

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 24 February 2020

Meeting time: 14.30

For further information contact:

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Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest
14.30

**2 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**
14.30–14.35

Negative Resolution Instruments

**2.1 SL(5)497 – The Local Authorities (Capital Finance and Accounting) (Wales)
(Amendment) Regulations 2020**

(Pages 1 – 10)

CLA(5)–07–20 – Paper 1 – Report

CLA(5)–07–20 – Paper 2 – Regulations

CLA(5)–07–20 – Paper 3 – Explanatory Memorandum

2.2 SL(5)500 – The National Park Authorities (Wales) (Amendment) Order 2020

(Pages 11 – 21)

CLA(5)–07–20 – Paper 4 – Report

CLA(5)–07–20 – Paper 5 – Order

CLA(5)–07–20 – Paper 6 – Explanatory Memorandum

Made Affirmative Resolution Instruments

**2.3 SL(5)498 – The Common Agricultural Policy (Direct Payments to Farmers)
(Miscellaneous Amendments) (Wales) Regulations 2020**

(Pages 22 – 33)

CLA(5)–07–20 – Paper 7 – Report

CLA(5)–07–20 – Paper 8 – Regulations



CLA(5)–07–20 – Paper 9 – Explanatory Memorandum

CLA(5)–07–20 – Paper 10 – Letter from the Minister for Environment, Energy and Rural Affairs to the Llywydd, 31 January 2020

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

14.35–14.40

Negative Resolution Instruments

3.1 SL(5)494 – The Food for Specific Groups (Information and Compositional Requirements) (Wales) (Amendment) Regulations 2020

(Pages 34 – 51)

CLA(5)–07–20 – Paper 11 – Report

CLA(5)–07–20 – Paper 12 – Regulations

CLA(5)–07–20 – Paper 13 – Explanatory Memorandum

3.2 SL(5)495 – The Infant Formula and Follow-on Formula (Wales) Regulations 2020

(Pages 52 – 74)

CLA(5)–07–20 – Paper 14 – Report

CLA(5)–07–20 – Paper 15 – Regulations

CLA(5)–07–20 – Paper 16 – Explanatory Memorandum

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

14.40–14.45

4.1 SL(5)491 – The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

(Pages 75 – 79)

CLA(5)–07–20 – Paper 17 – Report

CLA(5)–07–20 – Paper 18 – Welsh Government response

5 Papers to note

14.45–14.50

5.1 Letter from the First Minister: Wales' Changing Constitution

(Pages 80 – 86)

CLA(5)–07–20 – Paper 19 – Letter from the First Minister, 12 February 2020

CLA(5)–07–20 – Paper 20 – Letter to the First Minister, 23 January 2020

5.2 Letter from the Minister for Finance and Trefnydd to the Llywydd: Withdrawal of Statutory Instruments

(Pages 87 – 88)

CLA(5)–07–20 – Paper 21 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 12 February 2020

5.3 Letter from Lord Kinnoull, Chair of the House of Lords European Union Committee: Engagement with devolved legislatures

(Pages 89 – 90)

CLA(5)–07–20 – Paper 22 – Letter from Lord Kinnoull, 12 February 2020

5.4 Letter from the Minister for Finance and Trefnydd: UK Wide Statutory Instrument – The Financing, Management and Monitoring of Direct Payments (Amendment) Regulations 2020

(Pages 91 – 92)

CLA(5)–07–20 – Paper 23 – Letter from the Minister for Finance and Trefnydd, 12 February 2020

5.5 Letter from the Minister for Finance and Trefnydd: UK Wide Statutory Instrument – The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

(Pages 93 – 94)

CLA(5)–07–20 – Paper 24 – Letter from the Minister for Finance and Trefnydd, 12 February 2020

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

14.50

7 Consideration of a future inquiry

14.50–15.00

(Pages 95 – 98)

CLA(5)–07–20 – Paper 25 – Terms of reference for a future inquiry

8 Legislative Consent Memorandums – approach to scrutiny

15.00–15.10

(Pages 99 – 127)

CLA(5)–07–20 – Paper 26 – Legislative Consent Memorandum: Agriculture Bill

CLA(5)–07–20 – Paper 27 – Legislative Consent Memorandum: Fisheries Bill

Date of the next meeting – 2 March 2020

SL(5)497 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”).

These Regulations insert a new regulation 24K into the 2003 Regulations. New regulation 24K provides that a local authority must not charge an amount to its revenue account to reflect any fluctuation in the fair value of a local authority’s investment in a pooled investment fund. Instead, such amounts must be recorded in a separate account established and used solely for that purpose.

The Explanatory Memorandum to the Regulations (at section iv.) notes the following:

“Many local authorities have holdings in pooled investment funds....The Regulations amend the 2003 Regulations to mitigate the impact of fair value movements on pooled investment funds on local authority budget setting due to new International Financial Reporting Standards (IFRS) for Financial Instruments (IFRS9). This will place local authorities in Wales on an equivalent footing to counterparts in England.”

The change effected by these Regulations will apply to accounts prepared for financial years in respect of the period beginning with 1 April 2019 and ending with 31 March 2023.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

1. The footnote to regulation 1(2) contains a number of statutory references to regulations which have amended the 2003 Regulations. One of the regulations listed in the footnote is “2006/994”, which appears to be an error as those regulations have not amended the 2003 Regulations. We assume this should instead have been a reference to “2006/944” (being the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2006, which did amend the 2003 Regulations).

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



2. The Explanatory Memorandum to the Regulations states, at the end of section iv., that the amendments to the 2003 Regulations will come into force before 31 March 2020 (emphasis added).

However, these Regulations will come into force on 31 March 2020 and not before.

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 government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

13 February 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales

Legislation, Justice and Constitution Committee

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

2020 No. 110 (W. 19)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities (Capital
Finance and Accounting) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”).

These Regulations insert a new regulation 24K into the 2003 Regulations. New regulation 24K provides that a local authority must not charge an amount to its revenue account to reflect any fluctuation in the fair value of a local authority’s investment in a pooled investment fund. Instead, such amounts must be recorded in a separate account established and used solely for that purpose.

The fair value of a local authority investment in a pooled investment fund is determined in accordance with proper accounting practices as defined in regulation 25 of the 2003 Regulations. This accounting treatment is not to apply to the recognition of an impairment loss to such an investment as recognised under those proper accounting practices, or to any disposal (including a sale) of such an investment. It is also not applicable to investments made by a local authority in its capacity as the administering authority of a local government pension fund.

Regulation 24K will apply to accounts prepared for financial years in respect of the period beginning with 1 April 2019 and ending with 31 March 2023.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A full regulatory impact assessment has not been produced as no impact on the private or voluntary sectors is foreseen.

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

2020 No. 110 (W. 19)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities (Capital
Finance and Accounting) (Wales)
(Amendment) Regulations 2020**

Made 31 January 2020

Laid before the National Assembly for Wales
04 February 2020

Coming into force 31 March 2020

The Welsh Ministers, in exercise of the powers conferred by sections 21(1), 24 and 123(1) of the Local Government Act 2003⁽¹⁾, make the following Regulations.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020 and they come into force on 31 March 2020.

(2) In these Regulations, “the 2003 Regulations” means the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003⁽²⁾.

Fair value gains and losses of pooled investment funds

2. In the 2003 Regulations, after regulation 24J insert—

-
- (1) 2003 c. 26. Section 24 was amended by section 238(3) of the Local Government and Public Involvement in Health Act 2007 (c. 28). Powers under Part 1 of the Local Government Act 2003 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales, by virtue of section 24 of the Local Government Act 2003 as amended.
- (2) S.I. 2003/3239 (W. 319), as amended by S.I. 2004/1010 (W. 107), 2006/994 (W. 93), 2006/2914, 2007/1051 (W. 108), 2008/588 (W. 59), 2009/560 (W. 52), 2010/685 (W. 67), S.I. 2014/481 (W. 58), S.I. 2016/102 (W. 50), and S.I. 2018/325 (W. 61).

“Fair value gains and losses of pooled investment funds

24K.—(1) In this regulation—

“administering authority” means an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 2013⁽¹⁾;

“fair value” has the same meaning as in Regulation 25A to these Regulations;

“fair value gain or loss” means a change in the fair value of an investment;

“pooled investment fund” means—

- (a) a money market fund; or
- (b) an investment scheme approved by the Treasury under section 11(1) of the Trustee Investments Act 1961⁽²⁾ (local authority investment schemes).

(2) Paragraph (3) applies where a local authority—

- (a) invests in a pooled investment fund (other than in its capacity as an administering authority in relation to a pension fund); and
- (b) a fair value gain or loss experienced on the authority’s investment in that pooled investment fund would otherwise be charged to a revenue account by that local authority in accordance with proper practices.

(3) Where this paragraph applies, the local authority—

- (a) must not charge to a revenue account an amount in respect of that fair value gain or loss; and
- (b) must charge that amount to an account established, charged and used solely for the purpose of recognising fair value gains and losses in accordance with this regulation.

(4) Paragraph (3) does not apply in respect of—

- (a) an impairment loss in relation to the authority’s investment in a pooled investment fund as recognised in a revenue account of the authority in accordance with proper practices; or
- (b) a sale or other disposal of the whole or any part of the authority’s investment in a pooled investment fund.

⁽¹⁾ S.I. 2013/2356.

⁽²⁾ 1961 c. 62.

(5) This regulation applies in relation to accounts prepared for financial years falling within the period beginning with 1 April 2019 and ending with 31 March 2023.”.

Julie James

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

31 January 2020

EXPLANATORY MEMORANDUM

Explanatory Memorandum to the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by Local Government Finance Policy Division in the Education and Public Services Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Ministers Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020.



Julie James
Minister for Housing and Local Government
4 February 2020

i. Description

This Statutory Instrument amends existing Regulations, the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”).

The 2003 Regulations provide the regulatory regime for accounting practices to be followed by a local authority in Wales. They contain detailed provisions for the capital finance and accounting controls, including the rules on the use of capital receipts and what is to be treated as capital expenditure. They also modify accounting practice in various ways to prevent adverse impacts on authorities’ revenue resources.

The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020 (“the Regulations”) make provision in connection with the local government capital finance and accounting regime in Wales. Specifically the 2020 Regulations will mitigate the impact of fair value movements on pooled investment funds on local authority budget setting due to new International Financial Reporting Standards (IFRS) for Financial Instruments (IFRS9). This will place local authorities in Wales on an equivalent footing to counterparts in England.

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

None.

iii. Legislative Background

Under Part 1 of the Local Government Act 2003 (“the 2003 Act”), the Welsh Ministers have power to make provisions in regulations regarding certain aspects of capital finance and accounting rules and practices. The powers are expressed as being those of the Secretary of State, however, section 24 of the 2003 Act provides that in its application to Wales, Part 1 has effect as if for any reference to the Secretary of State there were substituted a reference to the Welsh Ministers.

In particular, the Regulations are made by the Welsh Ministers in exercise of the powers conferred by section 21(1), 24 and 123(1) of the 2003 Act.

The Regulations are subject to the negative resolution procedure.

iv. Purpose and intended effect of the legislation

The 2003 Regulations contain detailed provisions for the capital finance and accounting controls applicable to local government bodies in Wales, including the rules on the use of capital receipts and what is to be treated as capital expenditure.

They also modify accounting practice in various ways to prevent adverse impacts on authorities' revenue resources.

The Regulations make one important change:-

Many local authorities have holdings in pooled investment funds. Pooled investment funds are viewed as a safe alternative investment to bank deposits and are often used by local authorities as a way to manage cash efficiently. In theory, pooled investment funds offer investors a larger diversification than regular bank deposits and generate higher returns.

The Regulations amend the 2003 Regulations to mitigate the impact of fair value movements on pooled investment funds on local authority budget setting due to new International Financial Reporting Standards (IFRS) for Financial Instruments (IFRS9). This will place local authorities in Wales on an equivalent footing to counterparts in England.

The amendments to the 2003 Regulations will come into force before 31 March 2020.

v. Consultation

A consultation on the proposed amendments to the 2003 Regulations was undertaken over the period from 14 November 2019 to 31 December 2019 with key stakeholders. This included, all local government bodies in Wales, Wales Audit Office, Welsh Local Government Association, One Voice Wales and the Chartered Institute of Public Finance and Accountancy.

Stakeholders were invited to comment on the proposed 2020 Regulations. In total, 4 responses were received. Responses were received from the following categories of organisations and individuals.

Local Authorities – 3
Others – 1

There were no changes made to the draft regulations as a result of responses. The local authority responses were all supportive of the proposed amendments and welcomed the move to align the Welsh regulations to those in England.

The remaining response was from a treasury management advisor and was generally supportive but suggested an amendment to the definition of a pooled investment fund and to mitigate the impact of the withdrawal from the EU on exit day. Amendments to the Regulations had been made in 2017 and dealt with both issues raised. The advisor also suggested that gains and losses incurred in 2018-19 be included. This has not been incorporated as all accounts for the Welsh authorities for that financial year have been completed and audited with no concerns raised.

vi. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been produced for this instrument as the amendments to the Regulations do not create an additional regulatory burden. No impact on business, charities or the voluntary sector is foreseen.

vii. Post implementation review

The current regulatory framework has been in place since December 2003. Since that time the effectiveness of the system in place has been kept under regular review by the Welsh Government and in regular formal and informal situations with interested stakeholders, examples being Local Authorities, Welsh Local Government Association and Wales Audit Office.

viii. Summary

The 2020 Regulations will mitigate the impact of fair value movements on pooled investment funds on local authority budget setting due to new International Financial Reporting Standards (IFRS) for Financial Instruments (IFRS9). This will place local authorities in Wales on an equivalent footing to counterparts in England.

SL(5)500 – The National Park Authorities (Wales) Agenda Item 2.2 (Amendment) Order 2020

Background and Purpose

This Order makes amendments to Parts I and II of Schedule 2 to the National Park Authorities (Wales) Order 1995/2803 (“the 1995 Order”) to reduce the membership of Brecon Beacons National Park Authority (“BBNPA”) from 24 to 18. The Order comes into force on 1 April 2020.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

1. The second paragraph of the Explanatory Note refers to “Article 3”, but this should refer to “Article 2”. The error also exists in the Welsh version, which should therefore read “Mae erthygl 2”.

2. We note that the Welsh Ministers have power to give written notice of the termination of the appointment of a local authority member of a National Park authority under paragraph 6(1) of Schedule 7 to the Environment Act 1995. This power can be exercised where an order varies the number of local authority members of an authority, as is the case with this Order.

The power to remove members appointed by the Welsh Ministers is contained in paragraph 6(2) of Schedule 7 to the Environment Act 1995. That power must be exercised by giving the member three months' written notice of the termination or by such other manner as may be provided for in the terms of that member's appointment.

We note that this Order comes into force on 1 April 2020. The powers of the Welsh Ministers enable them to remove any local authority members so as to reduce membership of the BBNPA to the levels implemented by the changes under this Order. However, it is not clear that it is possible to reduce the number of members of the BBNPA appointed by the Welsh Ministers to the levels required following the coming into force of the changes under this Order. This matter is not dealt with in the Explanatory Memorandum.

Does the coming into force date take into account any necessary notice periods that are required to terminate appointments in order to reduce the number of members of the BBNPA appointed by the Welsh Ministers?

3. It is unclear why a regulatory impact assessment has not been produced for this Order. Section 76(2)(a) of the Government of Wales Act 2006 defines a regulatory impact assessment as “an assessment



as to the likely costs and benefits of complying with relevant Welsh subordinate legislation". It is noted that the Explanatory Memorandum identifies benefits arising from the changes made by this Order.

The Explanatory Memorandum states that a regulatory impact assessment is not required because "this instrument does not confer any new burdens on businesses, charities or voluntary bodies" and that "there is no significant impact on the public sector". Further, it appears that the justification for not preparing a regulatory impact assessment is on the grounds that this Order "relates to the maintenance of existing legislation" and has no impact on the statutory duties or statutory partners.

Section 76(1) of the Government of Wales Act 2006 requires the Welsh Ministers to make a code of practice setting out their policy on the carry out of regulatory impact assessments in connection with relevant Welsh subordinate legislation. Paragraph 4.2 of the code made by the Welsh Ministers pursuant to section 76(1) of the Government of Wales Act 2006 states that "Welsh Ministers' policy will be to carry out an RIA ... subject to the following exceptions".

Although the Explanatory Note states that the Welsh Ministers considered the Code of Practice on the carrying out of regulatory impact assessments, it is not clear which exceptions under the Code are relied upon in relation to this Order.

Which exception under the Code applies to the decision not to produce a regulatory impact assessment?

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

We acknowledge the incorrect reference to article 3 in both English and Welsh texts, and will rectify this through a correction slip.

Due to recent resignations, the number of current Ministerial appointments to the BBNPA at the point of coming into force will be 6. The instrument therefore accurately reflects the current composition and notice periods for termination will not be an issue.

We have considered this matter further and consider that the exceptions in the Code do not apply in this case. We therefore propose that a Regulatory Impact Assessment be carried out.

Legal Advisers

Legislation, Justice and Constitution Committee

14 February 2020



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales
Legislation, Justice and Constitution Committee

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

2020 No. 119 (W. 21)

COUNTRYSIDE, WALES

**The National Park Authorities
(Wales) (Amendment) Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Park Authorities (Wales) Order 1995 (S.I. 1995/2803).

Article 3 of this Order amends Parts 1 and 2 of Schedule 2 to that Order so that the membership of the Brecon Beacons National Park Authority decreases from 24 to 18. The total number of members consists of 12 local authority members and 6 members appointed by the Welsh Ministers.

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

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

2020 No. 119 (W. 21)

COUNTRYSIDE, WALES

**The National Park Authorities
(Wales) (Amendment) Order 2020**

Made 4 February 2020

*Laid before the National Assembly for
Wales* 6 February 2020

Coming into force 1 April 2020

The Welsh Ministers make this Order in exercise of the powers conferred by sections 63(1) and (5) of, and paragraphs 1(2) and (3), and 2(1) and (2) of Schedule 7 to, the Environment Act 1995⁽¹⁾, having consulted the councils for every principal area part of which is comprised in the Brecon Beacons National Park in accordance with paragraph 2(3) of Schedule 7 to the Environment Act 1995⁽²⁾.

Title and commencement

1.—(1) The title of this Order is the National Park Authorities (Wales) (Amendment) Order 2020.

(2) This Order comes into force on 1st April 2020.

**Amendment of the National Park Authorities
(Wales) Order 1995**

2.—(1) The National Park Authorities (Wales) Order 1995 is amended in accordance with the following paragraphs.

-
- (1) 1995 c. 25. The powers conferred on the Secretary of State by sections 63(1) and (5) of, and paragraphs 1(2) and (3), and 2(1) and (2) of Schedule 7 to, the Environment Act 1995 (c. 25) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers.
- (2) See section 79(1) for the definition of “principal area”.

(2) In Part 1 of Schedule 2 for—

”Brecon Beacons National Park Authority

Local authority members	16
Secretary of State members	8
Total number of members	24”

substitute—

“Brecon Beacons National Park Authority

Local authority members	12
Secretary of State members	6
Total number of members	18”

(3) In Part 2 of Schedule 2 for—

“Brecon Beacons National Park Authority

Council of a principal area	Number of members
Blaenau Gwent County Borough Council	1
Carmarthenshire County Council	2
Merthyr Tydfil County Borough Council	1
Monmouthshire County Council	2
Powys Council	8
Rhondda, Cynon, Taff County Borough Council	1
Torfaen County Borough Council	1”

substitute—

“Brecon Beacons National Park Authority

Council of a principal area	Number of members
Blaenau Gwent County Borough Council	1
Carmarthenshire County Council	1
Merthyr Tydfil County Borough Council	1
Monmouthshire County Council	1
Powys Council	6
Rhondda Cynon Taff County Borough Council	1
Torfaen County Borough Council	1”

Hannah Blythyn

Deputy Minister for Housing and Local Government,
acting under the authority of the Minister for Housing
and Local Government, one of the Welsh Ministers

4 February 2020

Explanatory Memorandum to National Park Authorities (Wales) (Amendment) Order 2019.

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Park Authorities (Wales) (Amendment) Order 2019.

Hannah Blythyn AM
Deputy Minister for Housing and Local Government
6 February 2020

PART 1

1. Description

This instrument makes amendments to Parts I and II of Schedule 2 to the National Park Authorities (Wales) Order 1995/2803 (“the 1995 Order”) to reduce the membership of Brecon Beacons National Park Authority (“BBNPA”) from 24 to 18, coming into force on 1 April 2020.

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

None.

3. Legislative background

Powers contained in sections 63(1) and (5) of, and paragraphs 1(2) and (3) and 2(1) and (2) of Schedule 7 (NPAs) to, the Environment Act 1995 (“the Act”) allow for the Welsh Ministers to specify in an Order the number of:

- (i) local authority members, and
- (ii) other members appointed by Welsh Ministers.

The powers conferred on the Secretary of State by sections 63(1) and (5) of, and paragraphs 1(2) and (3), and 2(1) and (2) of Schedule 7 to, the Act were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers. The same powers allow the Welsh Ministers to amend the 1995 Order so as to vary the specified number of local authority and other members.

The subordinate legislation is made under the negative resolution procedure.

Implementing a reduction in the membership requires the drafting and laying of an Order to amend Parts I and II of Schedule 2 to 1995 Order.

Part I of Schedule 2 (Membership of National Park Authorities) to the 1995 Order lists the number of members of each National Park Authority “NPA” and provides that for the BBNPA:

“Brecon Beacons National Park Authority

Local authority members	16
Secretary of State members	8
Total number of members	24”

Part II of Schedule 2 to the 1995 Order lists the number of local authority members of the councils for every principal area part of which is comprised in the Brecon Beacons National Park:

“Brecon Beacons National Park Authority

<u>Council of a principal area</u>	<u>Number of members</u>
Blaenau Gwent County Borough Council	1
Carmarthenshire County Council	2
Merthyr Tydfil County Borough Council	1
Monmouthshire County Council	2
Powys Council	8
Rhondda, Cynon, Taff County Borough Council	1
Torfaen County Borough Council	1”

4. Purpose and intended effect of the legislation

The Future Landscapes Wales programme in 2016-17 considered the governance of Wales’ designated landscapes and recommended harmonising the size of NPA memberships. Reinforcing this priority, the current Welsh Government policy document *Valued and Resilient: The Welsh Government’s Priorities for Areas of Outstanding Natural Beauty and National Parks* (2018) states the following:

“The scale and complexity of governance structures have obvious resource implications. Efficiency should be pursued, consistent with effective governance. The Welsh Government intends to *reduce the administrative costs of National Park Authorities* by removing them from the audit regime of the Local Government (Wales) Measure 2009, **and reducing the size of the BBNPA membership from 24 to 18.**”

The proposed changes are supported by BBNPA. In September 2016 BBNPA met and voted unanimously to support the reduction of the Authority’s membership from 24 to 18 to bring it in line with the other two NPAs in Wales. BBNPA asserted a smaller membership was consistent with maintaining good governance and that they would start a process of increased focus and efficiency on Park Authority business, including a revision of the committee structure. The Authority has estimated that a reduction in the size of the membership could deliver annual savings of £40,000 through a direct saving of the salary paid to members, as well as a reduction in their induction, training and travel expenses.

The BBNPA proposal suggested a reduction of four unitary authority appointees and two Welsh Government appointees, thereby retaining the two-

thirds unitary authority and one-third Welsh Minister appointee ratio.

	Current annual cost (24)	Savings through reduced membership (18)
Basic Salary	£86,400	£21,600
Induction (actual and staff costs)	£34,472	£8,572
Travel costs (savings based on average mileage for 30 meetings pa)	£16,000	£9,720
Total	£136,872	£39,892

5. Consultation

In 2017 the Welsh Government held a public consultation on reducing the Membership of BBNPA from 24 to 18 members. The consultation commenced on 11 April 2017 and closed on 29 June 2017.

It proposed reducing the number of Local Authority members from 16 to 12, as set out in Table 1, and reducing the number appointed by Welsh Ministers from 8 Members to 6 Members. The proposal retained appointments from each of the existing Local Authorities with representation, while also maintaining the link between the number of members and the area within the Park of each principal Council.

Table 1: Proposed reduction of Local Authority Members

Name of Council	Current	Proposed	Change
Blaenau Gwent County Borough Council	1	1	-
Carmarthenshire County Council	2	1	-1
Merthyr Tydfil County Borough Council	1	1	-
Monmouthshire County Council	2	1	-1
Powys Council	8	6	-2
Rhondda Cynon Taff County Borough Council	1	1	-
Torfaen County Borough Council	1	1	-
Total	16	12	-4

A total of five responses were received. These were from: Pembrokeshire Coast National Park Authority; Carmarthenshire, Monmouthshire and Powys County Councils; and, an individual (who submitted a response after the consultation closed). A summary of the responses was subsequently published.

Welsh Government's subsequent 2017 consultation, *Taking forward Wales' Sustainable Management of Natural Resources*, also set out a number of proposals relating to National Parks, including their governance. Responses to this consultation did not contain any substantive reasons for not proceeding with the membership reduction.

6. Regulatory Impact Assessment (RIA)

This instrument is required to amend Wales-only legislation that includes references to Schedule 7 to the Environment Act 1995, by amending Parts I and II of Schedule 2 to the National Park Authorities (Wales) Order 1995; as such this instrument does not confer any new burdens on businesses, charities or voluntary bodies. Furthermore, there is no significant impact on the public sector.

An Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing legislation.

The legislation has no impact on the statutory duties (sections 77-79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).

Agenda Item 2.3

SL(5)498 - The Common Agricultural Policy (Direct Payments to Farmers)(Miscellaneous Amendments)(Wales) Regulations 2020

Background and Purpose

These Regulations are made under section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 ("DPLC Act"), which received Royal Assent on 30 January 2020. The Regulations are made in order to address failures of retained EU law governing the Common Agricultural Policy Direct Payment Schemes to operate effectively, and deficiencies in that retained EU law. The Regulations amend two pieces of subordinate legislation in the field of agriculture:

- The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance)(Wales) Regulations 2014; and
- The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

Procedure

Made Affirmative. The Regulations have already been made, but require Assembly approval for them to come into force for more than 28 days.

Technical Scrutiny

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

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

1. The Explanatory Memorandum, in the third paragraph following the heading "Matters of special interest to the Constitutional and Legislative Affairs Committee", provides that "the instrument could not be made until the DPLC Act received Royal Assent on 30 March 2020". However, the DPLC Act received Royal Assent on 30 January 2020, which enabled these Regulations to be made.

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations come into force on Exit Day (11pm on 31 January 2020). The Regulations provide that paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 does not apply. The Regulations will enable the domestic EU derived legislation governing the Direct Payment Scheme for claim year 2020, which runs from 1 January 2020 to 31 December 2020, to operate effectively in the UK immediately after EU Exit.

Government Response

The Welsh Government acknowledges that there is an error in the Explanatory Memorandum (third paragraph following the heading "Matters of special interest to the Constitutional and Legislative Affairs



Committee"). The Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) received Royal Assent on 30 January 2020, not 30 March 2020.

I can confirm that this will be corrected, and a revised Explanatory Memorandum laid as soon as possible.

Legal Advisers
Legislation, Justice and Constitution Committee
February 2020



Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020, for approval by resolution of the National Assembly for Wales within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.

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

2020 No. 104 (W. 17)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Direct Payments to Farmers)
(Miscellaneous Amendments)
(Wales) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) in order to address failures of retained EU law governing the Common Agricultural Policy Direct Payment Schemes to operate effectively, and deficiencies in that retained EU law.

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

Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020, for approval by resolution of the National Assembly for Wales within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.

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

2020 No. 104 (W. 17)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Direct Payments to Farmers)
(Miscellaneous Amendments)
(Wales) Regulations 2020**

Made at 3:51 p.m. 31 January 2020

*Laid before the National Assembly for
Wales 4 February 2020*

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

The Welsh Ministers, in exercise of the powers conferred by section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020(1), make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020.

(2) These Regulations come into force on exit day and paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020(2) does not apply.

(1) 2020 c. 2; see section 3(10) for the definition of “devolved authority”.

(2) 2020 c. 1.

The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

2.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014(1) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), for the definition of “direct payments” substitute—

““direct payments” (*“taliadau uniongyrchol”*) has the meaning given by Article 1 of the Direct Payments Regulation;”;

(b) after paragraph (1) insert—

“(1A) References in these Regulations to the Horizontal Delegated Regulation, the Horizontal Implementing Regulation and the Horizontal Regulation are, to the extent that they relate to the direct payments for claim year 2020, references to those Regulations as they exist in domestic law.”

(3) In regulation 7, in paragraph (7)(a), at the beginning insert “except for matters relating to direct payments for claim year 2020.”.

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

3.—(1) The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015(2) are amended as follows.

(2) In regulation 3—

(a) omit “and (2)”, and

(b) for “Article 10(1)(b)” substitute “Article 10(1)”.

(3) In regulation 7, omit “and (2)(c)”.

(1) S.I. 2014/3223 (W. 328), to which there are amendments not relevant to these Regulations.

(2) S.I. 2015/1252 (W. 84), amended by S.I. 2016/217 (W. 86).

(4) In regulation 11(1) and (2), after “Direct Payments Delegated Regulation” insert “as it applied immediately prior to exit day”.

Lesley Griffiths

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

At 3:51 p.m. on 31 January 2020

The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Payments Wales within the Department for Environment, Skills and Natural Resources and is laid before the Senedd in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

04 February 2020

1. Description

The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 (“the instrument”) amend the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014, and the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015. The amendments address operability issues created by the United Kingdom (“UK”) leaving the EU. The instrument will enable the domestic EU derived legislation to operate effectively in the UK after EU Exit for direct payments claim year 2020.

The amendments in this instrument will maintain the status quo, as far as possible, and are minor and technical in nature.

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

The instrument is being laid using powers conferred upon the Welsh Ministers by section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (“DPLC Act”). The instrument makes provisions that the Welsh Ministers consider appropriate to prevent, remedy or mitigate any failure of retained EU law governing the CAP direct payment schemes to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

The instrument is being laid under the “made affirmative” procedure as provided for in paragraph 2(1) of Schedule 2 to the DPLC Act. The instrument comes into force on Exit Day (11pm on 31 January 2020).

The instrument could not be made until the DPLC received Royal Assent on 30 March 2020. It is important that the amendments come into force on Exit Day, at the point the relevant EU legislation becomes retained EU law. This is to avoid any legislative gap in the Direct Payment schemes for claim year 2020 and to ensure the scheme remains operable for the whole claim year, which began on 1 January.

The domestic Direct Payment scheme for claim year 2020 needs to be equivalent to the EU schemes in order to benefit from the state aid exemption in Article 13 of Regulation (EU) 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (“Direct Payments Regulations”). An enforcement gap could put this exemption at risk.

In relation to commencement, paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (“Withdrawal Act”) contains a general rule that ‘glosses’ the commencement dates in subordinate legislation made before exit day. The gloss applies to all subordinate legislation due to come into force on, immediately before or exit day, and provides that those provisions will instead come into force at the end of the implementation period. Regulation 1(2) provides that paragraph 1(1) of Schedule 5 to the Withdrawal Act does not apply to this instrument. The instrument therefore comes into force on exit day.

Section 1(1) of the DPLC Act incorporates the relevant EU legislation on Exit Day into domestic law. Section 3(7) of the DPLC Act clarifies that provisions made by regulations under the powers in the DPLC Act may apply in relation to matters in relation to the CAP Direct Payment schemes for the whole of the claim year, notwithstanding that for the month of January it will remain EU law.

3. Legislative background

CAP is the agricultural policy of the EU. It implements a system of agricultural subsidies and other programmes. Funding made available under the CAP is split into two Pillars: Pillar I (Direct Payments and CMO measures) and Pillar II (Rural Development Programmes). Direct Payments are the main income-support schemes for farmers under the CAP.

Under the terms of Part 4 of the Withdrawal Agreement (“WA”), EU law continues to be applicable in the UK during the implementation period, which is defined in Article 126 of the WA as starting on the date of entry into force of that Agreement and ending on 31 December 2020.

Section 1A of the Withdrawal Act gives effect to Part 4 of the WA. However, Article 137 of the WA provides that, taking effect from Exit Day, the Direct Payments Regulation (which governs CAP Direct Payments to farmers) shall not apply in the UK for claim year 2020, save for Article 13 (the state aid exemption for Direct Payments). Whilst Article 137 of the WA expressly refers to the Direct Payment Regulation, it is also intended to capture law connected to the application of that Regulation.

To benefit from the state aid exemption the UK must have Direct Payment schemes that are “*equivalent*” to the EU schemes for claim year 2020. Article 137, therefore, envisages that the UK will have Direct Payment schemes that are equivalent to the EU schemes.

The domestic legislation being amended by this instrument continues to have effect in domestic law during the implementation period by virtue of section 1B (2) of the Withdrawal Act, however amendments are required to ensure it remains operable and effective.

4. Purpose and intended effect of the legislation

This instrument amends domestic EU derived legislation governing the Direct Payment schemes for farmers established under CAP in respect of claim year 2020, which runs from 1 January 2020 to 31 December 2020. This is in order to address operability issues created by the United Kingdom (“UK”) leaving the EU. The amendments will enable that domestic legislation to operate effectively in the UK after EU Exit.

The amendments introduced by this instrument will maintain the *status quo*, as far as possible, and are largely technical. No substantive policy changes are being made and farmers in Wales will see no change on the ground.

5. Consultation

This instrument has not been subject to formal consultation because it aims to retain the status quo for the 2020 claim year, makes no substantive policy changes and is largely technical in nature. The instrument provides continuity and stability for Direct Payments recipients in Wales.

6. Regulatory Impact Assessment (RIA)

The Regulations maintain the current position and make no policy changes hence why no RIA has been undertaken.

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



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref - MA-L-LG-0284-20

Elin Jones AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

31 January 2020

Dear Elin,

The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020

I have today made the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 under section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020. The Regulations come into force on exit day (11pm on 31 January 2020). I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with paragraph 4(c) of Schedule 2 to the Direct Payments to Farmers (Legislative Continuity) Act 2020, this instrument must be laid before and approved by the Senedd for Wales by 5 March 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 3 March 2020.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee, and Sian Wilkins, Head of Chamber and Committee Services.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AC/AM

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

Agenda Item 3.1

SL(5)494 – The Food for Specific Groups (Information and Compositional Requirements) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (“the 2016 Regulations”). The amendments set out in these Regulations provide for the enforcement in domestic law of EU Commission Delegated Regulation 2016/128 in relation to the specific compositional and information requirements for food for special medical purposes developed to satisfy the nutritional needs of infants. These Regulations extend the existing enforcement regime set out in the 2016 Regulations to food for special medical purposes relating to infants.

The Regulations are made under sections 6(4), 16(1)(a) and (e) and 2(b), 26(1) and (3) and 48(1) of the Food Safety Act 1990 and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations amend the 2016 Regulations which implement, in Wales, various EU obligations in relation to food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control. The amended 2016 Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

12 February 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales

Legislation, Justice and Constitution Committee

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

2020 No. 92 (W. 14)

FOOD, WALES

FOOD SAFETY

**The Food for Specific Groups
(Information and Compositional
Requirements) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, amend the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (S.I. 2016/639 (W. 175)) (“the 2016 Regulations”) in order to provide for the enforcement in domestic law of the provisions of Commission Delegated Regulation (EU) 2016/128 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes developed to satisfy the nutritional requirements of infants (OJ No. L 25, 2.2.2016, p. 30) (“the Delegated Regulation”).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 (c. 68) and references in them to provisions of the Delegated Regulation are to be construed as references to such provisions as they are amended from time to time.

Regulation 4 of these Regulations amends regulation 2 of the 2016 Regulations so that references in the 2016 Regulations to the Delegated Regulation are to the Delegated Regulation as it applies to food for special medical purposes including that developed to satisfy the nutritional requirements of infants.

Regulation 6 of these Regulations substitutes a new regulation 7 of the 2016 Regulations to provide new transitional arrangements which ensure that stocks of food for special medical purposes which were labelled

or placed on the market before the date of application of provisions of the Delegated Regulation may continue to be marketed until those stocks are exhausted.

Regulation 7 of these Regulations amends the table in Schedule 1 to the 2016 Regulations to include further provisions into the definition of “specified EU requirement”.

These Regulations also make amendments to the 2016 Regulations to correct drafting errors and to provide further clarity. Regulation 8 inserts new paragraphs 6A and 7A in Part 3 of Schedule 3 to the 2016 Regulations to provide clarity regarding the application of section 35 of the Food Safety Act 1990 to the 2016 Regulations and regulation 5 corrects a drafting error in regulation 4(5) of the 2016 Regulations.

Regulation 9 of these Regulations contains revocations and savings provisions. Regulation 9 of, and the Schedule to, these Regulations revoke the Medical Food (Wales) Regulations 2000 (S.I. 2000/1866 (W. 125)) and provisions which amend them. The Medical Food (Wales) Regulations 2000 implement Commission Directive 1999/21/EC on dietary foods for special medical purposes developed to satisfy the nutritional requirements of infants (OJ No. L 91, 7.4.1999, p. 29, as corrected by a corrigendum published on 5 January 2000 (OJ No. L 2, 5.1.2000, p. 79)).

Regulation 9 of these Regulations further provides for the revocations to be saved for the purposes of the transitional provisions in regulation 7 of the 2016 Regulations as substituted by these Regulations, and for the purposes of the transitional provisions in regulation 5(3) of the Infant Formula and Follow-on Formula (Wales) Regulations 2020 (S.I. 2020/**** W. **).

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

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

2020 No. 92 (W. 14)

FOOD, WALES

FOOD SAFETY

**The Food for Specific Groups
(Information and Compositional
Requirements) (Wales)
(Amendment) Regulations 2020**

Made 30 January 2020

Laid before the National Assembly for Wales
31 January 2020

Coming into force 22 February 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4) 16(1)(a) and (e) and (2)(b), 17(1) and (2), 26(1) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and now vested in them⁽²⁾ and section 2(2) of, and paragraph

(1) 1990 c. 16. Section 6(4) of the Food Safety Act 1990 (“the 1990 Act”) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40), paragraph 10(1) and (3)(a) of Schedule 5, and Schedule 6 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”) and S.I. 2002/794. Section 16(1) of the 1990 Act was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act. Section 17 of the 1990 Act was amended by paragraphs 7, 8 and 12 of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.

(2) Those functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

1A of Schedule 2 to, the European Communities Act 1972(1).

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food(2).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for certain references to provisions of Commission Delegated Regulation (EU) 2016/128(3), referred to in these Regulations, to be construed as references to those provisions as amended from time to time.

The Welsh Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A)(4) of the Food Safety Act 1990.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(5), during the preparation and evaluation of these Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Food for Specific Groups (Information and Compositional Requirements) (Wales) (Amendment) Regulations 2020.

-
- (1) 1972 c. 68 (“the 1972 Act”). Section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006. It was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and S.I. 2007/1388.
- (2) S.I. 2005/1971 to which there are amendments not relevant to these Regulations.
- (3) Commission Delegated Regulation (EU) 2016/128 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes (OJ No. L 25, 02.02.2016, p. 30).
- (4) Section 48(4A) was inserted by section 40(1) of, and paragraph 21 of Schedule 5 to, the 1999 Act.
- (5) OJ No. L 31, 1.2.2002, p. 1, last amended by Regulation (EU) No 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.07.2019, p. 241).

(2) These Regulations come into force on 22 February 2020.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations, “the 2016 Regulations” means the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016(1).

Amendment of the 2016 Regulations

3. The 2016 Regulations are amended in accordance with regulations 4 to 8.

4. In regulation 2 (interpretation), omit paragraph (6).

5. In regulation 4 (application of provisions of the Act), in paragraph (5) for “applies to an improvement notice” substitute “applies to an appeal against an improvement notice”.

6. For regulation 7 (transitional arrangements) substitute—

“7. Food for special medical purposes that does not comply with any specified provision of the Delegated Regulation specified in Schedule 1 may continue to be marketed until stocks of such food are exhausted provided that—

- (a) it complies with the provisions of the EU Regulation specified in Schedule 1,
- (b) it was placed on the market or labelled—
 - (i) before 22 February 2019, or
 - (ii) before 22 February 2020 in the case of food for special medical purposes developed to satisfy the nutritional requirements of infants, and
- (c) the requirements specified in regulation 3(1) and (2) of the Medical Food (Wales) Regulations 2000(2) are met.”

7. In Schedule 1(3) (specified EU requirements)—

- (a) in the part of the table relating to the EU Regulation, in the entry relating to “Article

(1) S.I. 2016/639 (W. 175), amended by S.I. 2019/70 (W. 22) and prospectively amended by S.I. 2019/179 (W. 45).
(2) S.I. 2000/1866 (W. 125); amended by S.I. 2014/1102 (W. 110); there are other amending instruments but none are relevant to these Regulations.
(3) The table in Schedule 1 was substituted by S.I. 2019/70 (W. 22).

15(1) (Union list)”, in column 2, for “Articles 1(1)(c), 4(1) and the Annex insofar as it applies to food for special medical purposes” substitute “Articles 1(1)(a) and (c) and 4(1) and the Annex insofar as it applies to infant formula, follow-on formula, and food for special medical purposes”;

(b) for the part of the table relating to the Delegated Regulation substitute—

“Specified provision of the Delegated Regulation	Provisions to be read with the specified provision of the Delegated Regulation
Article 2(2) (requirement for the formulation of food to be based on sound medical and nutritional principles)	Article 1
The first sub-paragraph of Article 2(3) (requirement for food for special medical purposes developed to satisfy the nutritional requirements of infants to comply with the compositional requirements in Part A of Annex 1)	Articles 1 and 2(4) and Part A of Annex 1
The second sub-paragraph of Article 2(3) (requirement for food other than that developed to satisfy the nutritional requirements of infants to comply with the compositional requirements in Part B of Annex 1)	Articles 1 and 2(4) and Part B of Annex 1
Article 3(2) (requirement relating to residue threshold for certain active substances where food for special medical purposes is developed to satisfy the nutritional requirements of infants and young children)	Articles 1 and 3(1), (3) and (5) and Annex 2
Article 3(3)	Articles 1 and 3(1), (2)

(maximum residue levels for substances listed in Annex 2)	and (5) and Annex 2
Article 3(4) (prohibition on the use of plant protection products)	Articles 1 and 3(1) and (5) and Annex 3
Article 4 (name of the food)	Article 1 and Annex 4
Article 5(1) (requirement for food for special medical purposes to comply with Regulation (EU) No. 1169/2011(1) unless otherwise specified)	Articles 1 and 5(2)
Article 5(2) (additional mandatory particulars relating to food information)	Articles 1 and 5(1) and (3)
Article 5(3) (application of Articles 13(2) and (3) of Regulation (EU) No. 1169/2011 to additional mandatory particulars)	Articles 1 and 5(1) and (2)
Article 6 (specific requirements on the nutrition declaration)	Article 1 and Annex 1
Article 7 (nutrition and health claims)	Article 1
Article 8(1) (requirement for mandatory particulars to appear in a language easily understood by consumers)	Article 1
The first subparagraph of Article 8(2) (prohibition of pictures of infants or certain other pictures or text)	Article 1

(1) Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No. 1924/2006 and (EC) No. 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No. 608/2004 (OJ No. L 304, 22.11.2011, p. 18).

Article 8(3) (requirements relating to labelling, presentation and advertising)	Article 1
The first sub-paragraph of Article 8(4) (restriction on publication)	Article 1 and the third sub-paragraph of Article 8(4)
Article 8(5) (prohibition on use of promotional devices to induce sales)	Article 1
Article 8(6) (prohibition on providing free or low-priced products, samples or other promotional gifts)	Article 1
Article 9 (notification)	Article 1”

8. In Schedule 2 (modification of provisions of the Act), in Part 3 (modification of section 35)—

(a) before paragraph 7 insert—

“6A. In section 35(1), after “section 33(1) above” insert “, as applied by regulation 4(6) and (7) of the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016,”;

(b) after paragraph 7 insert—

“7A. In section 35(2), after “any other offence under this Act” insert “including an offence under section 33(2), as applied by regulation 4(6) and (7) of the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016,”.

Revocations and savings

9.—(1) The instruments specified in column 1 of the table in the Schedule are revoked to the extent specified in column 3 of that table, subject to paragraph (2).

(2) The instruments specified in column 1 of the table in the Schedule continue to have effect (so far as otherwise revoked to the extent specified in column 3 of that table) for the purposes of—

(a) regulation 7(c) of the 2016 Regulations as substituted by regulation 6 of these Regulations, and

- (b) regulation 5(3)(b) of the Infant Formula and Follow-on Formula (Wales) Regulations 2020⁽¹⁾.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
30 January 2020

⁽¹⁾ S.I. 2020/81 (W. 11).

SCHEDULE Regulation 9
Revocations

Column 1	Column 2	Column 3
<i>Instrument</i>	<i>Reference</i>	<i>Extent of revocation</i>
Medical Food (Wales) Regulations 2000	S.I. 2000/1866 (W. 125)	The whole of the Regulations
Infant Formula and Follow-on Formula (Wales) Regulations 2007	S.I. 2007/3573 (W. 316)	Regulation 30
Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008	S.I. 2008/2602 (W. 228)	Regulation 3
Transfer of Functions (Food) (Wales) Regulations 2014	S.I. 2014/1102 (W. 110)	Regulation 2
Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016	S.I. 2016/639 (W. 175)	Paragraph 2 of Schedule 3
Food for Specific Groups (Information and Compositional Requirements) (Amendment) (Wales) Regulations 2019	S.I. 2019/70 (W. 22)	Regulation 2

Explanatory Memorandum to the Food for Specific Groups (Information and Compositional Requirements (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food for Specific Groups (Information and Compositional Requirements) (Wales) (Amendment) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM
Minister for Health and Social Services
31 January 2020

1. Description

These Regulations make provision for the enforcement in Wales of the specific requirements for food for special medical purposes ('FSMP') for infants set out in Commission Delegated Regulation (EU) 2016/128 on food for special medical purposes ("the FSMP Delegated Regulation"). It does so by amending the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 ("the 2016 FSG Regulations") to extend the existing enforcement regime under those regulations to apply to FSMP developed to satisfy the nutritional requirements of infants, setting the penalty for non-compliance with the new rules.

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

None.

3. Legislative background

Welsh Ministers have the power to make the proposed Regulations under sections 6(4), 16(1)(a) and (e) and (2)(b), 17(1) and (2), 26(1) and (3) and 48(1)(b) of the Food Safety Act 1990 ("the 1990 Act") and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Powers under the 1990 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, as read with Section 40(3) of the Food Standards Act 1999, and were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 ("GOWA 2006"). Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food (The European Communities (Designation) (No. 2) Order 2005 (S.I. 2005/1971).

These Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The FSMP Delegated Regulation supplements the overarching EU Regulation (EU) No 609/2013 on Food for Specific Groups ("the FSG EU Regulation"), which sets out general rules governing the composition and labelling of food intended for infants and young children, food for special medical purposes ("FSMP") and total diet replacement for weight control, with detailed rules on Infant Formula and Follow on Formula ("IFFOF").

These Regulations provide the enforcement regime for the FSMP Delegated Regulation in so far as it relates to infants. It provides the offences and penalties for breaching these new EU rules on FSMP relating to infants by amending the 2016 FSG Regulations to extend the existing enforcement regime to this category of food.

The FSMP Delegated Regulation supplements the FSG EU Regulation with detailed rules on FSMP (FSMP are specialist foods intended for the exclusive or partial

feeding of people whose nutritional requirements cannot be met by normal foods). The date of application of the first part of this FSMP Delegated Regulation, relating to FSMP other than FSMP for infants, was 22 February 2019. This is enforced by the Food for Specific Groups (Information and Compositional Requirements) (Amendment) (Wales) Regulations 2019 ('the 2019 FSG Regulations').

The provisions of the FSMP Delegated Regulation relating to food developed to satisfy the nutritional requirements of infants apply from 22 February 2020 and are being enforced in these Regulations.

The Delegated FSMP Regulation repeals Directive 1999/21/EC which previously set detailed requirements for FSMP.

These Regulations revoke the Medical Food (Wales) Regulations 2000. It also makes provision for a transitional period for selling through stocks of FSMP for infants placed on the market or labelled before 22 February 2020, which reflects the position in the 2019 FSG Regulations which makes provision for a transitional period for selling through stocks of FSMP other than FSMP for infants placed on the market or labelled before 22 February 2019.

The FSMP Delegated Regulation updates the composition and labelling rules for FSMP. In respect of FSMP for infants it:

- updates existing rules on FSMP for infants, taking account of scientific developments and new legislation on food information to consumers
- prohibits nutrition and health claims on FSMP for infants. This is to avoid inappropriate promotion of these specialist products which are for use under medical supervision
- extends to FSMP intended for infants and young children the same rules on pesticides that apply to infant formula and baby foods.

The FSMP Delegated Regulation was adopted in September 2015 so industry has had three years notice to allow them to prepare in advance of the rules coming into force.

These Regulations contain an ambulatory reference. References within the Regulations to provisions of the FSMP Delegated Regulation are to be read as those provisions amended from time to time. Any amendments will be minor and highly technical in nature, for example, amendments to the composition of foods for specific groups. The ambulatory reference will avoid the need to introduce new Regulations every time any of the provisions in the Delegated Regulation are amended by EU legislation, should this happen while the UK is still bound by EU rules.

These Regulations make miscellaneous amendments to the 2016 FSG Regulations to provide clarity regarding the application of section 35 of the 1990 Act so as to make clear that the reference to section 33 of the 1990 Act in section 35 of the 1990 Act is to section 33 as applied by regulation 4 of the 2016 FSG Regulations. They also correct a drafting error in regulation 4(5) of the 2016 FSG Regulations to

provide that section 39 of the 1990 Act applies to an appeal against an improvement notice.

5. Consultation

A limited technical consultation was held for four weeks from 8 November 2019. A limited consultation was considered appropriate in this case, focusing purely on the enforcement regime of the Regulations. It was not appropriate to consult on the EU Delegated Regulations which were adopted in 2015.

This consultation covered these Regulations and the Regulations which provide enforcement provision for EU Delegated Regulation (EU) 2016/127 on infant formula and follow on formula. Parallel consultations were conducted in England, Scotland and Northern Ireland. The consultation was shared with enforcement bodies, industry stakeholders, health professional and consumer groups and other relevant non-government organisations.

15 responses were received UK wide, six from Welsh stakeholders. Of those we received in Wales one was from a local authority, one from an NHS maternity lead and one from Baby Feeding Law Group UK (BFLG UK), the rest were from members of the public.

Concerns were raised from four respondents (including the NHS and BFLG) regarding the use of improvement notices particularly in relation to infant formula and follow on formula.

BFLG UK responded to all of the UK consultations querying the breadth of the enforcement provisions and the appropriateness of an informal first step for enforcement bodies. Officials have discussed this issue with UK counterparts and have concluded that due to the niche market, small supplier base and well-defined governing compositional/labelling legislation, the improvement notice regime remains appropriate. Furthermore we are content that under this new enforcement regime enforcement officers continue to have the enforcement tools in respect of safety where something could be injurious to health under the 1990 Act, and the ability to respond to deliberate food crime under the Fraud Act 2006. Failure to comply with an improvement notice can lead to a criminal offence. All this is in line with the Food Law (Wales) Code of Practice.

No amendments were made to these Regulations (or the equivalent UK domestic SIs) as a consequence of the consultation.

6. Regulatory Impact Assessment (RIA)

A full regulatory impact assessment has not been carried out for these Regulations as the impact on businesses, charities or voluntary bodies is expected to be small.

Two options have been considered:

Option 1: Do nothing – Domestic legislation will not be put in place to provide an enforcement regime for The FSMP Delegated Regulation in so far as it relates to infants. Other legislation, for example the 1990 Act, would provide enforcement powers in the most severe cases breaching food safety.

The EU Delegated Regulation is binding in its entirety and directly applicable in all Member States. It is therefore not necessary to transpose the provisions of the Regulation into domestic law. Doing nothing would mean that the Regulation will still come into force, but we would not have the domestic legislation to make it workable and enforceable in Wales. This could result in several unwanted impacts including:

- lack of legal clarity for enforcement officers and businesses;
- risk to vulnerable consumers if there are no sanctions for non-compliant products and such products therefore remain on the market,
- impact on the supply chain of these specialist products due to uncertainty of business,
- lack of consumer confidence in enforcement of the law,
- the UK would be in breach of its legal obligations under the EU Treaty, as applied by the Withdrawal Agreement, and may face infraction proceedings.

Option 2: Introduce the Food for Specific Groups (Information and Compositional Requirements) (Wales) (Amendment) Regulations 2020 to provide an enforcement regime for Wales for the FSMP Delegated Regulation in so far as it relates to infant foods.

Option 2 is the preferred approach. This option will introduce the use of Improvement Notices as the first form of action for enforcement of the FSMP Delegated Regulation. The 2016 FSG Regulations have enforcement provisions using Improvement Notices. These Regulations will extend those enforcement provisions to the requirements of the FSMP Delegated Regulation relating to food developed to satisfy the nutritional requirements of infants.

Improvement Notices are already in use to enforce other areas of food law including in the 2016 FSG Regulations and are well understood by trading standards officers. Enforcement bodies and industry consider Improvement Notices a less burdensome approach to resolving problems of non-compliance.

We were not able to quantify costs in relation to the use of improvement notices but evidence gathered during the development and consultation of the 2016 FSG Regulations from both industry and enforcement bodies highlighted that the use of criminal sanctions as a first formal action can cause difficulties for enforcement thus limiting the public health outcome. The application of Improvement Notices, as a first formal action, was supported as a way of enabling businesses to improve, leading to improved compliance and so promoting better health outcomes.

Costs and Benefits

Costs to business

This legislation affects manufacturers and retailers of food for special medical purposes. **There are no known manufacturers of FSMP products in Wales.**

No significant changes are being proposed under Option 2. We estimate that businesses will only have to spend a short amount of time familiarising themselves with the new procedures. Guidance to this legislation will be updated and published accordingly. Once implemented, the proposed regime is deregulatory. That means that any business found not to be complying with the regulations will (except in the most serious cases) face a non-legislative, less burdensome approach to resolving the problem. Compliance costs are thus expected to fall.

Costs to local authorities

The impact on the public sector of implementing Option 2 is small. Although these Regulations would maintain the status quo regarding the enforcement of European regulation in this area, Local Authorities would need to become familiar with the new Instrument. Ongoing workloads for Trading Standards Officers are not expected to increase as a result of these Regulations, as enforcement work for the products affected is already required.

It is estimated that it would take one Trading Standards Officer one hour to read and become familiar with these Regulations and the new enforcement regime. The hourly pay rate for Qualified Trading Standards Officers is between £16 and £25 – averaging approximately £27 per hour once uprated to account for non-wage labour costs and overheads, taken as 30%. The total one-off cost to the 22 local authorities in Wales is therefore estimated at £594.

Local authorities may also benefit from reduced costs from fewer prosecutions since issuing an Improvement Notice would be the first formal action rather than a prosecution.

Benefits to business

There are no known manufacturers of FSMP products in Wales.

There would be minimal change for businesses if Option 2 was adopted, as the 2016 FSG Regulations already provide for Improvement Notices as an option alongside criminal sanctions in the Medical Food (Wales) Regulations 2000. These Regulations will consolidate the use of IN as the first formal action for existing and new provisions under the 2016 FSG Regulations. The broad benefit to industry is moving from the possibility of facing criminal sanctions to the new regime where enforcement will be carried out by way of an IN as the first formal action, followed up by a criminal offence in cases where businesses continue to ignore the Notice. This will therefore give food businesses the opportunity to rectify issues before the matter comes before a criminal court.

Benefits to local authorities

There are potential benefits of Option 2 in terms of moving to the Improvement Notice regime as a first formal action. Failure to comply with an IN will not of itself amount to a criminal offence (criminal sanctions can continue to be used under other

legislation for serious breaches) potentially resulting in reduced associated court costs

Option 2 is also likely to result in better monitoring of the market regarding food for special medical purposes as Improvement Notices will be recorded whereas informal warnings from enforcement practitioners were not.

Benefits to consumers

If Option 2 is adopted, this legislation will benefit those requiring food for special medical purposes as there will be better protection by way of better defined compositional standards and tighter labelling restrictions.

Summary of the preferred option

Option 2 is the preferred option because it ensures the proper enforcement of the FSMP Delegated Regulation in Wales and avoids the associated risk of infraction proceedings and consequent fines.

Agenda Item 3.2

SL(5)495 – The Infant Formula and Follow-on Formula (Wales) Regulations 2020

Background and Purpose

These Regulations make provision for the enforcement in Wales of the specific requirements set out in Commission Delegated Regulation (EU) 2016/127 on infant formula and follow-on formula (the IFFOF Delegated Regulation). The IFFOF Delegated Regulation supplements the overarching EU Regulation (EU) No 609/2013 on Food for Specific Groups, which sets out general rules governing the composition and labelling of food intended for infants and young children amongst other matters.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations implement EU obligations set out in the IFFOF Delegated Regulation, in Wales, in relation to infant formula and infant follow-on formula. These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

19 February 2020



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

2020 No. 89 (W. 13)

FOOD, WALES

FOOD SAFETY

**The Infant Formula and Follow-on
Formula (Wales) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, make provision to enforce Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding (OJ No. L 25, 2.2.2016, p. 1, “the Delegated Regulation”).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 (c. 68) and references in them to provisions of the Delegated Regulation are to be construed as references to such provisions as they are amended from time to time.

Regulation 3 provides that each food authority must execute and enforce these Regulations within its area. Regulation 2(1) contains a definition of “food authority”.

Regulation 4 and Schedule 2 apply, with modifications, certain provisions of the Food Safety Act 1990 (c. 16) for the purposes of these Regulations.

Regulation 5 and Schedule 3 make provision for revocations and savings as a consequence of these Regulations. The Infant Formula and Follow-on Formula (Wales) Regulations 2007 (S.I. 2007/3573 W. 316) (“the 2007 Regulations”) and the provisions which amend those Regulations are revoked. The 2007 Regulations implement Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive

1999/21/EC (OJ No. L 401, 30.12.2006, p. 1) and Council Directive 95/52/EEC on infant formulae and follow-on formulae intended for export to third countries (OJ No. L 179, 1.7.1992, p. 129). Article 13 of the Delegated Regulation repeals that Directive with effect from 22 February 2020, and from 22 February 2021 in the case of infant formula and follow-on formula manufactured from protein hydrolysates.

Regulation 5 of these Regulations further provides for the revocations to be saved for the purposes of the transitional arrangements in that regulation. Those transitional arrangements provide that where infant formula or follow-on formula has been placed on the market or labelled prior to the date of application of the Delegated Regulation (22 February 2020 or, in the case of infant formula or follow-on formula manufactured from protein hydrolysates, 22 February 2021), it may continue to be marketed until stocks are exhausted, provided that certain requirements are met.

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

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

2020 No. 89 (W. 13)

FOOD, WALES

**The Infant Formula and Follow-on
Formula (Wales) Regulations 2020**

Made 30 January 2020

*Laid before the National Assembly for
Wales* 31 January 2020

*Coming into force in accordance with
regulation 1*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4), 16(1)(a) and (e) and (2)(b), 17(1) and (2), 26(1) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and now vested in them⁽²⁾ and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽³⁾.

-
- (1) 1990 c. 16. Section 6(4) of the Food Safety Act 1990 (“the 1990 Act”) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40), paragraph 10(1) and (3)(a) of Schedule 5, and Schedule 6 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”) and S.I. 2002/794. Section 16(1) of the 1990 Act was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act. Section 17 of the 1990 Act was amended by paragraphs 7, 8 and 12 of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.
- (2) Those functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) 1972 c. 68 (“the 1972 Act”). Section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food⁽¹⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for certain references to provisions of Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding⁽²⁾ to be construed as references to those provisions as amended from time to time.

The Welsh Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the Food Safety Act 1990⁽³⁾.

There has been open and transparent public consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽⁴⁾, during the preparation and evaluation of these Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Infant Formula and Follow-on Formula (Wales) Regulations 2020.

(2) These Regulations come into force—

(a) except where sub-paragraph (b) applies, on 22 February 2020;

Reform Act 2006. It was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and S.I. 2007/1388.

- (1) S.I. 2005/1971, to which there are amendments not relevant to these Regulations.
- (2) OJ No. L 25, 2.2.2016, p. 1, as last amended by Commission Delegated Regulation (EU) 2019/828 (OJ No. L 137, 23.5.2019, p. 12).
- (3) Section 48(4A) was inserted by section 40(1) of, and paragraph 21 of Schedule 5 to, the 1999 Act.
- (4) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).

(b) on 22 February 2021 in respect of infant formula and follow-on formula manufactured from protein hydrolysates.

(3) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“the Delegated Regulation” (“*y Rheoliad Dirprwyedig*”) means Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding⁽¹⁾;

“food authority” (“*awdurdod bwyd*”) has the meaning that it bears by virtue of section 5(1A) of the Act⁽²⁾;

“specified EU law requirement” (“*gofyniad cyfraith UE penodedig*”) means any provision of the Delegated Regulation specified in column 1 of the table in Schedule 1, as read with any provision specified in the corresponding entry in column 2 of that table.

(2) Any reference to a provision of the Delegated Regulation is a reference to that provision as amended from time to time.

(3) Expressions used both in these Regulations and in the Delegated Regulation have the same meaning in these Regulations as they have in the Delegated Regulation.

Enforcement

3. Each food authority must execute and enforce these Regulations within its area.

Application of provisions of the Act

4.—(1) Section 10(1) and (2) of the Act (improvement notices) applies, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 2, for the purposes of—

(1) OJ No. L 25, 2.2.2016, p. 1, as last amended by Commission Delegated Regulation (EU) 2019/828 (OJ No. L 137, 23.5.2019, p. 12).

(2) Section 5(1A) was inserted by paragraph 16 of Schedule 9 to the Local Government (Wales) Act 1994 (c. 19).

- (a) enabling an improvement notice to be served on a person requiring that person to secure compliance with any specified EU law requirement; and
- (b) making a failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) Section 32(1) to (8) of the Act⁽¹⁾ (powers of entry) applies, with the modifications (in the case of section 32(1)) specified in Part 2 of Schedule 2, for the purposes of enabling an authorised officer of an enforcement authority—

- (a) to exercise a power of entry to ascertain whether food that does not comply with a specified EU law requirement is, or has been, sold; and
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of a specified EU law requirement.

(3) Section 35 of the Act (punishment of offences) applies, with the modifications specified in Part 3 of Schedule 2, for the purpose of specifying the punishment of an offence committed under section 10(2) as applied by paragraph (1)(b).

(4) Section 37 of the Act (appeals) applies, with the modifications specified in Part 4 of Schedule 2, for the purpose of enabling a person to appeal a decision to serve a notice referred to in paragraph (1)(a).

(5) Section 39 of the Act (appeals against improvement notices) applies, with the modifications (in the case of section 39(1) and (3)) specified in Part 5 of Schedule 2, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).

(6) The provisions of the Act specified in paragraph (7) (“the paragraph (7) provisions”) apply, with the modifications specified in Part 6 of Schedule 2, for the purposes of these Regulations insofar as they relate to the provisions of the Act specified in and modified by paragraphs (1) to (5).

(7) The provisions of the Act specified for the purposes of this paragraph are—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21⁽²⁾ (defence of due diligence);

(1) There are amendments to section 32(5) and (6), but none are relevant.

(2) Section 21 was amended by S.I. 2004/3279.

- (d) section 22 (defence of publication in the course of business);
- (e) section 29 (procurement of samples);
- (f) section 30(1) (analysis etc. of samples);
- (g) section 33(2) (obstruction etc. of officers);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A(3) (offences by Scottish partnerships);
- (j) section 44 (protection of officers acting in good faith);
- (k) section 53 (general interpretation);

and any reference in the paragraph (7) provisions to a section of the Act, including a reference to “any of the preceding provisions of this Part”, is to be read as a reference to such sections of the Act that apply by virtue of, and with the modifications made by, these Regulations.

Revocations, savings and transitional provisions

5.—(1) The instruments specified in column 1 of the table in Schedule 3 are revoked to the extent specified in column 3 of that table, subject to paragraph (2).

(2) The instruments specified in column 1 of the table in Schedule 3 continue to have effect (so far as otherwise revoked to the extent specified in column 3 of that table)—

- (a) until 21 February 2021 in respect of infant formula and follow-on formula manufactured from protein hydrolysates;
- (b) for the purposes of paragraph (3)(b).

(3) Infant formula and follow-on formula which does not comply with a specified EU law requirement may continue to be marketed until stocks of such food are exhausted, provided that—

- (a) it was placed on the market or labelled—
 - (i) before 22 February 2020; or
 - (ii) before 22 February 2021 in the case of infant formula and follow-on formula manufactured from protein hydrolysates; and
- (b) the conditions specified in the following provision of the Infant Formula and Follow-

(1) Section 30 was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.

(2) Section 33 was amended by paragraph 3(1) and (4) of the Schedule to the Food (Scotland) Act 2015 (asp 1).

(3) Section 36A was inserted by paragraph 16 of Schedule 5 to the 1999 Act.

on Formula (Wales) Regulations 2007⁽¹⁾ are met—

- (i) regulation 3(1) (prohibition on the marketing of infant formula unless certain conditions are met) in the case of infant formula;
- (ii) regulation 3(2) (prohibition on the marketing of follow-on formula unless certain conditions are met) in the case of follow-on formula.

Vaughan Gething
 Minister for Health and Social Services, one of the
 Welsh Ministers
 30 January 2020

SCHEDULE 1 Regulation 2(1)

Specified EU law requirements

Column 1	Column 2
<i>Specified provision of the Delegated Regulation</i>	<i>Provision of the Delegated Regulation to be read with the specified provision of the Delegated Regulation</i>
Article 1(2) (placing on the market)	Article 1(1)
Article 2(1) (compositional requirements for infant formula)	Articles 1(1) and 2(3), Annex 1 and Annex 3
Article 2(2) (compositional requirements for follow-on formula)	Articles 1(1) and 2(3), Annex 2 and Annex 3
Article 2(3) (preparation of infant and follow-on formula)	Articles 1(1), 2(1) and (2)
Article 3(1) (suitability of ingredients for infant formula)	Articles 1(1) and 3(3) and paragraph 2 of Annex 1
Article 3(2) (suitability of ingredients for follow-on formula)	Articles 1(1) and 3(3) and paragraph 2 of Annex 2
Article 4(2) (active substance residue threshold)	Articles 1(1) and 4(1), (3) and (5)
Article 4(3) (derogation)	Articles 1(1) and 4(1), (2)

(1) S.I. 2007/3573 (W. 316). The relevant amending instrument is S.I. 2008/2602 (W. 228).

from active substance residue threshold)	and (5)
Article 4(4) (requirements on pesticides)	Articles 1(1) and 4(1) and (5)
Article 5(1) (name of food not manufactured entirely from cows' or goats' milk protein)	Article 1(1) and Part A of Annex 6
Article 5(2) (name of food manufactured entirely from cows' or goats' milk protein)	Article 1(1) and Part B of Annex 6
Article 6 (specific requirements on food information)	Articles 1(1) and 7(1), (2), (3), (5), (6), (7) and (8)
Article 7(1) (specific requirements on the nutrition declaration)	Articles 1(1) and 7(4), Annex 1 and Annex 2
Article 7(3) (repetition of information included in mandatory nutrition declaration)	Article 1(1)
Article 7(4) (nutrition declaration mandatory regardless of size of packaging or container)	Articles 1(1) and 7(1), Annex 1 and Annex 2
Article 7(5) (application of Articles 31 to 35 of Regulation (EU) No. 1169/2011 ⁽¹⁾)	Articles 1(1) and 7(6), (7) and (8)
Article 7(6) (expression of energy value and amounts of nutrients)	Articles 1(1) and 7(5)
The first sub-paragraph of Article 7(7) (prohibition on expressing energy value and amount of nutrients as a percentage of reference intake)	Articles 1(1) and 7(5)
Article 7(8) (presentation of particulars included in the nutrition declaration)	Article 1(1)
Article 8 (prohibition on making nutrition and health claims on infant formula)	Article 1(1)
Article 9(1) ("lactose only" statement)	Article 1(1)
The first sub-paragraph of Article 9(2) ("lactose free" statement)	Article 1(1)
The second sub-paragraph of Article 9(2) (statement that "lactose free" infant formula and follow-on formula is not suitable for	Article 1(1)

infants with galactosaemia)	
Article 9(3) (prohibition on references to docosahexaenoic acid where infant formula placed on the market on or after 22 February 2025)	Article 1(1)
Article 10(1) (restriction on advertising for infant formula)	Article 1(1)
Article 10(2) (prohibition of promotional devices to induce sales of infant formula)	Article 1(1)
Article 10(3) (prohibition of provision of free or low-priced products, samples or other promotional gifts to the general public, pregnant women, mothers or members of their families)	Article 1(1)
Article 10(4) (requirements for donations or low-priced sales of supplies of infant formula to institutions or organisations)	Article 1(1)
Article 11(2) (requirements on information relating to infant and young child feeding)	Article 1(1)
Article 11(3) (requirements on donations of informational or educational equipment or materials)	
Article 12 (notification requirements)	Article 1(1)

⁽¹⁾ Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, etc (OJ No. L 304, 22.11.2011, p. 18).

SCHEDULE 2 Regulation 4

Modification of provisions of the Act

PART 1

Modification of section 10 of the Act

1. Section 10 of the Act (improvement notices) applies as if, for subsection (1), there were substituted—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with a specified EU law requirement, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply or, as the case may be, that the food does not comply with the specified EU law requirement;
- (b) specify the matters which constitute the failure to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or such measures that are at least equivalent to them, within such period as may be specified in the notice.”

PART 2

Modification of section 32 of the Act

2. Section 32 of the Act(1) (powers of entry) applies as if—

- (a) in subsection (1) for paragraphs (a) to (c) there were substituted—

“(a) to enter any premises within the authority’s area for the purpose of ascertaining whether there has been any contravention of a specified EU law requirement;

- (b) to enter any business premises, whether within or outside the authority’s area,

(1) Section 32(5) and (6) was amended by section 70 of, and paragraph 18 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c. 16).

for the purpose of ascertaining whether there is on the premises any evidence of any contravention of a specified EU law requirement; and

- (c) when exercising a power of entry under this section, to exercise the associated powers in subsections (5) and (6) relating to records;”;
- (b) subsection (9) were omitted.

PART 3

Modification of section 35 of the Act

3. Section 35 of the Act (punishment of offences) applies as if, before subsection (2), there were inserted—

“(1B) A person guilty of an offence under section 10(2), as applied by regulation 4(1) of the Infant Formula and Follow-on Formula (Wales) Regulations 2020, is liable on summary conviction, to a fine.”

PART 4

Modification of section 37 of the Act

4. Section 37 of the Act (appeals to magistrates’ court or sheriff) applies as if—

- (a) for the heading there were substituted “Appeals”;

- (b) for subsection (1) there were substituted—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 4(1) of, and Part 1 of Schedule 2 to, the Infant Formula and Follow-on Formula (Wales) Regulations 2020 may appeal to the magistrates’ court.”;

- (c) subsection (2) were omitted;

- (d) for subsection (5) there were substituted—

“(5) The period within which such an appeal as is mentioned in subsection (1) above may be brought must be—whichever ends the earlier—

- (a) one month from the date on which notice of the decision was served on the person desiring to appeal; or

- (b) the period specified in the improvement notice

and in the case of such an appeal, the making of the complaint shall be deemed for the purposes

of this subsection to be the bringing of the appeal.”

(e) in subsection (6)—

(i) for “ subsection (3) or (4)” there were substituted “subsection (1)”; and

(ii) in paragraph (a), “or to the sheriff” were omitted.

PART 5

Modification of section 39 of the Act

5. Section 39 of the Act (appeals against improvement notices) applies as if in subsection (3), “for want of prosecution” were omitted.

PART 6

Further modifications of provisions of the Act

6. Section 3 of the 1990 Act (presumptions that food intended for human consumption) applies as if, in subsection (1), for “this Act” there were substituted “the 2020 Regulations”.

7. Section 20 of the Act (offences due to fault of another person) applies as if, for “any of the preceding provisions of this Part”, there were substituted “the 2020 Regulations”.

8. Section 21 of the Act (defence of due diligence) applies as if, in subsection (1), for “any of the preceding provisions of this Part”, there were substituted “the 2020 Regulations”.

9. Section 22 of the Act (defence of publication in the course of business) applies as if, for “any of the preceding provisions of this Part”, there were substituted “the 2020 Regulations”.

10. Section 29 of the Act (procurement of samples) applies as if, in paragraph (b)(ii), after “under section 32 below”, there were inserted “including under section 32 as applied and modified by regulation 4(2) of, and Part 2 of Schedule 2 to, the 2020 Regulations”.

11. Section 30 of the Act (analysis etc. of samples) applies as if—

(a) in subsection (1), after “under section 29 above”, there were inserted “including under section 29 as applied and modified by regulation 4(6) of, and Part 6 of Schedule 2 to, the 2020 Regulations”; and

(b) in subsection (8), for “this Act” there were substituted “the 2020 Regulations”.

12. Section 33 of the Act (obstruction etc. of officers) applies as if, in subsection (1), for “this Act” (in each place where it occurs) there were substituted “the 2020 Regulations”.

13. Section 36 of the Act (offences by bodies corporate) applies as if, in subsection (1), for “this Act” there were substituted “the 2020 Regulations”.

14. Section 36A of the Act⁽¹⁾ (offences by Scottish partnerships) applies as if, for “this Act”, there were substituted “the 2020 Regulations”.

15. Section 44 of the Act (protection of officers acting in good faith) applies as if, for “this Act”, in each place where those words appear, there were substituted “the 2020 Regulations”.

16. Section 53 (general interpretation) applies as if—

(a) after the definition of “the 1956 Act” there were inserted—

““the 2020 Regulations” means the Infant Formula and Follow-on Formula (Wales) Regulations 2020;”;

(b) after the definition of “slaughterhouse” there were inserted—

““specified EU law requirement” has the meaning given in regulation 2(1) of the 2020 Regulations;”.

SCHEDULE 3 Regulation 5(1)

Revocations relating to Infant Formula and Follow-on Formula

Column 1	Column 2	Column 3
<i>Instrument</i>	<i>Reference</i>	<i>Extent of revocation</i>
Infant Formula and Follow-on Formula (Wales) Regulations 2007	S.I. 2007/3573 (W. 316)	The whole of the Regulations, except regulation 30
Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008	S.I. 2008/2602 (W. 228)	Regulation 2
Infant Formula	S.I. 2014/123	The whole of

(1) Section 36A was inserted by section 40(1) of, and paragraph 16 of Schedule 5 to, the 1999 Act.

and Follow-on Formula (Wales) (Amendment) Regulations 2014	(W. 13)	the Regulations
Transfer of Functions (Food) (Wales) Regulations 2014	S.I. 2014/1102 (W. 110)	Regulation 5
Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016	S.I. 2016/639 (W. 175)	Schedule 3, paragraph 4

Explanatory Memorandum to the Infant Formula and Follow-on Formula (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Infant Formula and Follow-on Formula (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM
Minister for Health and Social Services
31 January 2020

1. Description

These Regulations make provision for the enforcement in Wales of the specific requirements set out in Commission Delegated Regulation (EU) 2016/127 on infant formula and follow-on formula (“the IFFOF Delegated Regulation”), which was adopted in all EU Member States in September 2015.

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

None.

3. Legislative background

Welsh Ministers have the powers to make the proposed Regulations under sections 6(4), 16(1)(a) and (e) and (2)(b), 17(1) and (2), 26(1) and (3) and 48(1) of the Food Safety Act 1990 (“the 1990 Act”) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Powers under the 1990 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, as read with Section 40(3) of the Food Standards Act 1999, and were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (“GOWA 2006”). Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink), including the primary production of food by way of the European Communities (Designation) (No 2) Order 2005 (S.I. 2005/1971).

These Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The IFFOF Delegated Regulation supplements the overarching EU Regulation (EU) No 609/2013 on Food for Specific Groups (“the FSG EU Regulation”), which sets out general rules governing the composition and labelling of food intended for infants and young children, food for special medical purposes (“FSMP”) and total diet replacement for weight control, with detailed rules on IFFOF.

The IFFOF Delegated Regulation applies from 22 February 2020 except in respect of infant formula and follow-on formula (“IFFOF”) made from protein hydrolysates, for which the rules will apply from 22 February 2021. It updates the compositional, labelling and marketing rules for IFFOF, taking account of scientific developments and new legislation on food information to consumers, prohibits nutrition and health claims on infant formula and requires businesses to notify infant formula and some follow-on formula products to the Welsh Ministers.

The IFFOF Delegated Regulation repeals Directive 2006/141/EC (“the 2006 Directive”) with effect from 22 February 2020, and from 22 February 2021 in the case of infant formula and follow-on formula manufactured from protein hydrolysates. The

2006 Directive was implemented in Wales by the Infant Formula and Follow-on Formula (Wales) Regulations 2007 (“the 2007 IFFOF Regulations”). The 2007 IFFOF Regulations are revoked by these Regulations, along with the provisions which amend the 2007 IFFOF Regulations, but will continue to have effect in respect of IFFOF manufactured from protein hydrolysates, until 21 February 2021. In respect of IFFOF made from protein hydrolysates, the compositional, labelling and advertising rules will continue to be enforced by the 2007 IFFOF Regulations, until 21 February 2021.

These Regulations come into force on 22 February 2020, except for infant formula and follow-on formula made from protein hydrolysates, for which they come into force on 22 February 2021.

There are transitional provisions within these Regulations which provide that where infant formula or follow-on formula has been placed on the market or labelled prior to 22 February 2020 or, in the case of infant formula or follow-on formula manufactured from protein hydrolysates, 22 February 2021, it can (subject to certain requirements) continue to be marketed until stocks are exhausted.

These Regulations provide food authorities in Wales with powers under the 1990 Act, as modified, to enforce compliance with the provisions of the IFFOF Delegated Regulation in Wales. Those powers include a power to enter premises for the purpose of ascertaining whether there has been a failure to comply with the provisions of the IFFOF Delegated Regulation and/or whether there is any evidence on the premises of any such failure to comply. Improvement Notices will be the first formal action for any failure or suspected failure to comply with the IFFOF Delegated Regulation. Failure to comply with an Improvement Notice can lead to a criminal offence.

Criminal sanctions relating to food safety under the 1990 Act, or food crime under the Fraud Act 2006, may also apply in appropriate cases.

These Regulations contain an ambulatory reference. References within the Regulations to provisions of the IFFOF Delegated Regulation are to be read as those provisions amended from time to time. Any amendments will be minor and highly technical in nature, for example, amendments to the composition of foods for specific groups. The ambulatory reference will avoid the need to introduce new Regulations every time any of the provisions in the Delegated Regulation are amended by EU legislation, should this happen while the UK is still bound by EU rules.

5. Consultation

A limited technical consultation was held for four weeks from 8 November 2019. A limited consultation was considered appropriate in this case, focusing purely on the enforcement regime of the Regulations. It was not appropriate to consult on the EU Delegated Regulations which were adopted in 2015.

This consultation covered these Regulations and the Regulations which provide enforcement provision for EU Delegated Regulation (EU) 2016/128 on food for special medical purposes. Parallel consultations were conducted in England, Scotland and Northern Ireland.

The consultation was shared with enforcement bodies, industry stakeholders, health professional and consumer groups and other relevant non-government organisations.

15 responses were received UK wide, six from Welsh stakeholders. Of those we received in Wales one was from a local authority, one from an NHS maternity lead and one from Baby Feeding Law Group UK (BFLG UK), the rest were from members of the public.

Concerns were raised from four respondents (including the NHS and BFLG) regarding the use of improvement notices particularly in relation to infant formula and follow on formula.

BFLG UK responded to all of the UK consultations querying the breadth of the enforcement provisions and the appropriateness of an informal first step for enforcement bodies. It was proposed by an enforcement officer that the existing enforcement regime for the 2007 IFFOF Regulations should remain in place. Officials have discussed this issue with UK counterparts and have concluded that due to the niche market, small supplier base and well-defined governing compositional/labelling legislation, the improvement notice regime is appropriate. Furthermore we are content that under this new enforcement regime, enforcement officers continue to have the enforcement tools in respect of safety where something could be injurious to health under the Food Safety Act 1990, and the ability to respond to deliberate food crime under the Fraud Act 2006. Failure to comply with an improvement notice is in itself a crime. This is in accordance with the Food Law (Wales) Code of Practice.

No amendments were made to these Regulations (or the equivalent UK domestic SIs) as a consequence of the consultation.

6. Regulatory Impact Assessment (RIA)

A full regulatory impact assessment has not been carried out for these Regulations as the impact on businesses, charities or voluntary bodies is expected to be small.

Two options have been considered:

Option 1: Do nothing – Domestic legislation will not be put in place to provide an enforcement regime for the IFFOF Delegated Regulation in so far as it relates to IFFOF. Existing legislation such as, for example, the Food Safety Act 1990 or the Fraud Act 2006, would provide enforcement powers in the most severe cases breaching food safety.

The EU Delegated Regulation is binding in its entirety and directly applicable in all Member States. It is therefore not necessary to transpose the provisions of the Regulation into domestic law. Doing nothing would mean that the Regulation will still come into force, but we would not have the domestic legislation to make it workable and enforceable in Wales. This could result in several unwanted impacts including:

- lack of legal clarity for enforcement officers and businesses;

- risk to vulnerable consumers if there are no sanctions for non-compliant products and such products therefore remain on the market;
- impact on the supply chain of these specialist products due to uncertainty of business;
- lack of consumer confidence in enforcement of the law;
- the UK would be in breach of its legal obligations under the EU Treaty as applied by the Withdrawal Agreement and may face infraction proceedings.

Option 2: Introduce the Infant Formula and Follow-on Formula (Wales) Regulations 2020 to provide an enforcement regime for Wales for the IFFOF Delegated Regulation.

Option 2 is the preferred approach. This option will introduce the use of Improvement Notices as the first form of action for enforcement of the IFFOF Delegated Regulation.

Improvement Notices can already be applied under the 2007 IFFOF Regulations after being introduced by the overarching Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (“the 2016 FSG Regulations”), The difference now is that an under these Regulations an Improvement Notice will no longer, of itself constitute a criminal offence. The use of Improvement Notices in this way is well understood by trading standards officers. Enforcement bodies and industry consider Improvement Notices a less burdensome approach to resolving problems of non-compliance.

We were not able to quantify costs in relation to the use of improvement notices, but evidence gathered during the development and consultation of the 2016 FSG Regulations from both industry and enforcement bodies highlighted that the use of criminal sanctions as a first formal action can cause difficulties for enforcement, thus limiting the public health outcome. The application of Improvement Notices, as a first formal action, was supported as a way of enabling businesses to improve, leading to improved compliance and so promoting better health outcomes.

Costs and Benefits

Costs to business

This legislation affects manufacturers and retailers of food for special medical purposes. **There are no known manufacturers of IFFOF products in Wales.**

No significant changes are being proposed under Option 2. We estimate that businesses will only have to spend a short amount of time familiarising themselves with the new procedures. Guidance to this legislation will be updated and published accordingly. Once implemented, the proposed regime is deregulatory. That means that any business found not to be complying with the Regulations will (except in the most serious cases) face a non-legislative, less burdensome approach to resolving the problem. Compliance costs are thus expected to fall.

Costs to local authorities

The impact on the public sector of implementing Option 2 is small. Although these Regulations would maintain the status quo regarding the enforcement of European regulation in this area, Local Authorities would need to become familiar with these Regulations. Ongoing workloads for Trading Standards Officers are not expected to increase as a result of these Regulations, as enforcement work for the products affected is already required.

It is estimated that it would take one Trading Standards Officer one hour to read and become familiar with these Regulations and the new enforcement regime. The hourly pay rate for Qualified Trading Standards Officers is between £16 and £25 – averaging approximately £27 per hour once updated to account for non-wage labour costs and overheads, taken as 30%. The total one-off cost to the 22 local authorities in Wales is therefore estimated at £594.

Local authorities may also benefit from reduced costs from fewer prosecutions since issuing an Improvement Notice would be the first formal action rather than a prosecution.

Benefits to business

There are no known manufacturers of IFFOF products in Wales.

There would be minimal change for businesses if Option 2 was adopted. Improvement Notices can already be applied under the 2007 IFFOF regulations after being introduced by the 2016 FSG regulations. These Regulations introduce Improvement Notice as the first formal action, followed up by a criminal offence in cases where businesses fail to comply with the Notice. This will therefore give food businesses the opportunity to rectify issues before the matter comes before a criminal court.

Benefits to local authorities

As mentioned above enforcement officers are already able to use Improvement Notices for IFFOF breaches. Under these Regulations however their use will no longer give rise, of itself to a criminal offence thereby reducing the necessity in some instances of court action reducing associated costs to local authorities.

Option 2 is also likely to result in better monitoring of the market regarding IFFOF as Improvement Notices will be recorded whereas informal warnings from enforcement practitioners were not.

Benefits to consumers

If Option 2 is adopted, this legislation will benefit those requiring infant formula or follow on formula as there will be better protection by way of better defined compositional standards and tighter labelling restrictions.

Summary of the preferred option

Option 2 is the preferred option because it ensures the proper enforcement of the IFFOF Delegated Regulation in Wales and avoids the associated risk of infraction proceedings and consequent fines.

SL(5)491 – The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

Background and Purpose

These Regulations replace the Official Controls (Animals, Food and Feed) (Wales) Regulations and substantially amend the Trade in Animals and Related Products (Wales) Regulations.

They implement and enforce Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the EU Regulation”).

Implementation and enforcement of other provisions of the EU Regulation relating to food and feed are the subject of the Official Feed and Food Controls (Wales) Regulations 2009.

Part 2 of the Regulations provides for audits to be undertaken of official controls and other official activities in accordance with the EU Regulation. Part 3 provides for assistance and co-operation under Title IV of the EU Regulation and recovery of expenses. Part 4 provides for enforcement and penalties. Part 5 deals with consequential amendments as a result of the application of the EU Regulation. Part 6 contains amendments to secondary legislation relating to plant health fees as a result of the application of the EU Regulation and Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants.

Procedure

Negative.

Technical Scrutiny

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

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

1. Regulation 29(a) omits regulation 2(1) of the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019. Regulation 29 (b) omits regulations 3(7)(i) (see reporting point 5) 3 (20) and (22). Regulation 2(1) introduces the amendments to the Bovine Semen (Wales) Regulations 2008 and Regulation 3(20) introduces the amendments to Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011. It is unclear why these provisions have been deleted.

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

2. Regulation 12(1)(g) is concerned with the action an enforcement officer can take if they have reason to believe that a person is in possession of data that may be relevant to a contravention of the Regulations or the EU Official Controls Regulations. It allows an enforcement officer to “*seize and detain any computer equipment for the purpose of copying the data or, if it has not been possible carry out adequate inspection on the premises, of further inspection*”. It is not clear what is meant by this.



3. Regulation 23(33)(b) and (c) add entries into Schedule 1 of the Trade in Animals and Related Products (Wales) Regulations 2011 that relate to Regulation EU 2016/1012. This entry already appears to exist, having been added by regulation 9(3) of the Zootechnical Standards (Wales) Regulations 2018.
4. Regulation 23(34)(f) amends paragraph 9(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011. There appears to be a missing 'of' which should appear at the end of the text to be inserted. It should read "the import of certain birds and quarantine conditions for the purposes **of**".
5. Regulation 29(b) deletes regulation 3(7)(i) from the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019. Regulation 3 (7)(i) does not exist, we presume regulation 29 (b) should refer to regulation 3(7)(c)(i).

Standing Order 21.2 (vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

6. In regulation 13(5)(b), "y bodlonir neu ragor o'r amodau ym mharagraff (6)" should read "y bodlonir un neu ragor o'r amodau ym mharagraff (6)".
7. In regulation 23(10), the English version of new regulation 11(2)(a) states that the relevant authority may serve a notice "specifying the breach" of the requirements. The Welsh version states that the relevant authority may serve a notice "sydd yn...pennu'r modd y torrwyd y gofynion". By referring to the way the requirement is breached, the Welsh version appears to be more specific than the English version.

Merits Scrutiny

Three merits point are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

1. These Regulations make amendments to secondary legislation relating to Plant Health Fees payable to the Welsh Ministers.

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

2. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by the Minister for Finance and Trefnydd in a [letter](#) dated 22 January 2020 to the Llywydd.

The letter states that "*the drafting of the Statutory Instrument has been delayed because important parts of it depended on the status of the United Kingdom, insofar "as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October. In addition the Council Regulation is very complex and supplemented by 28 items of tertiary legislation which set out important detailed aspects of official controls and other official activities. Drafting*



of the Welsh Ministers' Regulation has been completed as quickly as possible, the final item of tertiary legislation made under the Council Regulation was finalised on 12 December 2019."

We note what the letter says about it being "essential that these Regulations are brought into force as soon as practicable, providing enforcement bodies with additional enforcement options and bringing Wales into line with the rest of the UK, as the other UK Administrations have already introduced their equivalent enforcement legislation".

We note that the equivalent regulations made by UK Parliament and the Scottish Parliament came into force on the 14 December 2019 (the coming into force date of the EU Regulation) and are not clear why these Regulations could not have come into force before 31 January 2020.

3. The Welsh Ministers had a choice of which procedure to apply to these Regulations under section 2(2) of the European Communities Act 1972. The choice of procedure appears to be appropriate.

Implications arising from exiting the European Union

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

Government Response

A government response is required to technical reporting points 1-7 and merits point 2.

Committee Consideration

The Committee considered the instrument at its meeting on 10 February 2020 and reports to the Assembly in line with the reporting points above.



Government response to draft LJCC report on the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

Technical Scrutiny points

The Committee has raised seven reporting points under Standing Order 21.2

(1) Amendment of the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

Regulation 29 (a) omits regulation 2(1) of the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 by error, regulation 29(a) should omit regulation 3(20) from the 2019 Regulations and the Welsh Government will take steps to correct this.

(2) Provision of powers to seize and detain computer equipment

This provision is intended to enable an enforcement officer to seize computer equipment where on site inspection of the data is not possible, for example because it cannot be accessed without more specialist equipment or personnel or because of time constraints.

(3) Amendment of Schedule 1 of the Trade in Animals and Related Products (Wales) Regulations 2011

3. The Welsh Government agree with this reporting point but do not propose to take further action as the entries at issue were replaced with identical text.

(4) Amendment of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011

The Welsh Government agree with this reporting point and will take steps to correct Schedule 2.

(5) Amendment of regulation 2 of the Trade in Animals and Related Products (Wales) Regulations 2011

Regulation 29 (b) deletes regulation 3(7)(i) from the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulation 2019, it should delete regulation 3(7) in its entirety and the Welsh Government will take steps to correct this.

(6) Consistency of Welsh and English texts in regulation 13(5).

The Welsh Government agrees with this reporting point and will take steps to correct it.

(7) Consistency of Welsh and English texts in regulation 23(10)

Although one could consider that the addition of the word “modd” somehow changes the emphasis, the Welsh Government believes this accurately conveys the meaning implicit in the word “specifying”, which appears in the English text. A more literal translation would produce an unnatural and inelegant syntax in Welsh, making the Welsh text more difficult to read and understand.

The Committee has raised two merits reporting points, a response to the second is set out below.

9) Timing of these Regulations

The UK administrations liaised closely to develop legislation to enforce Regulation (EU) 2017/625 on official controls across the agri-food chain resulting in each administration making 5 statutory instruments in total. Discussions between the legal services departments of each administration were ongoing throughout Monday, 2 December. Following the discussions on 2 December, both the UK and Scottish Governments were able to make their legislation immediately, with their regulations coming into force on 14 December. The Welsh Government required until 15 January in order to provide the SI (of 14,339 words) bilingually (the draft of which was submitted immediately for translation on 2 December). This time accounted for both the translation of the SI and the necessary equivalence checking. The instrument was then immediately submitted to the Minister.

Agenda Item 5.1

Yr Uwir Arif RE Hon Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Legislation, Justice and Constitution Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

12 February 2020

Dear Mick,

I am writing in response to your letter of 23 January following my oral evidence session of 13 January on your 'Wales' Changing Constitution' inquiry and the Legislative Consent Memorandum on the European Union (Withdrawal Agreement) Bill. I, too, found the session valuable.

You asked for clarification in relation to a number of issues and I have provided further information below.

Intergovernmental agreements

You acknowledged that the Trefnydd has made a commitment that we will provide an update on progress with the Order in Council to be made under section 109 of the Government of Wales Act 2006 which we anticipate will remove the requirement for Minister of the Crown consent to repeal concurrent powers created in Brexit legislation. We will provide that update in due course.

You welcomed my offer to consider a greater role for the Senedd in scrutinising intergovernmental agreements and any further thoughts I have on their continued use and duration. I will also respond on those matters in due course.

Regulations under the European Union (Withdrawal Agreement) Act 2020

You asked for my assessment of the volume of and timescales for subordinate legislation under the European Union (Withdrawal Agreement) Act 2020 and whether the Welsh Government intends to make its own regulations or consent to statutory instruments made by the UK Government. I am afraid that it is simply too early to provide any details. However, I am happy to reiterate the commitments I have made that the Welsh Government will provide as much advance notice as possible of the statutory instrument programme arising from the Act and that we will seek to make our own regulations wherever feasible.

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

Pack Page 80

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

Statutory Instrument Consent Memorandums (SICMs)

You asked for clarification of the circumstances in which it may not be practicable to table statutory instrument consent motions. Circumstances similar to those we faced in the aftermath of the European Union (Withdrawal) Act 2018 would qualify in my view.

You also asked for confirmation that my commitment to table statutory instrument consent motions as far as is reasonably practicable will apply in respect of the UK Government using powers derived from all Brexit-related Acts of the UK Parliament. I can confirm that my commitment in fact goes beyond that; it applies to all regulations to which Standing Order 30A applies.

Section 38 of the European Union (Withdrawal Agreement) Act 2020

Finally, you asked for my observations on what is now section 38 ('Parliamentary sovereignty') of the European Union (Withdrawal Agreement) Act 2020. As you know, during the legislative consent debate in Plenary on 21 January the Counsel General and Brexit Minister associated the Welsh Government with the remarks made by Carwyn Jones AM during that debate. The Counsel General and Brexit Minister stated that the section "asserts a form of parliamentary sovereignty that we in this place should not be quick to support, because it fundamentally misunderstands the changed constitution of Wales and of the United Kingdom".

Best wishes,

Mark

MARK DRAKEFORD

Mark Drakeford AM
First Minister

23 January 2020

Dear Mark

Thank you for appearing before the committee on 13 January 2020 to give evidence on our current inquiry, Wales' Changing Constitution, and for extending the session to allow us to scrutinise your Legislative Consent Memorandum (LCM) on the European Union (Withdrawal Agreement) Bill.

The session was valuable in terms of informing our inquiry and our consideration of the LCM but there are a number of issues on which we would be grateful for further clarification.

Intergovernmental agreements

During our evidence session we raised the role of intergovernmental agreements entered into by the Welsh Government as part of the making of UK Brexit-related legislation. It may be helpful if I set out the background to our concerns.

European Union (Withdrawal) Act 2018

In October 2019, we wrote to the Counsel General about a range of issues including the use of intergovernmental agreements. In his response of 27 November 2019, the Counsel General set out how the Welsh Government considers the intergovernmental agreement related to the European Union (Withdrawal) Act 2018 has brought benefits to the Assembly's ability to legislate. However, as a result of this agreement, and by permitting the UK Government to make a significant number of regulations in devolved areas, a section 109 Order under the Government of Wales Act 2006 is now required to amend Schedule 7B to that Act, to address the impact on and risk to the National Assembly's legislative competence.



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We acknowledge the commitment in the Trefnydd's letter of 17 December 2019 to provide an update on progress regarding the section 109 Order and look forward to hearing how it will address the concerns that we have raised on these matters.

Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (formerly the Healthcare (International Arrangements) Bill)

In January 2019, we published our report *The Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill*. Recommendations 1 and 3 related to Ministerial consent arrangements and notification to the Assembly about consent decisions. Vaughan Gething AM, the Minister for Health and Social Services, set out the Welsh Government's response on 12 February 2019. In considering the Welsh Government's response to our report at our meeting on 18 February 2019, we were asked not to publish a draft Memorandum of Understanding between the Welsh and UK Governments, which was used to explain why recommendations 1 and 3 were being rejected. In a letter of 18 February 2019, the Minister explained that the request not to publish the draft Memorandum of Understanding was in line with paragraph 7 of the *Inter-Institutional agreement between the National Assembly for Wales and the Welsh Government*, which refers to the Assembly recognising and respecting the need for confidential inter-governmental discussion between governments. There was insufficient time for the Committee to scrutinise a revised supplementary LCM which included the final Memorandum of Understanding before the relevant Legislative Consent Motion was debated on 12 March 2019.

Agriculture Bill

Although the UK Government's Agriculture Bill did not complete its passage through the UK Parliament prior to the 2019 General Election, we did scrutinise two Legislative Consent Memorandums related to the Bill and issued two reports. In our first report, *The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill* published in January 2019, we noted that the Welsh Government had entered into a bilateral agreement with the UK Government as a means of resolving a dispute over whether consent was required for the inclusion of a particular clause in the Bill. Recommendation 9 of our report stated:

"The Cabinet Secretary should explain to this Committee why it may not be necessary to amend clause 26 of the UK Agriculture Bill to resolve the issues that have been of concern to the Welsh Government. In so doing, the Cabinet Secretary should explain whether the intergovernmental agreement she spoke of would, in effect, allow UK Ministers to act in devolved areas without any scrutiny by the National Assembly."

Our second report in June 2019, *The Welsh Government's Legislative Consent Memorandum (Memorandum No 2) on the Agriculture Bill*, expressed concern at the delay in responding to our first report, as well as highlighting serious concerns with the use of the bilateral agreement. On 25 July 2019, after our last meeting of the summer



term, Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs responded to our reports and in respect of recommendation 9 stated above:

“I have secured the strongest possible role for the Welsh Ministers in the use of the powers and I no longer consider it necessary to amend the Bill. Subordinate legislation on devolved matters will continue to be laid before the Assembly for scrutiny in the usual way.”

The use of intergovernmental agreements

In his letter to us of 27 November 2019 the Counsel General, told us:

“Intergovernmental agreements are by their nature, and should remain, the responsibility of the relevant executives, and should not be subject to consent by legislatures. The Welsh Government enters into a range of agreements, both legally binding and non-legally binding, and it would not be constitutionally appropriate given the separation of powers for the Assembly to consent to those, although of course Members can and do scrutinise them.

Where intergovernmental agreements are linked to primary legislation for which the Assembly’s consent is sought, we would anticipate that consideration of the relevant intergovernmental agreement would be part of the Assembly’s consideration. Furthermore, we would anticipate ongoing Assembly scrutiny of the operation of intergovernmental agreements under the mechanisms agreed in the inter-institutional agreement between the Assembly and the Welsh Government.”

The comments of the Counsel General and the approach adopted in relation to the Healthcare and Agriculture Bills highlight a lack of clarity around when the Welsh Government believe it is appropriate for committees to engage in scrutiny of intergovernmental agreements linked to primary legislation. In our evidence session you acknowledged that scrutiny of intergovernmental agreements was “post-event”.

During the evidence session we asked, why, when governments can’t agree on provisions in UK Bills that would be subject to Assembly consent, is it appropriate to use intergovernmental agreements in their place, which then won’t be subject to Assembly consent. This question arose, in particular, as a result of our scrutiny of the Agriculture Bill. We also asked whether the use of intergovernmental agreements therefore provide an incentive for the UK Government not to include legally binding provisions in UK Bills, and you indicated that you understood why these concerns might arise.

Intergovernmental agreements have become of considerable interest and concern to us because they cover the UK Government making regulations in devolved policy areas, which are then subject to formal scrutiny by the UK Parliament rather than the National Assembly. The role of Assembly committees in scrutinising regulations and associated policy on these devolved issues effectively amounts to post-event representation rather



than influencing thinking or decision-making by reporting to the Assembly on the regulations in question.

We therefore welcome your offer of considering how the National Assembly could play a greater role in scrutinising intergovernmental agreements and any further thoughts you have on their continued use and duration, particularly as the majority of UK-wide common frameworks will also be underpinned by such agreements.

Regulations under the European Union (Withdrawal Agreement) Bill

The European Union (Withdrawal Agreement) Bill provides the Welsh Ministers with a number of regulation-making powers. During the evidence session, we asked to what extent has the Welsh Government assessed the need for regulations to be made by the Welsh Ministers under the Bill, in particular under the following clauses: 4, 12-14, 19 and 22.

The First Minister told the Committee that the powers under clause 4 are ones that the Welsh Government has currently no plans to use. In terms of the others, he said that they are all matters that are going to be subject to further discussion between the UK Government and the European Union during the implementation period and it is therefore difficult to see at this point in the process the extent to which Welsh Ministers might need to use their powers because “we do not know enough about the way in which citizenship rights for example will be the subject of further refinement between the UK and EU” during the next 12 months.

In order to inform our preparatory work, we would be grateful if you could provide the Committee with your assessment of the volume of and timescales for subordinate legislation expected to be made under these clauses of the European Union (Withdrawal Agreement) Bill and whether the Welsh Government intends to make its own regulations or consent to statutory instruments made by the UK Government.

Statutory Instrument Consent Memorandums (SICMs)

We have clearly disagreed over the requirements set out in Standing Order 30A. Irrespective of our differing views on this point, it is correct to say that the UK Government has amended primary legislation in devolved areas with the agreement of the Welsh Government and without the consent of the National Assembly. However, we very much welcome the letter of 17 December from Ken Skates AM, Minister for Economy and Transport Minister stating that as the majority of the programme to correct the statute book has been substantially completed, “the time is right to ... revert to the normal procedure whereby Welsh Government table Motions for SICMs”. During our evidence session we sought a commitment that the Welsh Government will table motions for SICMs each time the UK Government uses its powers under the European Union (Withdrawal Agreement) Bill to amend primary legislation in devolved areas, so that the Assembly can formally consent. In response you committed to tabling motions as far as is reasonably practicable.



We would be grateful if you could clarify the circumstances in which it may not be practicable to table such motions and have a short debate on them, particularly when the volume of SICMs is relatively small (some 20 over the last 14 months).

We would also be grateful if you could confirm that your commitment will apply in respect of the UK Government using powers derived from all Brexit-related Acts of the UK Parliament.

Clause 38 of the European Union (Withdrawal Agreement) Bill

During the evidence session, we started to explore clause 38 of the European Union (Withdrawal Agreement) Bill about parliamentary sovereignty but ran out of time. I would therefore be grateful for your observations on clause 38 and in particular its implications for the existing constitutional framework of the United Kingdom.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



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

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: PO798/EJ/OR
Ein cyf/Our ref

Elin Jones AM, Llywydd
National Assembly for Wales
Cardiff Bay
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12 February 2020

Dear Elin,

Withdrawal of Statutory Instruments

Thank you for the copy of your letter to the Chair of the Legislation, Justice and Constitution Committee regarding The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019.

I would like to reassure you that processes have been put in place to avoid similar circumstances arising in future.

This was a very unusual occurrence which has no precedent, either here in the Senedd, or at the UK Parliament. At the point the omission came to light, my officials liaised with Senedd Commission staff to discuss the approach to handling. Initially it was considered the appropriate course of action would be to withdraw the 2019 Order under Standing Order 27.11 when the replacement draft 2020 Order was laid, as set out in the letter from the Minister for Environment, Energy and Rural Affairs of 11 December. However, further discussions between our officials concluded that this was not how this Standing Order should be interpreted, and ultimately the 2019 Order was not withdrawn.

Thank you for setting out your interpretation of Standing Order 27.11, and your expectations of the Welsh Government were such an issue ever to arise again. I am happy to confirm if we need to withdraw an instrument once it has been made or approved, and where revocation or other alternative options are not available, we would explain our reasons to both you and the Senedd, as we have done on this occasion. During the plenary debate on the replacement Order on 4 February, the Minister for Environment, Energy and Rural Affairs provided an apology to the Senedd and an explanation why it was not possible for the 2019 Regulations to come into force.

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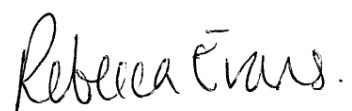
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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am sending a copy this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

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

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



Mick Antoniw AM
Chair, Legislation, Justice and Constitution Committee
National Assembly for Wales
Cardiff Bay
Cardiff, CF99 1NA

12 February 2020

Dear Mick,

The House of Lords European Union Committee has very much welcomed dialogue with the devolved legislatures since the 2016 referendum. Following the Committee's reappointment last month, I am writing to you to set out its approach to continuing engagement with the devolved legislatures in the months ahead.

The Committee has identified a number of work priorities between now and the end of the transition period in December 2020. We would welcome engagement with your Committee, and other relevant Committees in the National Assembly for Wales and the other devolved legislatures, to support this work.

In particular, we will continue to scrutinise draft EU legislation during the transition period, and we have secured a commitment from the UK Government to continue to deposit EU documents in, and to provide Explanatory Memoranda to, the UK Parliament. I understand that House of Commons European Scrutiny Committee officials currently share EU documents and Explanatory Memoranda with National Assembly for Wales officials. I trust this will continue. We will also share with you the results of our weekly sift of EU documents, along with any reports and significant correspondence on individual legislative proposals. In turn, we would welcome any information which relevant Committees in the Assembly wish to share regarding their views on EU legislative proposals, including in particular any which you judge raise matters of 'vital national interest', and which therefore may fall within the ambit of section 29 of the European Union (Withdrawal Agreement) Act 2020.

With this in mind, I would like to invite the views of National Assembly for Wales Committees on the European Commission's 3 February 2020 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, together with the UK Government's Written Ministerial Statement on UK/EU relations of the same date. The EU Committee will be considering a draft report on the Commission document at its meeting on Wednesday 5 March. If you would like to share your Committee's views, I would be grateful to receive them by Wednesday 26 February.

Finally, I can assure you of our continuing commitment to dialogue with Committees of the National Assembly for Wales with regard to our other priorities over the coming year. These include:

- **Scrutiny of the future relationship negotiations;**
- **Scrutiny of the formal mechanisms for dialogue between the UK and the EU**, including the Joint Committee on the Withdrawal Agreement, and the Specialised Committees that report to it;
- **Scrutiny of the Protocol on Ireland/Northern Ireland**, including the implications for Wales of its operation;
- **Inter-parliamentary engagement**, where we will continue to prioritise dialogue with the devolved legislatures, the European Parliament and EU national parliaments. In particular, we remain committed to the Interparliamentary Forum on Brexit, and recognise the value of applying this model for sectoral dialogue between relevant committees in each of the legislatures.

I have written in similar terms to Chairs and Conveners of other relevant Committees in the National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kinnoull', with a horizontal line underneath.

Lord Kinnoull
Chair of the European Union Committee

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
Mick.Antoniw@assembly.wales

12 February 2020

Dear Mick,

UK Wide Statutory Instrument - The Financing, Management and Monitoring of Direct Payments (Amendment) Regulations 2020

I am writing to notify you that the UK Government has made the above statutory instrument under powers set out in the Direct Payment for Farmers (Legislative Continuity) Act 2020.

This urgent made affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2020 Regulations make the modifications necessary to continue to ensure that the financing, management and monitoring of the Common Agricultural Policy ("CAP") Direct Payment Schemes remain operable for scheme year 2020 once the UK withdraws from the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

In respect of any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, I confirm that the CAP and its implementation in Wales is a devolved subject.

The law being amended is as follows:

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.
- Commission Implementing Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the

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

Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of the euro.

- Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.
- Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.
- Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance.

Save for **four**, all administrative functions are being transferred to the Welsh Ministers in relation to Wales without encumbrance.

There are four administrative functions which can only be exercised by the “relevant authorities” (England, Wales, Scotland and Northern Ireland) jointly – these are Articles 7 and 111(1) of Regulation (EU) 1306/2013, and Article 4(1) and (3) of Commission Implementing Regulation (EU) 908/2014. These functions are considered to be transitional whilst consideration is being given to establishing a common framework for agriculture.

The Welsh Ministers have provided consent for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU.

I am copying this letter to the Counsel General and Brexit Minister and the Minister for Environment, Energy and Rural Affairs.

Yours sincerely,



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

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
Mick.Antoniw@assembly.wales

12 February 2020

Dear Mick,

UK Wide Statutory Instrument – The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

I am writing to notify you that UK Government has made the above statutory instrument under powers set out in the Direct Payment for Farmers (Legislative Continuity) Act 2020.

This urgent made affirmative procedure Statutory instrument (SI) addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2020 Regulations make the modifications necessary to continue to ensure that the Common Agriculture Policy (“CAP”) Direct Payment Schemes remain operable for scheme year 2020, once the UK withdraws from the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

In respect of any impact the SI may have on the Assembly’s legislative competence and/or the Welsh Ministers’ executive competence, I confirm that the Common Agricultural Policy (“CAP”) and its implementation in Wales is a devolved subject.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

The Secretary of State can exercise these UK wide legislative functions only with the consent of a Devolved Administration. These functions relate to the UK direct payment ceiling, and as such it is considered that it falls outside the legislative competence of the Senedd; however

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changes to the UK ceiling would affect Wales' share of the national ceiling. Due to the impact on a devolved area, these powers will be exercised by the Secretary of State but only with the consent of the Welsh Ministers.

The way these functions are drafted may engage the consent requirements in paragraph 8(1)(c) of Schedule 7B to GOWA 2006 if the functions were removed in an Act of the Senedd in the future.

The Wales Office and DEFRA have confirmed that the Direct Payment for Farmers (Legislative Continuity) Act 2020 will be included in a forthcoming Section 109 Order to ensure that it, and any regulations made pursuant to it are carved out from the effect of the Schedule 7B restrictions. The timetable for this Section 109 Order has not yet been confirmed.


The law being amended is as follows:

- Regulation (EU) No 1307/2013 - establishes rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.
- Commission Delegated Regulation (EU) No. 639/2014 - supplements the Direct Payments Regulation.
- Commission Implementing Regulation (EU) No. 641/2014 - laying down rules for the application of the Direct Payments Regulation.

The Welsh Ministers have provided consent for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

I am copying this letter to the Counsel General and Brexit Minister and the Minister for Environment, Energy and Rural Affairs.

Yours sincerely,



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

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LEGISLATIVE CONSENT MEMORANDUM

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Agriculture Bill (The Bill) was introduced by George Eustice MP in the House of Commons on 16 January 2020. The Bill can be found at:

<https://services.parliament.uk/bills/2019-20/agriculture.html>
3. The Bill is similar in many respects to the Agriculture Bill introduced to Parliament on 12 September 2018, and which will make no further progress following the general election in December 2019. That Agriculture Bill was the subject of a legislative consent memorandum laid on 4 October 2018 and a supplementary legislative consent memorandum laid on 26 March 2019.

Policy Objective(s)

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers based on the principle of “public money for public goods” for the next generation of farmers and land managers.
5. The Bill also includes measures to enable the continuity of existing agricultural support and to ensure the effective functioning of the agricultural sector following the departure of the UK from the EU. In particular, the Bill includes provision to enable payments to continue to be made to farmers with powers to simplify and improve Direct Payments, for example, and to intervene in agricultural markets in the event of exceptional market conditions.

Summary of the Bill

6. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
7. The Bill provides the legal basis, in England, to transition away from the Common Agricultural Policy (CAP) and establish new financial assistance schemes based on the principle of public money for public goods.
8. The Bill also provides powers to enable the continuity of existing agricultural support and to intervene in agricultural markets in the event of exceptional market conditions, as noted above. At the request of the

Welsh Government, these powers will be available to the Welsh Ministers in relation to Wales.

9. The Bill also includes provisions on the collection and sharing of data; marketing standards and carcass classification; organic products; fair dealing and producer organisations; matters relating to farming and the countryside, including red meat levy redistribution and agricultural tenancy reforms; a requirement for the Secretary of State to report to the UK Parliament on food security; and regulation-making powers for the Secretary of State to secure the UK's compliance with WTO Agreement on Agriculture.

Provisions in the Bill for which consent is required

10. Consent is required for the following provisions of the Bill because they make provision with regard to devolved matters.

Clause 17: Duty to report to Parliament on UK food security

11. This clause places a duty on the Secretary of State to report to Parliament at least once every five years on data relevant to UK food security. The clause includes five factors which are considered as a policy matter to cover the main aspects that inform the UK's food security.
12. It is the Welsh Government's view this clause requires consent because it makes provision with regard to a range of devolved matters insofar as it applies to Wales, including food, food production and availability, food safety and agriculture.

Clause 27: Fair dealing obligations of business purchasers of agricultural products

13. This clause is intended to counteract unfair trading practices, and to prevent market abuse by larger players in the market exploiting those in relatively weak market positions. The effect is to confer on the Secretary of State a power by regulations to impose obligations on business purchasers of agricultural products in relation to contracts they make for the purchase of such products from qualifying sellers, including mandatory terms.
14. Subsection (1) empowers the Secretary of State to make regulations, including enforcement, imposing obligations on operators who buy agricultural products in the course of a business ("business purchasers") from "qualifying sellers" (defined in subsection (3)).
15. Subsections (3) – (5) set out definitions for the purposes of the section. A "business purchaser" is defined at subsection (3)(a) as set out above, as a person who purchases an agricultural product in the course of business which includes the purchase of products of that kind. A "qualifying seller" is defined at subsection (3)(b). This includes a person carrying on an

agricultural activity for the production, or in connection with the production, of the product.

16. The other categories of “qualifying seller” are producer organisations and associations of producer organisations, recognised under clause 28 of the Bill, and produce aggregators, insofar as they are not themselves producer organisations or associations of producer organisations. Produce aggregators are further defined at subsections (4) and (5).
17. Subsection (6) sets out examples of the kinds of obligations that may be imposed on business purchasers under the clause. This includes obligations to use a written contract (subsection (6)(a)); to include, or not include, a term in the contract dealing with a particular matter (subsection (6)(b)); to include terms that make specific provision (subsection (6)(c)(i)); and to comply with a set of principles and practices that promote fair dealing (subsection (6)(c)(ii)). These are examples and the list is not exhaustive.
18. Subsection (7) provides examples of the types of matters that could be specified under subsection (6)(b) and (c).
19. Subsection (8) outlines the enforcement provisions which may be made under subsection (1)(b), such as investigating complaints and creating a robust appeals process.
20. Subsection (9) provides the Secretary of State with powers to delegate authority to another person.
21. It is the Welsh Government’s view that this clause requires consent because its purpose and effect are confined to the agricultural sector and it makes provision with regard to devolved matters insofar as it applies to Wales, including agriculture, and agricultural productivity and sustainability.

Clause 31: Fertilisers

22. This clause is intended to amend and significantly expand the scope of existing powers to make provision by regulations to regulate, in the public interest, the composition or content of fertilisers and of material intended for the feeding of animals. Those provisions apply across the UK and include powers to control the import, export, sale or use of fertilisers and to regulate the marketing, labelling and packaging of fertilisers. The amended powers will, in particular, confer new powers for the purposes of assessing, monitoring or enforcing compliance with regulations made under section 74(A)(1) of the Agriculture Act 1970 or otherwise mitigating risks to human, animal or plant health or the environment presented by fertilisers.

23. Clause 31(2) amends the definition of a fertiliser under section 66 of the Agriculture Act 1970 to enable a broader range of materials to be regulated as a fertiliser in the UK.
24. Clause 31(3) amends section 74A of the Agriculture Act 1970 to enable the regulation of fertilisers on the basis of their function (as well as their composition or content, as is currently the case). This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the UK.
25. Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.
26. New subsection (1A) inserted into section 74A of the Agriculture Act 1970 will enable regulations to put in place the infrastructure for conformity assessment procedures to be carried out on fertilisers and to confer market surveillance functions on a public authority. It will also enable requirements to be placed on manufacturers and others involved in the supply of fertilisers to keep and, where required, provide information relating to fertilisers to the market surveillance authority for traceability purposes and to assist the authority in its role.
27. New subsection (1B) sets out the matters relating to the conformity assessment process for fertilisers which may be provided for in regulations. These include recognition of a person or organisations to undertake assessments, the creation of an appeals system, charging regime or framework, and recognition and registration processes.
28. New subsection (1C) sets out enforcement powers which may be conferred on a public authority with market surveillance functions, including powers to undertake further assessment of fertilisers, to prohibit the sale of certain fertilisers, to impose monetary penalties on those who breach regulations, and conferring powers to enter and inspect, take samples or seize and destroy materials.
29. New subsection (1D) provides that fertiliser regulations must not impose or confer a power or duty requiring or authorising the disclosure or use of information that would contravene certain data protection legislation.
30. New subsection (1E) provides a power to make regulations that amend or repeal Regulation (EC) No. 2003/2003 relating to fertilisers and other retained direct EU legislation relating to fertilisers.

31. Clause 31(5) amends section 84 of the Agriculture Act 1970. It provides that the first regulations made by the Welsh Ministers, the Secretary of State, the Scottish Ministers and a Northern Ireland department under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, Secretary of State, the Scottish Ministers and a Northern Ireland department under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure.
32. It is the Welsh Government's view that this clause requires consent because it makes provision with regard to a range of devolved matters insofar as it applies to Wales, including agriculture, the protection of human health, animal welfare and protection of the environment.

Clause 32: Identification and traceability of animals

33. Clause 32 amends the Natural Environment and Rural Communities Act 2006 (the "NERC Act 2006") so as to insert a new section 89A in respect of the identification and traceability of animals.
34. Clause 32(1) inserts a new section 89A into the NERC Act 2006. This sets out that the Secretary of State may make or have made an Order establishing a body, and provides that certain functions may be assigned to that body. These may include functions that are exercisable in relation to England, Wales, Northern Ireland or Scotland, and relate to collecting, managing and making available information regarding the identification, movement or health of animals, or the means of identifying animals. We understand the intention behind the provision is to approve the format of identification tags, and issue individual identification numbers to animals.
35. Clause 32(1) includes section 89A(2) which provides that when assigning functions to the body, the disclosure or use of information in contravention of data protection legislation is not permitted.
36. New section 89A(3) clarifies that "animals" has the same meaning as it has for the purposes of section 8 of the Animal Health Act 1981 (the "AHA 1981"). This ensures that the functions assigned to the body by the Secretary of State can be exercised in relation to animals that otherwise might not be covered, such as domestic pigs or equines, as the powers under the NERC Act 2006 are linked to agriculture.
37. It is the Welsh Government's view that clause 32(1) requires consent because it makes provision with regard to a range of devolved matters in so far as it applies to Wales, including agriculture, animal health and animal welfare.
38. Clause 32(2) amends the AHA 1981 such that in England the term "marking of animals" is replaced by "means of identifying animals", and

that provision made under subsection (1) of the AHA 1981 may bind the Crown. The provision extends to England, Wales and Scotland but the substantive amendment applies in relation to England and does not make provision in relation to devolved matters.

39. Clause 32(3) and (4) makes provision in relation to England and does not make provision with regard to devolved matters.

Clause 33: Red Meat Levy: payments between levy bodies in Great Britain

40. The Great Britain red meat levy boards (Agriculture and Horticulture Development Board (AHDB), Quality Meat Scotland, and Hybu Cig Cymru) each separately impose levies on red meat producers and processors in England, Scotland and Wales, respectively. Those levies can only be imposed to enable each body to meet its expenses in supporting the red meat industry in the country in which the levy is raised. Levies are therefore based on the geographical location of abattoirs rather than the origin of the livestock and do not take into account the trading patterns that exist across GB borders. As a result, the levy paid by producers who are operating in one part of Britain may be used to fund promotional and developmental activities in another.
41. Clause 33 enables Ministers to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. It is intended that this will enable those who invest in breeding and rearing livestock to benefit from the levy collected in relation to their livestock, even if the levy is collected by a slaughter house in another jurisdiction.
42. It is the Welsh Government's view that this clause requires consent because it makes provision with regard to devolved matters insofar as it applies in relation to Wales, notably agriculture.

Clauses 36 and 37: organic products

43. These clauses are intended to regulate the organic sector. In particular, the clauses confer regulation making powers in respect of the certification of organic products and import and export controls. Regulations can be made by the Secretary of State in any case (clause 37(1)(a)). The Welsh Ministers may make regulations "if and to the extent that provision made by the regulations would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly (ignoring any requirement for the consent of any person)" (clause 37(1)(c)).
44. Clause 36(1) to (4) deals with the certification of organic products, activities relating to organic products and persons carrying out such activities. Provision is made for regulations to be made dealing with matters relating to certification, including the sale and marketing of organic

products; the objectives and principles of organic production; and the labelling of organic products.

45. Sub-clause (2) deals with matters relating to the certification process, including the application, issue and suspension of certificates, and the sale and marketing of organic products. Sub-clause (3) sets out (without limitation) the objectives, principles and standards of organic production that regulations about certification may cover. Sub-clause (4) confers powers by regulations to make provision about the labelling, marketing and sale of certified organic products.
46. Sub-clauses (5) to (7) confer power to make provision by regulations in respect of the import and export of organic products from the United Kingdom.
47. It is the Welsh Government's view that these clauses require consent because they make provision with regard to devolved matters (insofar as they apply to Wales), in particular agriculture, agricultural products and food.

Clauses 40 to 42: WTO Agreement on Agriculture

48. Clauses 40 to 42 provide the Secretary of State with the powers to ensure the UK's compliance with its obligations under the World Trade Organisation ("WTO") Agreement on Agriculture.
49. The "Agreement on Agriculture" is an international treaty that sets out a number of general rules and commitments on agricultural trade practices as agreed by WTO members. These measures fall under three pillars; disciplines on domestic support, market access and export subsidies. The EU is a WTO member and the UK is also a member of the WTO in its own right; as such they are both signatories to the Agreement on Agriculture and after EU exit the UK continues to be subject to any commitments and obligations under the Agreement on Agriculture. The UK Government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture are WTO compliant.
50. The domestic support provisions relate to various forms of (direct and indirect) government financial support given to producers of certain agricultural products (as defined in Part I of the Agreement on Agriculture). Payments made to agricultural producers during the agricultural transition and through any future domestic support schemes will need to comply with the Agreement on Agriculture.
51. This clause intends to ensure that all support schemes are properly classified (as amber, green or blue box), and if they fall into the amber box, that they do not cause the UK to breach its Aggregate Measurement of Support commitment. This clause also intends to ensure that the UK is able to meet its obligations to make notifications required under the

Agreement on Agriculture and respond to any challenges from other WTO members.

52. Clause 40(2) links the three clauses (40, 41 and 42) which give the Secretary of State power to make regulations for securing compliance with obligations of the United Kingdom under the Agreement on Agriculture (the “purpose” specified in section 40(1)).
53. WTO agreements permit some forms of trade-distorting support (classified by the WTO as amber box support). Controls on amber box use provide for some WTO members, including the UK, to provide capped levels of (permitted) trade-distorting support. Clause 41 gives the Secretary of State powers to set limits on levels of domestic support (for the purpose of securing compliance with obligations of the United Kingdom under the Agreement on Agriculture).
54. WTO members including the United Kingdom are obliged to classify domestic support in accordance with the definitions set out in the Agreement on Agriculture. Clause 42 confers powers on the Secretary of State to make provision about the classification of support, for the purposes of the Agreement and clause 41. Sub-clauses (2) and (3) give the Secretary of State the power to set out in regulations a process designed to classify and to facilitate review of, the classification of domestic support in accordance with this obligation. Clause 42(3)(b) gives the Secretary of State powers to set out in regulations a process for resolving disputes between authorities regarding classification.
55. WTO members are required to make notifications in support of their Agreement on Agriculture obligations, including an annual notification on levels of domestic support to agricultural producers, and justification where support has been classified as green box or blue box. Sub-clauses (4) and (5) give the Secretary of State the powers to set out in regulations provisions for collecting information for the purposes of compliance with Agreement on Agriculture obligations, including from the Welsh Ministers.
56. It is the Welsh Government’s view that these provisions require consent because they make provision with regard to agriculture and concern the domestic implementation of international obligations.

Clause 44: Duration of provision in relation to Wales

57. Clause 44 ensures that the following provisions expire at the end of 2024; section 43 and Schedule 5, section 49(b) and, in Schedule 7, Part 2, section 52(1)(g), and in section 53(3), paragraph (b) and, so far as relating to Part 2 of Schedule 7, paragraph (c). Provision is also made to save the regulations described at sub-clauses (3) to (6). The clause also allows Welsh Ministers, by regulations, to make transitional, transitory or saving provisions in connection with this section.

58. The provisions that will expire under this provision are all considered to be devolved matters (for the reasons set out in this memorandum). It is the Welsh Government's view that this clause requires consent as it also makes provision with regard to those devolved matters.

Clause 46: Data protection

59. This clause makes clear that any duty or power to disclose information under Parts 1 to 6 of the Bill does not operate to require the disclosure of information which would contravene the data protection legislation. The "data protection legislation" is (from exit day) the GDPR Regulation 2016/679 as retained in domestic law (the "GDPR"), the Data Protection Act 2018, regulations made under that Act, and regulations made under section 2(2) of the European Communities Act 1972 as it relates to the EU GDPR or the Law Enforcement Directive 2016/680 (section 3 of the Data Protection Act 2018).

60. The GDPR and the Data Protection Act 2018 are concerned with the protection of individuals with regard to the processing of personal data (see, for example, section 2 of the 2018 Act). The "protection of personal data" is a reserved matter (paragraph 170 of Schedule 7A to GoWA). This provision is ancillary, however, to relevant provisions in Parts 1 to 6 as it restates the existing "data protection legislation" as it applies to those provisions. To the extent that the relevant provisions in Parts 1 to 6 are devolved (as considered above) then it is the Welsh Government's view that this clause requires consent because it makes ancillary provision with regard to devolved matters.

Clauses 47 to 54 (and Schedule 7)

61. These clauses makes general and final provision about regulations, including procedures and related matters; interpretation; consequential amendments to the CMO regulation (set out in Schedule 7); powers to make consequential etc. provision by regulation; financial provision; extent; commencement; and the short title of the Bill.

62. It is the Welsh Government's view that they each require consent to the extent that they each make provision with regard to provisions in the Bill that are considered to be devolved, as described in this memorandum (save for the short title which is a devolved matter insofar as it makes provision in relation to Wales).

Schedule 3 and clause 34: Agricultural tenancies

63. Clause 34 introduces Schedule 3 to the Bill. The provisions in Part 1 of Schedule 3 to the Bill make amendments to Parts 2 and 4 of, and Schedules 2, 3 and 6 to, the Agricultural Holdings Act 1986 (the "1986 Act") which include provisions about agricultural tenancies. The provisions in Part 2 of Schedule 3 to the Bill make corresponding amendments to the Agricultural Tenancies Act 1995.

64. The 1986 Act applies to agricultural tenancies entered into before 1 September 1995 and those tenancies commencing after 1 September 1995, and which are subject to the provisions of section 4(1) of the Agricultural Tenancies Act 1995 and remain governed by the 1986 Act. Agricultural tenancies are subject to regulated rent, have lifetime security of tenure and most granted before 12 July 1984 also carry statutory succession rights for up to two generations of eligible close relatives on death or retirement of the incumbent tenant (except for council farm AHA agreements which do not have statutory succession rights).
65. The provisions in Schedule 3 are intended to update and modify provision for agricultural tenancies in the 1986 Act to provide more flexibility, remove barriers to investment and improve the practical operation of the 1986 Act in relation to agricultural tenancies.
66. The suite of reforms to the 1986 Act include:
- i) Amendments to section 12 and Schedule 2 to the 1986 Act which make provision about arbitration or third party determination of rent. The amendments ensure that appointment of third party experts can happen at the same time as the appointment of arbitrators and make provision about consideration of factors relating to improvements to a holding in the arbitration or third party determination of rent;
 - ii) Inserting new section 19A in the 1986 Act which confers a regulation making power on the Welsh Ministers, in relation to Wales, and the Secretary of State, in relation to England, to make provision in regulations for a tenant of an agricultural holding to refer certain requests for landlord's consent or variation of contract terms for arbitration if no agreement has been reached. In relation to Wales, requests which can be referred are limited to those for the purposes of enabling tenants to access financial assistance in exceptional market circumstances and comply with statutory duties.;
 - iii) Amendments to Schedule 3, Case A, updating council farm retirement notice provisions to keep pace with changes to the state pension policy;
 - iv) Amendments to various provisions in the 1986 Act which make provision about succession of tenancies following the death or retirement of a tenant. The amending provisions repeal all provisions in the 1986 Act relating to the commercial unit test, confer power on the Welsh Ministers to make regulations setting criteria which must be considered when determining a person's suitability to become the tenant of a holding, and repeal provisions prescribing the minimum age of a retiring tenant.
 - v) Amendments to sections 12(b), 22(b) and 84(2) of the 1986 Act are updated so that the Central Association of Agricultural Valuers and Agricultural Law Association can offer arbitration appointments services alongside the Royal Institute of

Chartered Surveyors. Corresponding changes are made to the Agricultural Tenancies Act 1995 to extend the list of professional authorities that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1995 Act so that it is the same as those listed in section 84 of the 1986 Act.

67. It is the Welsh Government's view that all of the provisions in Schedule 3 require consent because they make provision with regard to devolved matters (insofar as they relate to Wales), in particular the promotion of agriculture. The purpose of the reforms is to provide more flexibility to the tenant farming sector.

Schedule 5 and clause 43

68. Clause 43 of the Bill introduces Schedule 5 of the Bill which makes provision in relation to Wales. The powers set out in that Schedule are time limited and will be replaced by an Agriculture (Wales) Bill to be introduced in the National Assembly for Wales. Schedule 5 covers those powers needed to enable continuity of financial support to farmers and ensure the effective operation of the agricultural sector following the UK's departure from the EU. Similar powers to those described below are conferred on the Secretary of State in respect of England under Parts 1 to 3 and 5 of the Bill. Schedule 5 does not, however, contain any provision to operate or transition to new financial assistance schemes (in the way that Part 1 of the Bill makes such provision in relation to England).

Schedule 5, Part 1: Financial support after exiting the EU

69. Paragraphs 1-3 of Part 1 of Schedule 5 provide for the payment of Direct Payments in Wales under the basic payment scheme.

70. Paragraph 2 provides powers for the Welsh Ministers to make regulations to modify, after exiting the EU, retained EU law relating to the basic payment scheme, and include powers to simplify or improve the basic payment scheme or to terminate greening payments.

71. Paragraph 3 provides for the Welsh Ministers to make regulations to continue the basic payments scheme after 2020. This will allow for the basic payment scheme to continue beyond 2020.

72. Paragraph 4 enables the Welsh Ministers to make regulations that modify, in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation. That includes Regulation 1306/2013 and retained direct legislation made under that Regulation.

73. Paragraph 5 provides the Welsh Ministers with power to make regulations that modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. The

power can be used either to repeal that legislation or to simplify or improve the operation of such legislation.

Schedule 5, Part 2: Intervention in Agricultural Markets

74. Part 2 of Schedule 5 enables the Welsh Ministers to make a declaration if the Welsh Ministers consider there are exceptional market conditions (paragraph 6). The Welsh Ministers may then exercise the powers conferred under paragraph 7, during the period specified in the declaration (unless revoked sooner). Under those powers the Welsh Ministers may give, or agree to give, financial assistance to support agricultural producers in Wales whose incomes are being or are likely to be adversely affected by the exceptional market conditions described in the declaration (paragraph 7(2)). The Welsh Ministers may also make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration (paragraph 7(3)).

75. The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage so that the operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established under paragraph 6 (paragraph 8(1)).

76. The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage other than in connection with a declaration under paragraph 6, including altering the operation of that legislation and securing that it ceases to have effect in Wales (paragraph 8(2)).

Schedule 5, Part 3: Collection and sharing of data

77. Part 3 makes provision about the collection and sharing of data. In particular, these provisions confer powers on the Welsh Ministers to require a person in, or closely connected with, an agri-supply chain to provide information about any of the person's activities connected with the supply chain so far as the activities are in Wales. These include powers for the Welsh Ministers to require the provision of certain information (paragraph 9(1)), to make regulations to collect information (paragraph 9(2)) and to enforce a requirement to provide information (paragraph 14(1)).

78. The data collected and shared under these provisions can be used for certain purposes specified in paragraph 11 including, for example, to help farmers and producers increase productivity, to help producers to manage risk and market volatility and to support animal and plant health and traceability. The information must be processed in accordance with the requirements set out at paragraph 13.

79. A duty is placed on the Welsh Ministers to publish a draft requirement before a particular requirement for collection of data is imposed under paragraph 9(1) (paragraph 12(1)).

Schedule 5, Part 4: Marketing standards and carcass classification

80. Part 4 confers powers on the Welsh Ministers by regulations to make provision about the standards which apply to certain products marketed in Wales. This Part also enables the Welsh Ministers by regulations to make provision in respect of carcass classification by slaughterhouses in Wales.

81. Paragraph 16 contains the list of agricultural products for which marketing standards may be made. The Welsh Ministers may make regulations to amend the list of products for which marketing standards may be set or altering the description of the listed agricultural products (paragraph 16(3)).

Schedule 5, Part 5: Data Protection

82. Part 5, which is very similar to clause 46 of the Bill, makes clear that any duty or power to disclose information under Schedule 5 does not operate to require the disclosure of information which would contravene the data protection legislation (as defined in the Data Protection Act 2018, section 3).

Conclusions on Schedule 5 (and clause 43) consent

83. It is the Welsh Government's view that consent is required for all of the provisions in Schedule 5 (and clause 43), because they make provision with regard to agriculture, a devolved matter.

Powers to create subordinate legislation

84. The Annex describes a list of subordinate legislation making powers conferred on the Welsh Ministers. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 47(6)(c) and (7)(c) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

85. It remains this government's intention to publish an Agriculture White Paper before the end of this Assembly term which will build on the proposals set out in the Sustainable Farming and Our Land consultation and lay the groundwork for an Agriculture (Wales) Bill to be introduced in the next Assembly term. The detail of the new scheme is dependent on the outcome of policy and operational decisions which cannot be made until analysis of results from both the Green and White Papers have been completed.

86. Making these provisions for Wales in the UK Agriculture Bill will enable the continued provision of existing agricultural subsidies beyond 2020, and ensure the effective operation of agricultural markets following the UK's departure from the EU. The powers taken for the Welsh Ministers under Schedule 5 (provision relating to Wales) to this Bill are time limited and intended to be a transitory measure to give the agricultural sector much needed stability in this period of uncertainty.
87. The Welsh Government is generally supportive of the Bill as drafted. There remains disagreement between the UK Government and the Welsh Government on whether the WTO clause is wholly reserved. However, a bilateral agreement has been reached to require the UK Government to consult the devolved administrations before bringing forward regulations under this power. An explanation to the terms of the agreement was provided as part of the Supplementary LCM (March 2019) on the previous Agriculture Bill (introduced September 2018).
88. There are outstanding concerns regarding the provisions in the Bill for the identification and traceability of animals (clause 32), agricultural tenancies (clause 34 and Schedule 3), and the regulation of organic products (clause 36). Work to resolve these outstanding concerns will continue during the Bill's parliamentary passage and a supplementary Legislative Consent Memorandum will be brought forward at the appropriate time, if required.

Financial implications

89. There are no direct financial implications for the Welsh Government or the Assembly as a result of taking these powers in this Bill.

Conclusion

90. The Welsh Government is of the view it is appropriate to utilise this UK Bill as a vehicle to enable the Welsh Government to continue providing financial support to farmers in Wales after 2020, and to ensure the effective operation of agricultural markets in Wales and across the UK following the UK's departure from the EU. Certain time-limited powers provided for by this Bill will be used until an Agriculture (Wales) Bill is introduced in the Assembly.

Lesley Griffiths AM
Minister for Energy, Environment and Rural Affairs
February 2020

Annex

LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL 2020 – PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

<u>Bill provision</u>	<u>Description of Power</u>	<u>Legislative procedure</u>
31 (fertilisers)	Clause 31(4) amends section 74A of the Agriculture Act 1970 and allows for regulations made by the Welsh Ministers in relation to Wales (and the Secretary of State, Scottish Ministers and a Northern Ireland Department in respect of other parts of the UK) to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.	The first regulations made by the Welsh Ministers under section 74A(1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 31(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2), Agriculture Act 1970).
33 (red meat levy)	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure
36 and 37 (organic products)	Powers for the Welsh Ministers in respect of the certification of organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly (ignoring any requirement for the consent of any person) (clause 37(1)(c)).	Affirmative resolution procedure where— (a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or (b) the regulations are made under subsection (1), (5) or (7) of section 36 and they are the first regulations to be made under that subsection by the authority making them. Otherwise, regulations under clause 36 are subject to negative

		resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).
44 (duration of provision in relation to Wales)	Powers for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.	Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under this clause are subject to negative resolution procedure.
50(1) (consequential etc. provision)	The appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) clause 43 and Schedule 5, (ii) clause 44, and (iii) clause 49 and Schedule 7 so far as they apply in relation to Wales.	Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure. Other regulations under subsection (1) are subject to negative resolution procedure.
50(5) (consequential etc. provision)	The appropriate authority may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. The Welsh Ministers are the appropriate authority, for provision in connection with— (i) clause 43 and Schedule 5, (ii) clause 44, and (iii) clause 49 and Schedule 7 so far as they apply in relation to Wales.	No procedure
53(3) (commencement)	Powers for the Welsh Ministers by regulations made by statutory instrument to appoint— (a) so far as relating to Wales— (i) paragraphs 10 to 18 of Schedule 3, and (ii) section 34 so far as relating to those paragraphs, (b) Parts 2 and 4 of Schedule 5, and section 43 so far as relating to those Parts, and (c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.	No procedure
Schedule 3, para 6(7)	Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to- a) include a person in, or remove a person from, the definition of “professional authority”; b) reflect changes in the name or internal organisation of any body mentioned in that	Negative procedure

	definition.	
Schedule 3, para 7	Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration requests made by the tenant for landlord's consent or variation of terms	Negative procedure
Schedule 3, para 17	Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.	Negative procedure
Sch 5, para 2(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 3(1)	Powers for the Welsh Ministers to provide for the continuation of the basic payment scheme beyond 2020, including power to provide for the direct payments ceiling for Wales to be made by Welsh Ministers	Affirmative resolution procedure
Sch 5, para 4(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 5(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 6 of Schedule 5 (declaration relating to exceptional market conditions).	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 8(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)
Sch 5, para 9(2)	Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
Sch 5, para 14(1)	Powers for the Welsh Ministers to make provision for enforcement of a requirement	Affirmative resolution procedure

	imposed under paragraph 9(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)	
Sch 5, para 15(1)	Powers for the Welsh Ministers by regulations, in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
Sch 5, para 16(3)	Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of— (a) adding or removing an agricultural product from paragraph 16(1); (b) altering the description of an agricultural product in paragraph 16(1).	Affirmative resolution procedure
Sch 5, para 17(1)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure

LEGISLATIVE CONSENT MEMORANDUM

Fisheries Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Assembly.
2. The Fisheries Bill (the “Bill”) was introduced into the House of Lords on 29 January 2020. The Bill can be found at:

[Bill documents – Fisheries Bill 2019 – 20 – UK Parliament](#)

Policy Objective

3. The UK Government’s stated position is the Fisheries Bill will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union and the Common Fisheries Policy.

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
5. The Bill makes provision for:
 - policy objectives in relation to fisheries, fishing and aquaculture, fisheries statements and fisheries management plans;
 - access to British fisheries;
 - the licensing of fishing boats;
 - the determination and distribution of fishing opportunities;
 - schemes to be established for charging for unauthorised catches of sea fish;
 - grants in connection with fishing, aquaculture or marine conservation
 - the recovery of costs in respect of the exercise of public functions relating to fish or fishing;
 - to confer powers to make further provision in connection with fisheries, aquaculture or aquatic animals;
 - to make provision about byelaws and orders relating to the exploitation of sea fisheries; and for connected purposes.
6. The Fisheries Bill was previously introduced into UK Parliament in October 2018 and was amended following Commons Committee scrutiny stage. A legislative consent memorandum and a supplementary legislative consent memorandum were laid in the Assembly in November 2018 and January

2019 respectively. However, following prorogation for the General Election in December 2019, the Bill fell. This legislative consent memorandum covers all relevant provisions within the new Bill introduced on 29 January 2020. At the request of Welsh Government, the Bill includes powers for the Welsh Ministers.

Provisions in the Bill for which consent is required

7. Consent is required for the provisions listed below because they modify the Assembly's legislative competence or because they fall within the legislative competence of the Assembly.

Fisheries Objectives, fisheries statements and fisheries management plans

8. Clause 1 defines a set of fisheries objectives which apply across the whole of the UK. These objectives include sustainability, precautionary approach, bycatch and equal access for UK vessels in UK waters.
9. Clause 2 requires the Fisheries Policy Authorities (FPA) to prepare and publish a Joint Fisheries Statement (JFS) within 18 months from the Act passing. The JFS must set out policies for achieving, or contributing to the achievement of the fisheries objectives. It also requires the making of a statement explaining fisheries management plans will be used to achieve or contribute to the achievement of the objectives. It sets out what the statement must contain and/or specify. The Welsh Ministers are defined as a FPA in clause 48 – interpretation.
10. Clause 3 allows for the JFS to be replaced or amended. It introduces Schedule 1 and sets out timings for the JFS to be reviewed at least every 6 years.
11. Schedule 1 – Fisheries Statements and management plans: preparation and publication
Part 1 defines the procedure for the preparation and publication of a JFS. Part 1 paragraph 2 requires the FPAs prepare a draft JFS and consult interested persons. Part 1 paragraph 3(1) provides in their role as a FPA the Welsh Ministers are required to lay the draft JFS before the Assembly. Part 1 paragraph 4 makes provision for the publishing the finalised JFS.

Part 3 defines the procedure for the preparation and publication of a fisheries management plan. Paragraph 10 requires the FPA to consult interested persons upon the draft and have regard to any representations made to them about it. Part 3 paragraph 11 makes provision for the publishing of the finalised fisheries management plans.
12. Clause 6 sets out a duty to prepare and publish the Fisheries Management Plans listed in the JFS. The plan must specify each sea fish, type of fishing and area to which it relates and what indicators will be used for monitoring the effectiveness of the plan. Further, whether available scientific evidence

is sufficient to allow assessment of a stock's maximum sustainable yield and what steps required as a result of this assessment.

13. Clause 7 sets out that Fisheries Management Plans can be amended, replaced or revoked in response to a relevant change of circumstances. If changes to the plans are not consistent with the JFS, the FPAs must make a statement explaining the reasons for this.
14. Clause 8 provides that Fisheries Management Plans can be amended or replaced and provides that they must be reviewed at least every 6 years. It also introduces Part 3 of Schedule 1 which requires each authority preparing a plan to consult interested persons upon it.
15. Clause 9 makes short term provision for fisheries policy authorities to prepare and publish Fisheries Management Plans in advance of the first JFS.
16. Clause 10 requires all national fishing authorities, including the Welsh Ministers, to exercise all functions in relation to fisheries, fishing or aquaculture in accordance with the JFS and the Fisheries Management Plans unless a relevant change of circumstances indicates otherwise and, in which case, reasons for that departure must be stated in a published document.
17. Clause 11 introduces the requirement for fisheries policy authorities to prepare and publish a report on the extent policies in the JFS have been implemented and achieved, or contributed to the achievement of, the fisheries objectives. The report must also include the extent to which policies within Fisheries Management Plans have been implemented and have affected the level of stocks of sea fish. The reporting period is once every three years and a copy of the report must be laid before the Assembly by the Welsh Ministers.

Access to British Fisheries and regulation of foreign fishing boats

18. Clause 12 mandates that a foreign fishing vessel must not enter British fishery limits unless it does so pursuant to a valid UK Fishing Licence or for a purpose recognised in either international law or under a treaty
19. Clause 13 introduces Schedule 2 which contains amendments of subordinate legislation, includes Welsh Ministers' legislation, to ensure that it applies to foreign fishing boats and British fishing boats equally

Licensing of fishing boats

20. Clause 14 provides that fishing anywhere by a British fishing boats is prohibited unless authorised by a licence. It goes onto to set out a number of exceptions to that general rule (restating the current law). Clause 14(3) gives the Secretary of State the power to amend the exceptions by regulations, under affirmative procedure, with the consent of Welsh

Ministers, Scottish Ministers and the Northern Ireland Department. If a boat fishes in contravention of this requirement, the master, the owner and the charterer (if any) are each guilty of an offence.

21. Clause 15 provides that it is a matter for each nation of the UK to licence their own fishing vessels. For our purposes, clause 15 provides that the Welsh Ministers are able to grant a fishing licence in respect of a Welsh fishing vessel.
22. Clause 16 provides that fishing within British fishery limits by a foreign fishing boat is prohibited unless authorised by a licence. It allows the Secretary of State to create, vary or amend exceptions in relation to that requirement, via regulations under the affirmative procedure, with the consent of Welsh Ministers, Scottish Ministers and the Northern Ireland Department.
23. Clause 17 provides powers for each nation of the UK to grant a licence to a foreign fishing boats in relation to the relevant administrative area. It enables the Welsh Ministers to licence foreign fishing vessels within Wales and the Welsh zone.
24. Clause 18 provides a definition of 'sea fishing licence' for the Act and introduces Schedule 3.
25. Schedule 3 - Sea Fishing Licences: Further Provisions
Schedule 3 sets out a range of provisions relating to sea fishing licences, including the ability to attach conditions to a sea fishing licence and that breach of a licence condition is a criminal offence. It provides a power to vary conditions and to suspend or revoke sea fishing licences. Paragraph 4 imposes a duty on each sea fish licensing authority to comply with requests from other such authorities in order to ensure regulatory consistency. Paragraph 7 gives each national authority (which is defined as the Welsh Ministers in relation to the licensing of Welsh fishing boats and in relation to foreign fishing boats in Wales and the Welsh zone) the power to make regulations regarding the way in which the sea fish licensing authority (also the Welsh Ministers in relation to the matters stated above) may exercise their licensing functions. Unless those Regulations contain a provision reducing the amount of time a fishing boat may spend at sea (in which case an affirmative procedure applies), the negative procedure applies. Paragraph 8 provides that the Secretary of State may make provision which could be made by either the Welsh Ministers, Scottish Ministers or Northern Ireland department with the consent of Welsh Ministers, Scottish Ministers and the Northern Ireland Department

Access and licensing: offences and consequential amendments

26. Clause 19 sets out the penalties for offences under the preceding clauses. Clause 20 applies offences under preceding clauses to bodies corporate.

Clause 21 confirms in relation to such an offence, proceedings should be commenced in the United Kingdom.

27. Clause 22 introduces Schedule 4 which contains consequential amendments.
28. Schedule 4 – Access and licensing: minor and consequential amendments
Schedule 4 contains minor and consequential amendments to the statute book, consequential upon the licensing provisions contained in clauses 12 and 14 to 21 to ensure the rest of the statute book correctly refers to those new licensing provisions.

Fishing opportunities

29. Clause 23 provides that the Secretary of State will set the total UK fishing opportunities in terms of both the maximum quantity of sea fish (the catch quota) and the maximum numbers of days that British fishing boats may spend at sea (the effort quota) but may only do so for the purposes of complying with international obligations to determine fishing opportunities of the UK. Clause 23 provides a broad power for the Secretary of State to set UK quotas, which could as drafted apply to stocks of fish species which are only present wholly within the waters of one of the devolved administrations. In relation to the effort quota, clause 23(8) allows the Secretary of State to make regulations for determining the number of days a vessel is to be regarded to have spent at sea.
30. Clause 24 provides that a determination of fishing opportunities (catch and effort quota) under clause 23 can only be made after consultation with Welsh Ministers, Scottish Ministers, Northern Ireland Department and the Marine Management Organisation (MMO).
31. Clause 25 amends Article 17 of the Common Fisheries Policy Regulation to place duties on the Secretary of State, the MMO, Welsh Ministers, Scottish Ministers and the Northern Ireland Department, as national fisheries authorities, in relation to the distribution of fishing opportunities.
32. Clause 26 places a duty on relevant national authorities, to exercise their fisheries functions so as to ensure that UK catch and effort quotas are not exceeded.
33. Clause 27 introduces Schedule 5 which confers powers on Welsh Ministers for the sale of fishing opportunities for a calendar year.
34. Schedule 5 – Sale of Welsh fishing opportunities for a calendar year
Schedule 5 confers powers on the Welsh Ministers to make Regulations to make provision for the sale of rights to use a Welsh catch quota and a catch effort quota for a calendar year. The quota would be available to Welsh fishing boats. Regulations are subject to the Affirmative resolution procedure and the Welsh Ministers must consult such persons as they think appropriate.

Grants and charges

35. Clause 33 introduces Schedule 6 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes.
36. Schedule 6 – Financial Assistance: Powers of Devolved Authorities
Paragraph 1 of Schedule 6 provides the Welsh Ministers with powers to give financial assistance or to arrange for such assistance to be given to any person for certain purposes. These powers are available in relation to Wales or the Welsh zone or Welsh fishing boats. Such financial assistance must be given in accordance with a scheme established by regulations (subject to affirmative procedure) made by the Welsh Ministers. Paragraph 3 of Schedule 6 makes related consequential amendments.
37. Clause 34 introduces Schedule 7 which confers powers on the Welsh Ministers to make regulations to impose charges.
38. Schedule 7 – Imposition of charges: powers of Devolved Authorities
Schedule 7 confers powers on the Welsh Ministers to make regulations to impose charges in respect of relevant marine functions including functions relating to fishing quotas, ensuring that fishing activities are carried out lawfully, registration of buyers and catch certificates. The Welsh Ministers must consult such persons as they consider appropriate before exercising this power. The Regulations are subject to approval by the Assembly by Negative resolution procedure.
39. Clause 35 amends the Fisheries Act 1981 to remove a reference to Member State.

Powers to make further provision

40. Clause 36 gives the Secretary of State the power to make Regulations regarding fisheries and aquaculture for certain listed purposes. Clause 38 provides the Secretary of State with a power to make Regulation regarding aquatic animal disease. Clause 39(3) provides that the Secretary of State cannot exercise those functions in so far as it would relate to a matter within the legislative competence of the Assembly. However, Clause 40(2) provides that such provision could be included with the consent of the Welsh Ministers. Clause 39 (4) provides that the Secretary of State can make regulations relating to Welsh fishing boats outside of the Welsh zone. The Welsh Ministers must be consulted before the Secretary of State makes any provision under clauses 36 or 38 in any event (clause 41).
41. Clause 42 introduces Schedule 8 which provides Welsh Ministers with powers to make provision commensurate with clauses 36 and 38.
42. Schedule 8 – Powers to make further provision: Devolved Authorities
Paragraph 6 gives the Welsh Ministers the power, to make Regulations in relation to fisheries and aquaculture to make provision for the purposes of

implementing an international obligation of the UK relating to fisheries, fishing or aquaculture, for conservation purpose or for a fish industry purpose. Paragraph 8 gives the Welsh Ministers the power to make Regulations, to make provision about aquatic animal diseases. Paragraph 9(3) confirms the Welsh Ministers may only exercise those powers to make provision that would be within the legislative competence of the Assembly, if it were included within an Act of the Assembly. Paragraph 10 provides that unless those Regulations deal with certain listed matters (for example, amending primary legislation), they will be subject to the Assembly's approval by Negative resolution procedure. Where the circumstances specified at paragraph 10(2) exist, the Regulations are subject to the Affirmative resolution procedure. Paragraph 10(1) requires that the Welsh Ministers consult with the Secretary of State, Scottish Ministers and Northern Ireland Department and other persons likely to be affected before making such Regulations.

Miscellaneous

43. Clause 43 amends section 108A (legislative competence) of the Government of Wales Act 2006 ("2006 Act") and makes a number of further consequential changes to the 2006 Act. A new section 108A(4A) is inserted which provides that references in subsections (2)(b) and (3) of section 108A to Wales includes the area of the Welsh zone in relation to fishing, fisheries or fish health. The effect is that, in relation to fishing, fisheries and fish health, the legislative competence of the Assembly is extended to Wales and the Welsh zone. The commencement provisions mean clause 43 (legislative competence of the Assembly) comes into force automatically after the Act is passed (within two months by convention).
44. Clause 44 introduces Schedule 9 which contains powers for the Welsh Ministers in relation to the exploitation of sea fisheries resources.
45. Schedule 9 – Powers relating to the exploitation of sea fisheries resources
Schedule 9 provides powers relating to the exploitation of sea fisheries resources by making a number of amendments to the Marine and Coastal Access Act 2009. Paragraph 12 of Schedule 9 inserts new sections 134A to 134C into the 2009 Act which provide the following powers for the Welsh Ministers.

Section 134A enables the Welsh Ministers to make Orders in relation to Wales for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats. Section 134B enables the Welsh Ministers to make Orders in relation to the Welsh offshore region (i.e. the area of the Welsh zone which lies beyond Wales) for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats or features of geological or geomorphological interest. Section 134C makes further provision regarding the matters that can be included in an Order under sections 134A or 134B.

Paragraphs 18 of Schedule 9 inserts a new sub-section 135(1A) into the 2009 Act which requires the Welsh Ministers to consult with the MMO, the Scottish Ministers and the Northern Ireland Department and other persons likely to be affected before making an Order under the new section 134B. Paragraph 19 of Schedule 9 inserts a new sub-section 136(1A) into the 2009 Act which extends the section 136 power to make Interim Orders to the Welsh offshore region. Paragraph 18 (6) provides that if the Welsh Ministers consider there is an urgent need to make an order under section 134A or 134B the consultation requirement is waived akin to the existing powers in 134 of the 2009 Act. Paragraphs 22 to 31 make further consequential amendments to the 2009 Act and the Water Resources Act 1991.

The powers of the Welsh Ministers to make legislation pursuant to the amendments made to the Marine and Coastal Access Act 2009 are subject to the approval of the Assembly by the Negative resolution procedure by virtue of section 316(8) of that Act.

46. Clause 45 introduces Schedule 10.

47. Schedule 10 – Common Fisheries Policy Regulation: Minor and consequential amendments.

Schedule 10 revokes Article 2 (objectives of the Common Fisheries Policy), Article 5 and Annex I (right of equal access for EU fishing vessels to waters of member states), and Article 16 (distribution of fishing opportunities by the council to member states).

Provisions in the Bill for which consent is not required

48. Clause 4 defines the Secretary of State Fisheries Statement (SSFS), its relationship to a/the JFS. It provides a JFS may omit a relevant Secretary of State policy. It defines relevant Secretary of State policy and provides that they should be included within a SSFS.

49. Clause 5 sets out provisions on the timing, publication, review and amendment of the SSFS. Further provisions in Schedule 1 create a consultation requirement and a requirement that the consultation draft is laid before Parliament.

50. Clauses 28 - 32 relate to discard prevention charging schemes and contain no Welsh provisions.

Reasons for making these provisions for Wales in the Fisheries Bill

51. The Fisheries Bill creates the primary legislative elements of the UK Framework for fisheries management and support moving forwards. These provisions could only appropriately be applied through a UK Bill, providing a uniform set of powers, obligations and objectives.

52. Welsh Government is supportive of the Bill as drafted. We welcome the inclusion of clause 43 which extends the Assembly's legislative competence for fisheries matters beyond Wales, into the Welsh zone. This brings the Assembly's competence in line with the Welsh Ministers' executive competence.
53. The Welsh Government will take powers for the Welsh Ministers in the Bill as an interim measure until a Wales Fisheries Bill is brought forward to the Assembly.
54. Until this Bill is passed, within the current devolution arrangements, a Assembly Bill would only be able to deal with the necessary administrative arrangements in relation to Wales (but not the wider Welsh zone), resulting in a lack of coherence, and reliance in part on the UK Bill and in part on a Wales Fisheries Bill.
55. It is appropriate, therefore, to seek these powers now to enable us to act quickly and decisively in Wales, in an uncertain future, which enables the fullest opportunities for our immediate fisheries management and our future fisheries policy.
56. We will continue to work with UK Government through the passage of the Bill and will engage fully with the Assembly through the legislative consent motion process.

Financial implications

57. There are no direct financial implications for Wales as a result of taking these provisions in this Bill.

Conclusion

58. It is the view of the Welsh Government it is appropriate to deal with these provisions in this UK Bill as there needs to be a UK wide approach to create the Fisheries Framework which can only be done in a UK bill. The Bill also contains a number of provisions which must be in place before the end of the implementation period. For non-framework powers, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Wales Fisheries Bill.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
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