake littering enforcement functions in a consistent and proportionate way.

Clause 66 Fixed Penalty Notices - Taking a power to amend penalties in secondary legislation, allows for them to be kept under review, see if they are working effectively and amend them if needed.

See also the answer to Q13 below.

Clause 67 Regulation of polluting activities - Allows for the detailed conditions for any exemption (from the prohibition on carrying out an activity without a permit) to be set and amended by the regulator.

See also the answer to Q13 below.

Clause 75 Water resources management plans, drought plans and joint proposals - Allows flexibility to consider which undertakers should be directed to prepare joint proposals and when.

Clause 76 Drainage and sewerage management plans - Allows Welsh Ministers to intervene to ensure drainage and sewerage management plans address emerging challenges which may arise and therefore remain efficacious

Clause 82 Power to amend legislation to make technical updates in the field of water quality - Required to ensure substances and standards in relation to those substances or in relation to the chemical status of surface water or groundwater do not remain fixed after the UK withdraws from the EU. The power would enable action to be taken legislatively to tackle those new priority substances most accurately representing harm to the water environment.

Clause 87 Valuation of other land in drainage district: Wales - It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates. The provisions within the Bill would allow the value of other land to be calculated via an alternative methodology (as IDBs will be able to make use of alternative data for these calculations), which will be set out in secondary legislation subject to the affirmative procedure.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.

Clause 88 Valuation of agricultural land in drainage district: England and Wales - The Bill makes provision to allow the secondary legislation to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter

Clause 89 Disclosure of Revenue and Customs information - The power to add to the list of qualifying persons set out under new section 37A(3)(h) is needed in order to ensure other persons requiring access to HMRC information for a qualifying purpose, who are identified at a later date, may be added to the list in secondary legislation, in circumstances where the framework of regulatory bodies operating in this area changes.

Clause 125 Amendment of REACH legislation - Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means after exit day the only way to amend the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations would be through primary legislation.

This power is needed to ensure the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations can be kept up to date.

13. Could you outline the policy you will seek to make in regulations, using the powers contained in the Bill? When do you envisage that such regulations would be laid?

We would require secondary legislation in the form of regulations to implement both DRS and EPR for packaging. These are key work areas which are progressing as a joint programme of work. The exact timetabling for when these regulations will be laid has not been finalised as the current focus of work has been the progressing a second round of consultation on both schemes. In due course we will consider other waste streams for new legislation on EPR, and we consulted on this in our recent consultation on a new Circular Economy Strategy for Wales. In due course we will discuss new legislation for environmental product labelling and standards with the other UK administrations.

Clause 55 – Electronic tracking of waste: This provision comes into force two months after the Act comes into force. The timetabling for when the Regulations will be laid has not been finalised, as Welsh Government and Natural Resources officials are working with their counterparts in the other UK nations on how we can digitise waste tracking processes. In particular, how we record what happens to waste as it moves from production to recovery or disposal.

Clause 57 – Hazardous waste: The Welsh Minister have discretion to decide when the provision comes into force. Much of the law on hazardous waste is derived from EU law. The amendments being made by the Bill would enable the Welsh Ministers to continue to be able to amend or replace regulations which govern how hazardous waste is managed, after the UK has left the EU.

Clause 61 – Charging powers: The exact timetabling of bringing these powers into force has not yet been finalised. The powers:

- add new charging powers for NRW in relation to new or amended duties conferred on them in the future. The new powers will allow NRW to recover their reasonable costs of appropriate investigation, intervention and enforcement of current producer responsibility schemes and, as they are established, new EPR schemes;

- allow NRW to apply existing environmental permitting scheme charges to exempt waste operations, including registration and subsistence charges where appropriate, to fund compliance monitoring of these operations; and

- for NRW to create charging schemes for its functions related to the illegal disposal of waste and permitted waste sites. This would allow NRW to recover its reasonable costs of appropriate investigation, intervention and enforcement of illegal waste sites from those illegal waste sites. Currently, NRW is able to charge for the operation and compliance checking of the environmental permitting regime. However, they are unable to charge for the enforcement of those uncompliant with permitting requirements or operating illegally outside of the permitting regime.

Clause 66 - Fixed Penalty Notices: We will not be making regulations at this time. The Welsh Ministers have discretion to decide when the provision comes into force. Repeal of the ECA removes the current power to alter the levels of these penalties through secondary legislation, and so a new power is required to enable the level of these penalties through secondary legislation, to enable the level of the fines to be amended either up or down.

Clause 67 - Exemptions: This provision comes into force two months after the Act comes into force. The power allows the Welsh Ministers to set out in regulations which conditions relating to exempt activities (i.e. those not requiring an Environmental Permit) NRW can

determine, instead of those conditions having to be set out in regulations. Setting conditions currently requires Welsh Ministers to make new regulations each time a condition is changed. Allowing NRW to set the conditions will help ensure appropriate controls are in place as the waste market shifts. The timetabling for making regulations under this Clause have not been finalised.

Clause 52 - Single Use Plastics These powers will help support the Welsh Government's commitment to reduce the use of unnecessary single-use plastic items and to help meet our long-term goal of zero waste by 2050. The Welsh Government is already seeking to ban or restrict the sale of several commonly littered single-use plastic items including plastic cotton buds, straws and plates.

However, there are other single-use plastic items not included in the above measure and have ongoing negative externalities arising from their production, use and inappropriate disposal, for example disposable coffee cups and food containers. Since many of these plastic items are provided to the consumer seemingly "free of charge" and complementary to the purchase of other products, consumers are currently not incentivised or actively encouraged to limit their consumption to sustainable levels. We believe without further intervention, consumption levels could remain the same or even increase over time. This contributes to waste ending up in landfill and incineration following their use, or as litter causing pollution and harm to the natural environment.

We believe such items could, potentially, be dealt with through the provision of a charging regime similar to the one in place for single use carrier bags. We have seen applying a charge to single-use plastic items has led to positive change in consumer behaviour. Without the powers to require levies on other single-use plastic items where it will effectively reduce consumption, the negative externalities outlined above cannot be mitigated using legislation. However, secondary legislation will only be implemented for such items where the evidence shows charging is the most effective policy mechanism to reduce consumption in favour of readily available and more sustainable alternatives.

Clause 65 - Litter enforcement: We intend to create a specific power for Welsh Ministers to issue statutory guidance on the use of the enforcement powers in Part IV of the EPA 1990, to which those exercising the powers must have regard. This is intended to address the perception enforcement action may be used by Local Authorities or private companies, to raise revenue at the expense of 'unwary' citizens or enforcement action is otherwise illegitimate, unfair or disproportionate, by providing clear guidance to Local Authorities on the appropriate use of their enforcement powers, to which they must have regard. This is intended to promote greater consistency and improve public confidence in the legitimacy of enforcement action.

We also intend to extend Welsh Ministers' power to prescribe conditions to be satisfied before a person may be authorised to issue fixed penalties for littering. This is intended to act as a further safeguard against inappropriate enforcement activity by ensuring authorised persons must have met certain conditions relating to the skills, quality and professionalism of their activities before they can issue fixed penalties.

We will consult further with the industry, training providers, Local Authorities and other key stakeholders before exercising this extended regulation-making power. This could potentially result in prescribing conditions such as the attainment of a specific qualification, accreditation or charter-mark.

Clause 87/88 - provides a regulation making power for the Welsh Ministers to make provision for the value of other land in a Welsh internal drainage district to be determined.

As the law stands IDBs calculate the value of drainage rates for non-agricultural land using a methodology based on valuation lists which are outdated and incomplete. The regulations would be subject to the affirmative procedure. There is currently no timescale for new regulations to be in place

Clause 125 - The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

14. Some of the delegated powers are powers to amend primary legislation. Two of these powers (clauses 66 and 76) are subject to the negative procedure. Do you think the negative procedure is appropriate in these cases? Why have you not asked for regulations made under these powers to follow the affirmative procedure?

Clause 66 Powers to Vary Fixed Penalty Notices - Negative procedure is considered appropriate as the fixed penalty notice scheme is already in place and this power allows only amendment to the amount of penalty to be charged. Welsh Ministers are required to act in accordance with public law principles and, accordingly, any increase in the penalty amount will need to be reasonable and fair. The approach is consistent with similar powers in section 34A(10), 46B(5), 47ZB(6) and section 97A(3) EPA 1990, which are subject to the same procedure.

Clause 76 Drainage and sewerage management plans - Negative procedure is appropriate as the regulations would be making minor and technical changes to the way in which plans are published and this may need to be done frequently. The Regulations would not make amendments to the content of the plans themselves.

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan.

15. Clause 75 amends the Water Industry Act 1991 to omit certain procedural requirements regarding the preparation and review of Water Resources Management Plans from the primary legislation. Instead, the Welsh Ministers will have a power to set the requirements out in regulations. Why is it appropriate to move this requirement from primary to secondary legislation?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections regulatory powers relate to detailed procedural aspects of the

preparation, consultation, timing and publication of the plan. This will align the water resource planning procedures more closely with the procedure for preparing drainage and wastewater plans.

16. Clause 75(3) omits sections 37B and 37C from the Water Industry Act 1991. Can you explain why these provisions are being removed? Will the Welsh Ministers be replacing these provisions through secondary legislation?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan which are more appropriate to be prescribed by secondary legislation, which we will consult on before making.

17. Clause 76 inserts sections 94B and 94D into the Water Industry Act 1991. Sections 94B and 94D provide that where the Assembly resolves that an instrument containing regulations made by the Welsh Ministers is annulled, "Her Majesty may by Order in Council revoke the instrument". Why is this different to the approach for regulations made by the Welsh Ministers set out in the Statutory Instruments Act 1946?

Section 11A(5)(b) of the Statutory Instruments Act 1946 provides in a case of a statutory instrument made by Welsh Ministers alone, the power of Her Majesty to revoke, by Order in Council a statutory instrument laid before the National Assembly for Wales, is a power of the Welsh Ministers to revoke it by order.

The newly inserted sections 94B and 94D to the Water Industry Act 1991 contain powers to make Regulations (new s.94D) and Orders (s.94B) made by both the Welsh Ministers in relation to Wales and the Secretary of State in relation to England, due to the cross border nature of those instruments.

Therefore, s1A(5)(b) will not apply to these instruments. The 1946 Act does not make express provision for a scenario where an instrument is made by both Welsh Ministers and Secretary of State. Therefore it was felt most practical for Her Majesty to provide for the revocation of both instruments.

18. Clause 76 also inserts section 94C into the Water Industry Act 1991 which provides a power for the Welsh Ministers to make provision, by regulations, about the procedure for preparing and publishing a drainage and sewerage management plan. Those regulations can confer a power on the Welsh Ministers to make provisions by directions. Do you think the negative procedure is appropriate for regulations made under section 94C?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan. The negative procedure is appropriate for regulations made under this section.

19. In relation to the Secretary of State's powers in clause 81 (Water quality) can you explain why the Secretary of State's powers are more limited in Scotland than in Wales? What discussions have you had with the UK Government about this matter?

There have been no discussions with the UK Government on this matter,

Concurrent plus powers

20. The Bill includes a number of 'concurrent plus' powers (including in clauses 47 to 51, 81, and 125, and Schedules 4 to 8) which reduce the Assembly's legislative competence in the respective areas. Can you explain why you consider the concurrent plus powers are appropriate? What is the Ministerial commitment that is referred to in your LCM?

The policy intention of Clauses 47-51 is to develop a joint UK wide regulatory approach to Extended Producer Responsibility which allows for a consistent scheme to operate across the UK for packaging, and potentially other products. The ability to have the option to develop a consistent scheme is important for market reasons. This includes the porous nature of the extensive border with England and the way many retailers operate their distribution systems. Operating different EPR systems between Wales and England might incentivise fraud, and would be confusing for both retailers and the public.

To enable this consistency, we are seeking a concurrent plus approach, the effect of which would be, Welsh Ministers, unless consent is provided, would carry out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales. Obtaining the powers for Welsh Ministers enables them to have flexibility in the future, and would also allow them to bring in EPR recovery for other products in Wales (for example disposable nappies). The inclusion of these powers in the Bill is in line with the First Minister's criteria on the use of UK Bills as the interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.

Concurrent powers are also sought in respect of clause 81, which is concerned with technical updates in the field of water quality. It allows for the Secretary of State to make regulations or modify legislation for the purposes of:

- making provision about the substances to be taken into account in assessing the chemical status of surface water of groundwater;

- specifying standards in relation to those substances or in relation to the chemical status of surface water or ground water

The application of such powers will be in relation to river basin districts. Whilst we have one river basin district wholly in Wales, two of our river basin districts are cross border (the Dee and the Severn). The Ministerial powers in respect of those districts are currently exercised jointly by the Welsh Ministers and SoS. Given the existing legislative framework is exercised in such a way it is desirable be closely aligned with Defra on these matters so as to ensure a common approach in relation to the cross-border river basin districts.
Clause 125 and its associated schedules provides for the amendment of the REACH regulations and the REACH enforcement regulations. This provision is connected to the EU Exit SIs and provides an enabling power to make future amendments to retained EU law. The powers can only be exercised by the Secretary of State with consent of Welsh Ministers where they concern matters within devolved competence. This matches the approach taken with UK-wide powers in the EU Exit correcting SIs for REACH, which are required to enable a UK-wide regime.

Concurrent plus powers are also required in relation to the REACH enforcement regulations. Welsh Ministers currently have the power to amend REACH enforcement regulations in Wales under the European Communities (Designation) (No.2) Order 2007 (http://www.legislation.gov.uk/uksi/2007/1349/made), as does the Secretary of State. The

concurrent plus power has been requested to maintain the status quo and retain powers currently exercisable by both Welsh Ministers and the Secretary of State under EU law.

We have secured the Secretary of State's agreement to amend the Bill, should this be required This will enable us to include a carve-out of paragraph 11, Schedule 7B of GoWA, which restricts the Assembly's legislative competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister. The function is applied where there is a qualified devolved function which includes a function which is to any extent exercisable concurrently.

21. Will a section 109 Order be brought forward to deal with the carve-out in respect of paragraph 11 of Schedule 7B of GOWA? We are aware that a section 109 Order is being drafted and should be brought forward in the near future; will the issues raised by this Bill be dealt with in this forthcoming section 109 Order? If not, why not and when will these matters be dealt with?

We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

22. Are there any areas in which the Welsh Government intends to give consent for the UK Government to make secondary legislation on the Welsh Government's behalf? Will the Welsh Ministers formally notify the Assembly when consent has been given, as per the Standing Order 30C process?

A concurrent plus approach, has the effect of Welsh Ministers, unless consent is provided, carrying out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales.

Welsh Ministers will formally notify the Assembly when consent has been given, as per the Standing Order 30C process

Reasons for making provisions for Wales in the Environment Bill

23. Are the powers in the Bill intended to be temporary in nature (i.e. will they be replaced by powers in a future Welsh Environment Bill)? If not, why not? If so, why has a sunset clause not been included in the Bill?

The enabling powers in the Bill will assist us in delivering current and future Welsh policy. We have used the UK Environment Bill as at present there are no immediate plans for a Welsh Environment Bill.

24. You say, as one of the reasons for making these provisions for Wales in the Environment Bill, that there is currently "no time within the Assembly's timetable to bring forward an Environment Bill that could be used to take forward these provisions." The Government's legislative programme is a matter for it alone to decide upon. Why couldn't the Welsh Government include an Environment Bill in its legislative programme?

The Welsh Government has finite resources for developing its legislative programme, particularly in respect of those specialists who draft and translate legislation. It makes decisions on the content of the programme based on the available resources and capacity to deliver, which in my portfolio has been significantly affected by the work required to

respond to EU exit. Developing legislation takes time to ensure it is fit for purpose. In addition a Bill has to be introduced by a certain point in a Senedd term to ensure the Senedd has sufficient time for its scrutiny and approval before the next Senedd elections, otherwise the Bill falls. These challenges, combined with the necessary and ongoing work on legislation to respond to EU exit and transition, have meant a Welsh Environment Bill has not been possible. The UK Bill has provided us with an alternative opportunity to put legislation in place in some key areas.

25. Whilst the environmental governance provisions in the Bill seem to directly relate to the UK's departure from the EU, not all provisions in the Bill seem to be 'Brexit' related. How many of the other provisions in the Bill need to be in place before the implementation period completion day? Are any provisions in the Bill "time critical", and if so why?

I am unable to comment on the wider Bill as it is for the UK Government to determine how to deliver its policy objectives.

With the loss of section 2(2) of the European Communities Act, which enables us to update secondary legislation where appropriate we have taken enabling powers to update the legislation in some areas such as hazardous waste, water quality powers (priority substances) and REACH.

Under the transition agreement, the UK is obligated to transpose Article 8A amendments to the EU Waste Framework Directive as part of the EU's Circular Economy Package. The Extended Producer Responsibility provisions in the Bill are there to allow us, along with the other nations within the UK, to meet the general minimum requirements in relation to producer responsibility in the Circular Economy Package.

Powers in relation to REACH will need to be implemented shortly after the transition period. When we lose powers under section 2(2), we will be unable to make any changes to REACH enforcement regulations to enable us to keep pace with technical changes. By taking powers in this bill, Government will be able to respond promptly to any implementation issues arising and make workable what is a large and complex piece of EU-derived legislation.

The reason this is time sensitive is due to the fact that there are deadlines and activities/decisions to be made under REACH which are triggered by the end of the implementation period. The loss of the section 2(2) powers is less time critical compared to the need to potentially amend deadlines or to streamline the REACH process when it becomes operational. The section 2(2) powers relate to amending the REACH enforcement regulations. The rest of the REACH regulations were amended by EU law and applied to the UK without the need for domestic legislation. Without the powers included in the Bill, primary legislation would be necessary to address any teething issues with REACH (such as businesses being unhappy with the two year registration deadline).

More generally we would like to introduce all changes as soon as possible, given the benefits described in answer to question 1.

26. How and when will you review the effectiveness of the Bill for making environmental policy in Wales?

The review of the effectiveness of the Bill with respect to environmental policy will form part of the on-going policy and evidence review that takes place within Government. This is informed over time from a variety of evidence sources and feedback mechanisms such as

the State of Natural Resources Report prepared by Natural Resources Wales and other environmental metrics and targets that are in place, for example recycling rates, reported fly tipping.

The published lists for authorised fuels and exempted classes of fireplace will be updated, monitored and reviewed annually.

The effectiveness of the land drainage rates & levies provisions will be assessed by the introduction of a more consistent mechanism for review.

Accessibility

27. How will you ensure that the provisions in the Bill, and the subordinate legislation made under it, are accessible to stakeholders and to the wider public?

As regulations are developed to enact the powers in the Bill our usual call for evidence, engagement and consultation processes will be followed.

28. Are you concerned that having these provisions in UK legislation will have a negative impact on the accessibility of the law, at a time when the Welsh Government is seeking to make Welsh law more accessible?

We have considered accessibility of law to be a key consideration in taking powers in this Bill. As much of the legislation being amended operates on, at a minimum, an England and Wales basis using the UK Bill to make these amendments ensure there are not multiple similar amendments to a single provision, making it more accessible for the user.

In light of the Counsel General's programme for codification, we of course will consider at some point in the future how we can make environmental law in Wales more coherent and accessible.

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