Agenda - Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 - Senedd
Meeting date: 5 November 2018
Meeting time: 14.30

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6362
SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

14.30

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

14.30 (Pages 1 - 4)

CLA(5)-27-18 - Paper 1 - Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)260 - The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018

2.2 SL(5)261 - The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018

2.3 SL(5)265 - The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018

Affirmative Resolution Instruments

2.4 SL(5)263 - The Sustainable Drainage (Enforcement) (Wales) Order 2018

2.5 SL(5)264 - The Sustainable Drainage (Appeals) (Wales) Regulations 2018

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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

14.35

Negative Resolution Instruments

3.1 SL(5)262 – The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018

(Pages 5 – 80)

CLA(5)-27-18 – Paper 2 – Report

CLA(5)-27-18 – Paper 3 – Regulations

CLA(5)-27-18 – Paper 4 – Explanatory Memorandum

3.2 SL(5)267 – The Town and Village Greens (Landowner Statements) (Wales) (No. 2) Regulations 2018

(Pages 81 – 111)

CLA(5)-27-18 – Paper 5 – Report

CLA(5)-27-18 – Paper 6 – Regulations

CLA(5)-27-18 – Paper 7 – Explanatory Memorandum

CLA(5)-27-18 – Paper 8 – Letter from the Leader of the House and Chief Whip

3.3 SL(5)266 – The Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018

(Pages 112 – 124)

CLA(5)-27-18 – Paper 29 – Report

CLA(5)-27-18 – Paper 30 – Order

CLA(5)-27-18 – Paper 31 – Explanatory Memorandum

4 Statutory Instruments requiring Consent in accordance with Standing Order 30A – EU Exit

14.40

4.1 SICM(5)4 – The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018

(Pages 125 – 144)

CLA(5)-27-18 – Paper 9 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs

CLA(5)-27-18 – Paper 10 – Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)-27-18 – Paper 11 – Statutory Instrument Consent Memorandum

CLA(5)-27-18 – Paper 12 – Explanatory Memorandum

CLA(5)-27-18 – Paper 13 – Regulations

4.2 SICM(5) 5 - Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

(Pages 145 - 164)

CLA(5)-27-18 – Paper 14 – Letter from the First Minister

CLA(5)-27-18 – Paper 15 – Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)-27-18 – Paper 16 – Statutory Instrument Consent Memorandum

CLA(5)-27-18 – Paper 17 – Explanatory Memorandum

CLA(5)-27-18 – Paper 18 – Regulations

5 Written statements in accordance with Standing Order 30C - EU Exit

14.50

5.1 The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018

(Pages 165 - 166)

CLA(5)-27-18 – Paper 19 – Statement

5.2 The Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018

(Pages 167 - 168)

CLA(5)-27-18 – Paper 20 – Statement

6 UK Agriculture Bill: Evidence session

15.00 (Pages 169 - 194)

Lesley Griffiths AM, Cabinet Secretary for Energy, Planning and Rural Affairs;

Tim Render, Welsh Government;

Peter McDonald, Welsh Government.

CLA(5)-27-18 – Briefing

CLA(5)-27-18 – Research Service Briefing

CLA(5)-27-18 – Paper 21 – Letter to the Cabinet Secretary for Energy, Planning and Rural Affairs, 24 September 2018

CLA(5)-27-18 – Paper 22 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs, 11 October 2018

7 Correspondence relating to Composite and Joint Statutory Instruments

16.00 (Pages 195 - 199)

CLA(5)-27-18 – Paper 23 – Letter from Charles Walker MP, Chair of the Procedure Committee of the House of Commons, 25 October 2018.

CLA(5)-27-18 – Paper 24 – Letter from the Chair to the Procedure Committee, 15 January 2018.

8 Papers to note

16.10

8.1 Letter from the National Autistic Society: Autism Bill

(Pages 200 - 202)

CLA(5)-27-18 – Paper 25 – Letter from the National Autistic Society

8.2 Letter to the Finance Committee from the Cabinet Secretary for Finance: Bonds for Capital Investment Expenditure

(Pages 203 - 204)

CLA(5)-27-18 – Paper 26 – Letter from the Cabinet Secretary for Finance

8.3 **House of Lords Secondary Legislation Scrutiny Committee Report: Correspondence: Delegated legislation under the European Union (Withdrawal) Act 2018**

(Pages 205 - 210)

CLA(5)-27-18 – Paper 27 – Report

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

16.20

10 Consideration of Evidence: UK Agriculture Bill

11 Statutory Instruments requiring Consent: Brexit and Statements made under Standing Order 30C: Handling

(Pages 211 - 216)

CLA(5)-27-18 – Paper 28 – Handling of Statutory Instruments requiring Consent: Brexit and Statements made under Standing Order 30C

12 Legislative Consent Memorandum: Ivory Bill

(Pages 217 - 221)

CLA(5)-27-18 – Briefing

Agenda Item 2

Statutory Instruments with Clear Reports

05 November 2018

SL(5)260 – The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018

Procedure: Negative

This Order forms part of a suite of statutory instruments relating to sustainable drainage systems and makes provision in relation to the requirement for approval of, and requests for adoption of, such systems under Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

This Order comes into force on 7 January 2019.

Parent Act: Flood and Water Management Act 2010

Date Made: 10 October 2018

Date Laid: 15 October 2018

Coming into force date: 07 January 2019

SL(5)261 – The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018

Procedure: Negative

These Regulations form part of a suite of regulations that make provision in relation to sustainable drainage. They form part of the Welsh Government's objective of creating a national strategy for flood risk management in Wales.

These Regulations make provision for an approving body to charge fees in relation to applications for approval of sustainable drainage systems pursuant to Schedule 3 to the Flood and Water Management Act 2010.

Parent Act: Flood and Water Management Act 2010

Date Made: 10 October 2018

Date Laid: 15 October 2018

Coming into force date: 07 January 2018

SL(5)263 – The Sustainable Drainage (Enforcement) (Wales) Order 2018

Procedure: Affirmative

This Order forms part of a suite of subordinate legislation that makes provision in relation to sustainable drainage.

This Order provides for the enforcement of a breach of the requirement for approval under paragraph 7(1) of Schedule 3 to the Flood and Water Management Act 2010 in respect of drainage systems for construction work.

Parent Act: Flood and Water Management Act 2010

Date Made:

Date Laid: 15 October 2018

Coming into force date: 07 January 2019

SL(5)264 – The Sustainable Drainage (Appeals) (Wales) Regulations 2018

Procedure: Affirmative

These Regulations form part of a suite of regulations that make provision in relation to sustainable drainage. They form part of the Welsh Government's objective of creating a national strategy for flood risk management in Wales.

These Regulations provide for a right of appeal to the Welsh Ministers against a decision of an approving body under Schedule 3 to the Flood and

Water Management Act 2010 in relation to applications for approval or in relation to the duty to adopt with respect to sustainable drainage systems.

Parent Act: Flood and Water Management Act 2010

Date Made:

Date Laid: 15 October 2018

Coming into force date: 07 January 2019

SL(5)265 – The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018

Procedure: Negative

This Order revokes and replaces the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 for Wales.

Section 60(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to sections 3A, 4, 7 to 9, 47, 54 and 59 of the 1990 Act. This is defined in article 2 as listed buildings ecclesiastical exemption. Those sections relate to listed building control, including: building preservation notices; restrictions on works of demolition, alteration or extension; compulsory acquisition of buildings in need of repair; urgent preservation works by a local authority and the Welsh Ministers; and offences in relation to intentional damage.

Section 75 of the 1990 Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to section 74 of the 1990 Act. Section 74 relates to the control of demolition of buildings in conservation areas. This is the conservation area consent ecclesiastical exemption.

This Order removes the listed buildings ecclesiastical exemption in the case of all ecclesiastical buildings other than for those cases falling within article 4. Under article 4 the exemption is retained in respect of church buildings of

the Church in Wales, the Church of England, the Roman Catholic Church, the Methodist Church, the Baptist Union of Great Britain and the Baptist Union of Wales provided that the building in question's primary use is as a place of worship and subject to the restrictions set out in that article.

Parent Act: Planning (Listed Buildings and Conservation Areas) Act 1990

Date Made: 15 October 2018

Date Laid: 16 October 2018

Coming into force date: 01 January 2019

SL(5)262 – The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018

Background and Purpose

These Regulations form part of a suite of statutory instruments relating to sustainable drainage systems and the provisions of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

These Regulations make provision:

- for procedure in relation to the determination, by approving bodies, of applications for approval and adoption of sustainable drainage systems and ancillary matters; and
- in respect of statutory works on public land which may have an effect on such systems.

These Regulations come into force on 7 January 2019.

Procedure

Negative.

Technical Scrutiny

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

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

Regulation 13 defines a "statutory undertaker" as a person entitled to carry out statutory works on public land under a provision of an enactment listed in Regulation 16 of these Regulations. However, Regulation 16 does not list any enactments.

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

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

Government Response

Regulation 13 should refer to regulation 14, rather than regulation 16. This is a typo, which we will seek to address by way of correction slip.

Legal Advisers
Constitutional and Legislative Affairs Committee
29 October 2018

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1077 (W. 226)

WATER INDUSTRY, WALES

The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for procedure in relation to the determination by approving bodies, of applications for approval of sustainable drainage systems and for adoption of such drainage systems, in accordance with Schedule 3 to the Flood and Water Management Act 2010 (c. 29) ("the Act").

Regulation 3 provides that an approving body may refuse to determine an application for approval not made in accordance with paragraph 9 or 10 of Schedule 3 to the Act.

Regulation 4 provides for procedure to be followed by the approving body in relation to seeking responses from the statutory consultees specified in paragraph 11(3) of Schedule 3 to the Act.

Regulation 5(1)(a) provides for the time limit within which an application for approval that relates to a development that is the subject of an Environmental Impact Assessment, must be determined. Regulation 5(1)(b) provides for the time limit for determination of any other type of application for approval. Regulation 5(2) provides that in either case, the applicant and approving body may agree a longer time for determination of the application.

Regulation 5(3) provides that an approving body which fails to determine an application within the relevant time limit is deemed to have refused the application.

Regulation 6 provides for the information to be included in a notification to a developer of a decision in relation to adoption, where a developer requests that an approving body adopt a drainage system, or where the approving body adopts a drainage system on its own initiative.

Certified copy from legislation.gov.uk Publishing

Regulation 7(1) provides for the time period for release of a non-performance bond by an approving body following notice of a decision in relation to adoption of a drainage system, except where the approving body has certified that the drainage system has not been constructed in accordance with approved proposals or is unlikely to be completed, and the approving body has carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

In those circumstances, regulation 7(3) provides for the approving body to account to the developer for sums applied to the cost of the work, the return of the balance and the release of the non-performance bond.

Regulation 8 provides that within 4 weeks of notifying a developer of a decision to adopt a drainage system (whether on request or on its own initiative), the approving body must arrange for registration of the drainage system in the register maintained under section 21 of the Act, for a designating authority to make a provisional designation under paragraph 7 of Schedule 1 to the Act, and give notice of intention to designate any part of the drainage system that is a street, within the meaning of section 48 of the New Roads and Street Works Act 1991.

Regulation 9 provides for the definition of "single property" drainage systems for the purposes of exemption from the duty to adopt, pursuant to paragraph 18 of Schedule 3.

Regulation 10(1) provides for the time period for an approving body to release a non-performance bond where a drainage system has been completed in accordance with approved proposals. Regulation 10(2) provides for the case where an approving body has carried out work to ensure that a drainage system is completed so that the system is likely to comply with national standards. In those circumstances, regulation 10(3) provides for the time for an approving body to account to the developer for monies applied to the work, return any excess and release the non-performance bond.

Regulation 11 provides that an approving body must notify the persons in paragraph 24(2) of Schedule 3 as soon as practicable after exercising its power to adopt a drainage system to which the duty to adopt does not apply and regulation 13(2) specifies the content of the notice.

Regulation 12 provides for the time period for registration of a drainage system by the lead local flood authority, and provisional designation of a drainage system by a designating authority under

Certified copy from legislation.gov.uk Publishing

paragraph 7 of Schedule 1 to the Act, following voluntary adoption.

Regulation 13 provides for the definition of "statutory undertaker".

Regulation 14 provides for the definition of "statutory works".

Regulations 15(1) to (3) provide for a statutory undertaker to give notice to an approving body of intention to commence statutory works on public land, including in an emergency, where such works will or may affect a sustainable drainage system. Regulations 15(4) to (6) make provision for approval and notification of reconstruction works in relation to sustainable drainage systems following statutory works.

Regulation 16(1) provides a power for the approving body to require a statutory undertaker to carry out remedial works. Where such a request is not complied with, regulation 16(2) provides a further power to an approving body, to undertake remedial works and recover the cost of the works from the statutory undertaker.

Regulation 17(1) requires an approving body to determine, within 12 months of completion of statutory works, whether it is satisfied that the requirements in regulation 17(2) are met. The requirements are that a reconstructed or new drainage system functions in accordance with the approved proposal; whether a new system, if not constructed in accordance with the approved proposal, complies with national standards, or a reconstructed sustainable drainage system, if not constructed in accordance with the approved proposal, is reconstructed to the state it was in before the statutory works were commenced.

Regulation 17(3) provides a power, where an approving body is not satisfied in relation to regulation 17(2), for the approving body to require a statutory undertaker to carry out reconstruction or remedial works within a specified timescale. If such a request is not complied with, regulation 17(4) provides a power of the approving body to carry out the works, and recover the cost from the statutory undertaker.

A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1077 (W. 226)

WATER INDUSTRY, WALES

The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018

Made *10 October 2018*

Laid before the National Assembly for Wales *15 October 2018*

Coming into force *7 January 2019*

The Welsh Ministers, in exercise of the powers conferred by sections 32 and 48(2) of, and paragraphs 4(a), 11(5), 17(5), 18(3), 23(7), 24(5) and 28 of Schedule 3 to, the Flood and Water Management Act 2010(**1**), make the following Regulations.

PART 1

Introduction

Title and commencement

1.—(1) The title of these Regulations is the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

(2) These Regulations come into force on 7 January 2019.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Flood and Water Management Act 2010;

"applicant" ("*ceisydd*") means a person who makes an application for approval;

(1) 2010 c. 29. Schedule 3 was amended by sections 21(3), 88(a) and 88(b) of the Water Act 2014 (c. 21) and S.I. 2012/1659 and 2013/755 (W. 90).

Certified copy from legislation.gov.uk Publishing

"application for approval" ("*cais am gymeradwyaeth*") means—

(a) an application for approval made in accordance with paragraph 9 of Schedule 3, or

(b) that part of a combined application that seeks approval made in accordance with paragraph 10 of Schedule 3—

and a reference to a "valid application" ("*cais dilys*") is to be construed accordingly;

"approval" ("*cymeradwyaeth*") means the approval required under paragraph 7(1) of Schedule 3 for a drainage system(**1**) for construction work(**2**);

"confirmed proposal" ("*cynnig a gadarnhawyd*") means a proposal to carry out reconstruction work confirmed under regulation 15;

"developer" ("*datblygwr*") has the meaning given in paragraph 23(2)(b) of Schedule 3;

"development" ("*datblygiad*") has the meaning given in section 55 of the Town and Country Planning Act 1990(**3**);

"national standards" ("*safonau cenedlaethol*") means the national standards for sustainable drainage published under paragraph 5 of Schedule 3;

"reconstruction work" ("*gwaith ailadeiladu*") means work carried out—

(a) to reconstruct a sustainable drainage system to the state it was in before statutory works commenced, or

(b) to construct a new sustainable drainage system in accordance with the national standards to operate in place of the sustainable drainage system affected by statutory works;

"remedial work" ("*gwaith adferol*") means work carried out on a sustainable drainage system—

(a) to remedy damage caused by statutory works, and

(b) to ensure the sustainable drainage system complies with the national standards;

"Schedule 3" ("*Atodlen 3*") means Schedule 3 to the Act;

"statutory undertaker" ("*ymgymerwr statudol*") has the meaning given in regulation 13;

"statutory works" ("*gwaith statudol*") has the meaning given in regulation 14;

(**1**) "Drainage system" is defined in paragraph 1 of Schedule 3.
(**2**) "Construction work" is defined in paragraph 7(1)(a) of Schedule 3.
(**3**) 1990 c. 8.

Certified copy from legislation.gov.uk Publishing

"sustainable drainage system" ("*system ddraenio gynaliadwy*") means those parts of a drainage system that are not vested in a sewerage undertaker pursuant to an agreement under section 104 of the Water Industry Act 1991(**1**);

"working day" ("*diwrnod gwaith*") means a day which is not a Saturday, Sunday, a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**2**), or other public holiday in Wales.

(2) In these Regulations a reference to "construction work" is to be construed as a reference to construction work having drainage implications(**3**).

PART 2

Determination of applications for approval

Refusal to determine application for approval

3.—(1) An approving body(**4**) may refuse to determine an application for approval which is not made in accordance with paragraph 9(2) or 10(2) (as the case may be) of Schedule 3.

(2) Where an approving body refuses to determine an application pursuant to paragraph (1), it must as soon as practicable—

(a) inform the applicant of the refusal and the reasons for it, and

(b) return any application fee accompanying the application.

Duty to consult before determining application for approval

4.—(1) An approving body, when requesting a response from a person consulted under paragraph 11(3) of Schedule 3 (a "consultee"), must specify a date for response which is within 3 weeks beginning on the first working day after sending the request.

(2) Before the end of the period specified under paragraph (1) the approving body and consultee may agree a different date for response.

(3) The approving body may disregard a response that is received from a consultee after the relevant time limit.

(**1**) 1991c. 56. Section 104(1) was substituted by section 96(4)(a) of the Water Act 2003 (c. 37). There are other amendments not relevant for the purposes of these Regulations.

(**2**) 1971 c. 80.

(**3**) "Drainage implications" is defined in paragraph 7(2)(b) of Schedule 3.

(**4**) "Approving body" is defined in paragraph 6 of Schedule 3.

Certified copy from legislation.gov.uk Publishing

(4) In this regulation, "relevant time limit" means—

(a) a period specified under paragraph (1), or

(b) any other period agreed under paragraph (2).

Time limits for determining applications for approval

5.—(1) An approving body must determine—

(a) an application for approval that relates to a development that is the subject of an Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017(**1**) ("the 2017 Regulations") within the period of 12 weeks beginning on the first working day after it receives a valid application, or

(b) any other application for approval within the period of 7 weeks beginning on the first working day after it receives a valid application.

(2) Before the end of the period specified in sub-paragraph (a) or (b) (as the case may be) of paragraph (1), the approving body and applicant may agree a longer time for determining an application.

(3) An approving body which fails to determine an application within the relevant time limit is deemed to have refused the application.

(4) In this regulation—

"development" ("*datblygiad*") has the meaning given in section 55(1) of the Town and Country Planning Act 1990(**2**);

"Environmental Impact Assessment" ("*Asesiad o'r Effaith Amgylcheddol*") has the meaning given in regulation 2 of the 2017 Regulations;

"relevant time limit" ("*terfyn amser perthnasol*") means—

(a) a period specified in paragraph (1), or

(b) any longer period agreed under paragraph (2).

PART 3

Duty to adopt

Notice of adoption decision

6. A notification under paragraph 23(4)(b) or (5) of Schedule 3 must specify—

(**1**) S.I. 2017/567 (W. 136).

(**2**) 1990 c. 8.

Certified copy from legislation.gov.uk Publishing

(a) the reasons for the decision, and

(b) the date of the decision.

Release of non-performance bond where duty to adopt applies

7.—(1) Except where paragraph (3) applies, the approving body must release a non-performance bond within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3.

(2) Paragraph (3) applies if the approving body—

(a) issued a certificate under paragraph 12(2) of Schedule 3, and

(b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

(3) The approving body must, within 4 weeks beginning on the first working day after completing the work—

(a) send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work,

(b) pay the developer any excess, and

(c) release the non-performance bond.

Registration and designation where duty to adopt applies

8. Within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3, an approving body must—

(a) arrange for—

(i) the lead local flood authority(**1**) to include the drainage system in the register maintained under section 21 of the Act,

(ii) a designating authority(**2**) to make a provisional designation under paragraph 7 of Schedule 1 to the Act of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body, and

(b) in accordance with regulations made under section 63 of the New Roads and Street

(**1**) "Lead local flood authority" is defined in section 6(9) of the Act.

(**2**) "Designating authority" is defined in paragraph 1 of Schedule 1 to the Act.

Certified copy from legislation.gov.uk Publishing

Works Act 1991([1]), give notice of intention to designate under that section any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.

PART 4

Where duty to adopt does not apply

Single property exception

9. For the purposes of paragraph 18(1) or (2) of Schedule 3 a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that, following completion of the construction work, will be owned, managed or controlled by—

(a) a single person, or

(b) two or more persons together.

Release of non-performance bond where duty to adopt does not apply

10.—(1) Except where paragraph (3) applies, an approving body must release a non-performance bond within 4 weeks beginning on the first working day after completion of a drainage system that is constructed in accordance with approved proposals.

(2) Paragraph (3) applies if the approving body—

(a) issued a certificate under paragraph 12(2) of Schedule 3, and

(b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

(3) The approving body must, within 4 weeks beginning on the first working day after completing the work—

(a) send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work,

(b) pay the developer any excess, and

(c) release the non-performance bond.

(4) In this regulation—

"approved proposals" ("*cynigion a gymeradwywyd*") means proposals approved under

(1) 1991 c. 22. Section 63(5) was inserted by paragraph 27 of Schedule 3 to the Act.

Certified copy from legislation.gov.uk Publishing

paragraph 7(1) of Schedule 3, including any conditions of approval;

"drainage system" ("*system ddraenio*") is to be construed as a drainage system to which the duty to adopt does not apply.

Notification of voluntary adoption

11.—(1) An approving body must give any notification under paragraph 24(2) of Schedule 3 as soon as practicable after deciding to adopt a drainage system to which the duty to adopt does not apply.

(2) The notification must specify—

(a) the reason for adoption, and

(b) the date of adoption.

Registration and designation following voluntary adoption

12. Within 4 weeks beginning on the first working day after giving a notification under paragraph 24(2) of Schedule 3, an approving body must arrange for—

(a) the lead local flood authority to include the drainage system in the register maintained under section 21 of the Act, and

(b) a designating authority to make a provisional designation under paragraph 7 of Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body.

PART 5

Works on public land

Meaning of "statutory undertaker"

13. For the purpose of paragraph 28(3)(a) of Schedule 3, "statutory undertaker" means a person entitled under a provision of an enactment listed in regulation 16 to carry out statutory works on public land.

Meaning of "statutory works"

14. For the purpose of paragraph 28(3)(b) of Schedule 3, "statutory works" means works that may be carried out by a person under any of the following provisions—

Certified copy from legislation.gov.uk Publishing

(a) section 159 of the Water Industry Act 1991(**1**) (power to lay, inspect, maintain etc. pipes);

(b) Schedule 4 to the Gas Act 1986(**2**) (power to dig up streets);

(c) paragraph 10(4) of Schedule 4 to the Electricity Act 1989(**3**) (power to make boreholes);

(d) Schedule 3A to the Communications Act 2003(**4**).

Giving notice of statutory works and proposals for reconstruction work

15.—(1) Except in an emergency, a statutory undertaker must not commence statutory works that will or may affect the operation of a sustainable drainage system on any public land unless, at least 4 weeks before the statutory works are commenced, it gives notice to the approving body for that drainage system of—

(a) the proposed statutory works, and

(b) the proposal to carry out reconstruction work.

(2) Notice given under paragraph (1) must expire on the working day before the statutory works are to commence.

(3) If the statutory works are commenced in an emergency, the statutory undertaker must as soon as is practicable after the statutory works are commenced give notice to the approving body of—

(a) the commencement of the statutory works, and

(b) the proposal to carry out reconstruction work.

(4) Reconstruction work may not be commenced unless the approving body has confirmed the proposal to carry out the reconstruction work.

(5) Unless the approving body has notified the statutory undertaker to the contrary, a proposal to carry out reconstruction work is taken to be confirmed—

(a) for a proposal notified under paragraph (1)(b), 4 weeks beginning on the first working day after the notice is given;

(**1**) 1991c. 56. Section 159 was amended by section 97(1) and (5) of the Water Act 2003 (c. 37).

(**2**) 1986 c. 44. Schedule 4 was amended by Schedule 6, Part 1, paragraphs 1 and 2(1) to the Utilities Act 2000 (c. 27) and by Schedule 8, paragraph 119 to the New Roads and Street Works Act 1991 (c. 22). There are other amendments not relevant to these Regulations.

(**3**) 1989 c. 29.

(**4**) 2003 c. 21. Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

Certified copy from legislation.gov.uk Publishing

(b) for a proposal notified under paragraph (3)(b), 48 hours after the notice is received by the approving body.

(6) The statutory undertaker must as soon as reasonably practical after carrying out reconstruction work notify the approving body of the date the statutory works were completed.

Requirement to undertake remedial work

16.—(1) If a statutory undertaker fails to carry out reconstruction work in accordance with the confirmed proposal, the approving body may require the undertaker to carry out remedial work within a specified timescale.

(2) If a statutory undertaker fails to comply with a requirement under paragraph (1), the approving body may—

(a) carry out remedial work, and

(b) recover as a debt from the undertaker any costs incurred in carrying out that work.

Statutory works to comply with the national standards

17.—(1) Within 12 months after statutory works are completed, the approving body must decide if it is satisfied that the requirements in paragraph (2) are met.

(2) The requirements are that—

(a) a reconstructed or new sustainable drainage system functions in accordance with the confirmed proposal,

(b) a new sustainable drainage system, if not constructed in accordance with the confirmed proposal, complies with the national standards, or

(c) a reconstructed sustainable drainage system, if not constructed in accordance with the confirmed proposal, is reconstructed to the state it was in before the statutory works were commenced.

(3) If an approving body is not satisfied that the requirements in paragraph (2) are met, it may require the statutory undertaker to carry out reconstruction work or remedial work within a specified timescale.

(4) If a statutory undertaker fails to comply with a requirement under paragraph (3), the approving body may—

(a) carry out remedial work, and

(b) recover as a debt from the undertaker any costs incurred in carrying out that work.

Certified copy from legislation.gov.uk Publishing

Hannah Blythyn
Minister for Environment under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
10 October 2018

Schedule 3 of the Flood and Water Management Act 2010 for sustainable drainage, explanatory memorandum, incorporating the regulatory impact assessment and explanatory notes, October 2018

© Crown copyright 2018 WG36003 Digital ISBN 978 1 78964 146 2
Mae'r ddogfen yma hefyd ar gael yn Gymraeg / This document is also available in Welsh.

Explanatory Memorandum to:

1. **The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018**
2. **The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018**
3. **The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018**
4. **The Sustainable Drainage (Enforcement) (Wales) Order 2018**
5. **The Sustainable Drainage (Appeals) (Wales) Regulations 2018**

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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the:

1. The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018
2. The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018
3. The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018
4. The Sustainable Drainage (Enforcement) (Wales) Order 2018
5. The Sustainable Drainage (Appeals) (Wales) Regulations 2018

I am satisfied that the benefits justify the likely costs.

Hannah Blythyn AM
Minister for Environment **15 October 2018**

CONTENTS

<u>PART 1 – Explanatory Memorandum</u>

1. Description
2. Matters of special interest
3. Legislative background
4. Purpose and intended effect of the provisions
5. Consultation

<u>PART 2 – Regulatory Impact Assessment</u>

6. Policy options considered
7. Cost-benefit analysis of options
8. Summary of responses to consultations and the Government response
9. Competition assessment
10. Specific impact assessments
11. Post implementation review

<u>Annex 1 – Housing development</u>
<u>Annex 2 – Commercial and industrial development</u>
<u>Annex 3 – Developers in Wales</u>

PART 1 – Explanatory Memorandum

1. Description

1.1 Schedule 3 of the Flood and Water Management Act 2010 (the 2010 Act) relates to provisions for sustainable drainage (SuDS). These include the establishment of a SuDS Approving Body (SAB) to be set up within the local authority alongside their lead local flood authority (LLFA) duty. SAB approval will be required before construction of drainage systems can commence on new and redeveloped sites. Provided appropriate statutory National SuDS Standards (SuDS standards) are met, the SAB will be required to adopt and maintain the approved SuDS that serve more than one property.

1.2 SuDS can provide a range of benefits, including *reducing damage from flooding, improving water quality, protecting and improving the environment, improving health and well-being, and ensuring the stability and resilience of drainage systems.* These are consistent with both the well-being goals and the sustainable development principles contained within the Well-being of Future Generations (Wales) Act 2015[1]. They are also consistent with the Natural Resources Policy for Wales[2].

1.3 SuDS, in contrast to conventional piped drainage, seek to manage rainfall in a way similar to natural processes, making use of the landscape and natural vegetation to control the flow and volume of surface water. To date, the use of SuDS on new developments has been non-mandatory. As a result, the use of SuDS is limited and systems are not always compliant with SuDS Standards[3]. This is due, in large part, to uncertainty around adoption and ongoing maintenance.

1.4 This is a single explanatory memorandum for the suite of Statutory Instruments needed to implement Schedule 3 of the 2010 Act. Once commenced these instruments, together [with the relevant provisions in Schedule 3] provide for the following:

- Establish a SuDS Approving Body (SAB) in county and county borough councils.
- Provides that drainage systems for managing rainwater (including rainwater, snow and other precipitations) for new developments must be approved by the SAB before construction begins.
- Requires the Welsh Ministers to publish National SuDS Standards (SuDS Standards) for the design, construction, operation and maintenance of SuDS. In order to be approved by the SAB the proposed drainage system must meet the SuDS Standards.
- Places a duty on the SAB to adopt and maintain approved SuDS that serve more than one property. In order to be adopted by the SAB the drainage system must be constructed and function as approved in accordance with the SuDS Standards.
- Inserts a new section 106A into the Water Industry Act 1991 which supplements the existing provisions in section 106 of that Act making the right to connect

[1] Welsh Government (2015) Well-being of Future Generations (Wales) Act 2015
[2] Welsh Government (2017) Natural Resources Policy
[3] Welsh Government (2016) Recommended non-statutory standards for sustainable drainage (SuDS) in Wales

surface water to public sewers conditional on the drainage system being approved by the SAB as meeting the SuDS Standards.
- Sets out Sewerage Undertakers, Natural Resources Wales, British Waterways and Highway Authorities as statutory consultees to the SAB.
- Establishes a SAB enforcement and appeals regime.
- Provides a mechanism for the recovery of reasonable costs incurred by the SAB in carrying out its function.

1.5 The Order commencing Schedule 3 of the Flood and Water Management Act 2010 for Wales was made on 1 May 2018. The legislation, along with the regulations necessary for its implementation, will come into effect on 7 January 2019. This is to give sufficient time to local authorities to establish the SAB approval mechanism. It is also to give developers time to become aware of the changes and prepare for mandatory SuDS Standards and the requirement for SAB approval before beginning construction.

1.6 It is proposed that the requirement for SAB approval will not apply to single dwellings and developments with a construction area of less than 100 square meters.

1.7 Transitional provisions have been inserted so that after the coming into force date SAB approval will not be required for the following:

- New developments that were already granted planning permission before the coming into force date, or
- New developments with one or more reserve matters where an application for approval of the reserve matter(s) is made within the period of 12 months after the coming into force date, or
- New developments where a valid planning application has been submitted before the coming into force date.

1.8 Exemption provisions have been inserted so that SAB approval will not be required for the following:

- Construction related to major roads (built by the Welsh Government), Network Rail railways and activities of internal drainage boards (delivered by Natural Resources Wales).

- Permitted developments which involve the construction of a building or other structure covering an area of land of less than 100 square meters.

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

2.1 The 2010 Act is an existing UK Act of Parliament, these Statutory Instruments together are needed to implement Schedule 3 of the 2010 Act in Wales and apply only to Wales. The Flood and Water Management Act 2010 (Commencement no.2) (Wales) Order 2018 was made on 1 May 2018. The Order commenced Schedule 3 of the Act with effect from the day after the day on which it was made, for the purpose of making subordinate legislation, and for remaining purposes with effect from 7 January 2019.

2.2 Schedule 3 of the 2010 Act could apply in England but has not been commenced. SuDS measures in England remain under review by the UK Government and have been the subject of scrutiny by the Environment, Food and Rural Affairs (EFRA) Parliamentary Committee. The Committee concluded the UK Government's policy on SuDS is failing and made recommendations on the need to make standards for SuDS mandatory to improve the quality of SuDS schemes.

2.3 The UK Government has since published a review[4] on the application and effectiveness of its approach, which seeks to implement SuDS on major new developments and to prioritise the use of SuDS in areas at risk of flooding through non statutory planning policy. A number of findings have emerged as summarised below:

:

- 80% of adopted Local Planning Authorities (LPAs) local plan policies reflected the policy that SuDS are to be provided in major new developments.
- 70-75% of LPAs have **no** monitoring or reporting of the take-up of SuDS.
- A considerable number of LPAs reported their time, expertise and resources were under pressure with assessing planning applications.
- The report noted that Lead Local Flood Authorities (LLFAs) were concerned that SuDS were not being incorporated at the master planning stage, with a lack of detail and consideration at early planning.
- The report noted a shortfall where LPAs are not ensuring that maintenance arrangements for SuDS schemes are put in place for the life-time of the development.

3. Legislative background

3.1 Schedule 3 of the 2010 Act is given effect by Section 32 of that Act. Section 49(3)(i) of the 2010 Act provides that Section 32 and Schedule 3 come into force in relation to Wales in accordance with provisions made by order of the Welsh Ministers.

3.2 Schedule 3 of the 2010 Act confers powers on the Welsh Ministers to make subordinate legislation in relation to Wales on a number of matters:

- Paragraph 7(4) contains provision amongst other things, for regulations to be made about exemptions to the requirement for approval. Paragraph 11(5) provides for regulations to be made about timing and procedure for determination of applications for approval, including the consequences of failure to comply with them.

- Paragraph 13(1) requires regulations to be made for fees for applications for approval.

- Paragraph 18(3) provides that regulations may be made for determining when a drainage system is to be treated as designed for a single property. Paragraph 20 provides that additional exceptions to the adoption duty may be made by Order.

[4] https://www.gov.uk/government/publications/a-review-of-the-application-and-effectiveness-of-planning-policy-for-sustainable-drainage-systems

Paragraph 23(7) and 24(5) provide that regulations may be made about the timing and manner of notice given by the SAB concerning adoption.

- Paragraph 14(1) requires an order to be made for the enforcement of the requirement for approval.

- Paragraph 25(1) requires regulations to be made providing a right of appeal against certain decisions made by the SAB.

3.3 The Assembly legislative procedure for making the instruments is as follows:

- By virtue of section 48(5) of the 2010 Act, the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018, The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018, and The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018 follow the negative resolution procedures.

- By virtue of section 48(6)(a) of, and paragraphs 14(5)(b) and 25(3)(b) of Schedule 3 to the 2010 Act, the Sustainable Drainage (Enforcement) (Wales) Order 2018 and the Sustainable Drainage (Appeals) (Wales) Regulations 2018 follow the affirmative resolution procedure.

3.4 These instruments deal with surface water drainage in Wales only. This differs from all other aspects of sewerage and drainage which are provided by sewerage undertakers under the Water Industry Act 1991 (WIA). Under the WIA, Welsh Ministers are responsible for the regulation of water and sewerage undertakers who operate wholly or mainly in Wales and the Secretary of State has responsibility for water and sewerage companies operating wholly or mainly in England. As a result, for drainage services provided by the water and sewerage undertakers, those parts of England served by Dŵr Cymru Welsh Water are the responsibility of Welsh Ministers. Related provisions in the Wales Act 2017 once commenced will align regulation of sewerage undertakers with the geographical national border, instead of wholly or mainly.

3.5 Schedule 3 of the Act uses the term “Minister” to denote both the Welsh Ministers and the Secretary of State. The term “Minister” is used in this document to denote the Welsh Ministers.

4. Purpose and intended effect

The problem the legislation seeks to address

4.1 Around 163,000 properties in Wales are at risk of surface water flooding (120,000 residential & 43,000 non-residential)[5]. The cost of damages associated with local

[5] Natural Resources Wales Reports, Evidence and Data on Flooding: https://naturalresources.wales/evidence-and-data/research-and-reports/reports-evidence-and-data-on-flooding/december-floods-fact-sheet/?lang=en

flooding events in Wales was found to be as much as £71 million for the period 2011-2014[6].

4.2 The risk of flooding is increasing, largely due to climate change and urbanisation. Surface runoff can be a major source of pollution; both directly and from overwhelmed sewers discharging into rivers. Pressure to take action on water quality, for example by increasing the capacity of the sewerage system, also stems from the present need to comply with EU legislation, in particular the Water Framework Directive.

4.3 According to Natural Resources Wales[7] "*there is distinct lack of 'public clarity' over responsibilities ('who does what'), particularly in relation to the management of (coastal and) surface water flooding*" "the creation of sustainable drainage approval bodies" is identified as a key measure which could help improve flood risk management. **The approval and adoption of SuDS schemes by an approving body established in local authorities is an objective of the national strategy for flood risk management in Wales[8].** Of particular concern is the current lack of clear responsibilities for maintaining and operating surface water drainage systems that are not defined as traditional piped or sewered drains that connect to the public sewer system or otherwise.

4.4 SuDS reduce the rate and volume of surface runoff from developments to more closely match 'greenfield' sites. This generally means lower or slower discharges compared with conventional piped drainage. They are a more sustainable and resilient form of drainage and typical components include ponds, permeable paving and swales[9].

4.5 Schedule 3 of the 2010 Act includes a provision that requires developers to seek drainage approval from a SAB before starting any construction work that has drainage implications. The SAB must determine if the application meets mandatory SuDS Standards. Under the legislation all approved SuDS which serve more than one property must be adopted and maintained by the SAB.

4.6 Exemptions to the regime may be allowed by regulation and the 2010 Act specifically allows for phased commencement to manage impacts on Local Authorities and businesses.

4.7 The Pitt review[10], which followed the 2007 floods, made specific recommendations with regards to surface runoff, including the need to:

- Clarify the responsibility for the adoption and maintenance of sustainable drainage systems; and
- Remove the automatic right to connect to surface public water sewers (Section 106 and Section 115 of the Water Industry Act 1991).

Which will be implemented by commencing Schedule 3 to the 2010 Act.

Why Government needs to intervene

[6] Natural Resources Wales Reports, Evidence and Data on Flooding: https://naturalresources.wales/evidence-and-data/research-and-reports/reports-evidence-and-data-on-flooding/december-floods-fact-sheet/?lang=en
[7] https://naturalresources.wales/media/680131/flood-coastal-erosion-risk-management-in-wales-2014-2016.pdf
[8] https://gov.wales/docs/desh/publications/111114floodingstrategyen.pdf
[9] CIRIA (2015) The SuDS Manual (C753)
[10] Cabinet Office (2008) The Pitt Review: Learning the Lessons from the 2007 Floods

4.8 The justification for, and use of, SuDS is well established in the planning system, which includes TAN 15 and Approved Document H of the Building Regulations, as well as voluntary standards such as the Home Quality Mark. However, the current uptake of SuDS is low, limiting the potential contribution of SuDS to mitigating flood risk from surface run-off and the risk of sewer overload, or to protecting water quality.

4.9 In the past, most developments have been built with separate drains for foul water and surface runoff, although some 70% of the UK's sewer network is combined, so many surface water drains connect into existing combined sewers. A relatively low proportion (around 20-40% based on anecdotal evidence) can be described as SuDS that comply with national standards[11]. The market has been slow in voluntarily integrating SuDS into development plans. The market has been constrained by:

- Information failure – currently, there is a lack of consistent use of recommended standards. Despite the existence of good practice, bad practice is also evident and contributes to a perception that SuDS are expensive and entail non-essential costs.

- Externalities – there is a disconnect between those who manage and/or pay for surface water drainage and those who benefit from sustainable management. The benefits are often public and generally accrue further downstream, i.e. some way away from the point at which the rain falls and is dealt with.

- Lack of a statutory requirement and coherent arrangements for the adoption and ongoing maintenance of drainage - currently, developers or local authorities have to make arrangements to finance the ongoing maintenance of SuDS, where they are built. However, the arrangements for this are highly variable and ad-hoc.

4.10 In addition to the constraints mentioned above, there are also weak market drivers for the management of surface water runoff:

- The legacy of draining surface water runoff into our sewers means that foul water and surface runoff are often seen as a single problem. However, over recent years there has been little change in the amount of water each person uses at home[12] i.e. little improvement in water efficiency per person. In contrast, Ofwat predict a significant increase in sewer flooding from climate change going forward[13]. Thus the influence of surface runoff (influenced by the pattern of climate change, as well as urban creep) on our sewers will increase relative to the amounts of foul water to be handled.

- Current arrangements for flood insurance cover are highly cross-subsidised by those not at risk and this dis-incentivises the uptake of management measures, including SuDS.

---

[11] Welsh Government (2016) Recommended non-statutory standards for sustainable drainage (SuDS) in Wales

[12] Environment Agency (2008) Water resources in England and Wales research on current state and future pressures http://webarchive.nationalarchives.gov.uk/20140329213237/http://cdn.environment-agency.gov.uk/geho1208bpas-e-e.pdf

[13] Ofwat has published research illustrating the predicted scale of increased sewer flooding risks due to climate change https://www.ofwat.gov.uk/wp-content/uploads/2015/11/rpt_com201106mottmacsewer.pdf

Policy Objective

4.11 Commencement of Schedule 3 is intended to:

- Move provision of SuDS from a non-statutory to a statutory requirement;
- Ensure compliance with and consistency of standards for long term surface water management;
- Provide certainty for developers that SuDS will be adopted without the need for lengthy negotiation or significant expense;
- Reduce the risk of localised, surface water flooding;
- Mitigate pollution that may arise from surface water runoff;
- Reduce extra load on public sewers and the need for additional capacity; and
- Help safeguard water supplies.

4.12 Other, indirect benefits include:

- Help achieve the goals of the Well-being of Future Generations (Wales) Act 2015, and in particular the **Welsh Government Well-being Objective** to connect communities through sustainable and resilient infrastructure.
- Contribute to the commitment to take action to improve management of our water environment, made in the **Welsh Government Programme for Government 2016-2021.** This also identifies green infrastructure (such as SuDS) as an opportunity to address poverty, housing and infrastructure drivers, whilst meeting broader longer term objectives.
- Contribute to the commitment to implement nature based solutions, a national priority in the Welsh Government **Natural Resources Policy (2017)** for Wales, and related wider long-term **Prosperity for All** objectives including supporting sustainable communities, promoting green growth, supporting a more resource efficient economy and maintaining healthy, active and connected communities[14].
- Contribute to the goals of the **Water Strategy for Wales**, which sets out strategic direction for water policy over the next 20 years and beyond.
- Contribute to delivering objectives of the **National Strategy of Flood and Coastal Erosion Risk Management in Wales**.
- Achieve compliance with the **Planning (Wales) Act 2015**, which imposes duties requiring "*sustainable development*" consistent with SuDS features on new developments.
- Achieve compliance with the duty to maintain and enhance bio-diversity and promote the resilience of eco-systems, established under the **Environment (Wales) Act 2016**.
- Help meet the goals of the **EU Water Framework Directive**.
- Reduce air pollution through the increased use of green infrastructure, contributing to achieving the **Air Quality Standards (Wales) Regulations 2010**.
- Help meet **Welsh Housing Quality Standards**, which state that new homes constructed for Registered Social Landlords (housing associations) for both social housing and sale on the open market must be "*located in attractive and safe*

[14] In particular, the Policy states that "increasing access to green spaces and providing community facilities to bring people together is highlighted as a 'best buy' to prevent mental ill health and improving mental well-being by Public Health Wales. The World Health Organisation suggests that public health approaches with health, social, economic and environmental benefits, such as safe green spaces and active transport, have been shown to be cost-effective with potential returns on investment. Studies also suggest that people living closer to good-quality green space are more likely to have higher levels of physical activity, and are more likely to use it and more frequently".

environments", use "soft and hard landscaping with planting in protected areas" and provide "adequate, practical and maintainable communal areas";

- Help Wales to achieve **carbon reduction objectives**[15] and adapt to climate change.
- Increase wetland habitats and urban green space contributing to the aims of the **National Biodiversity Strategy and Action Plan for Wales** (the Nature Recovery Plan for Wales) and the commitments to the **Habitats and Birds Directives**.

Why SuDS?

4.13 Flood damage from surface runoff is predicted to increase due to climate change and continued urbanisation[16].

4.14 SuDS can reduce this increase by storing runoff, slowing the rate at which runoff enters water bodies and helping runoff infiltrate into the ground. In case studies SuDS has been shown in particular circumstances to reduce runoff by as much as 50%[17].

4.15 The majority of towns and cities in Wales were constructed with combined sewers where surface runoff mixes with foul water and is then transported to a treatment plant that extracts clean water. In around half of the network, current sewerage systems are at or beyond capacity.

4.16 In these situations, during periods of intense rain, the combined sewers quickly become full. When this happens, untreated sewage and foul water discharges to streams and rivers through engineered overflows (intended to prevent similar flooding in properties). During floods, this will combine with flood waters and in a small number of cases it can also flood homes directly.

4.17 The extent of legal discharges is limited by Natural Resources Wales permits and is constrained by the following directives:

- Bathing Water Directive;
- Shellfish Directive;
- Water Framework Directive; and
- Urban Waste Waters Treatment Directive.

4.18 The sewage network in England and Wales is valued at around £174 billion, substantial additional sewerage capacity is needed to address the predicted increase in flooding due to climate change, urban creep and new connections. However if new connections were not made (through introducing SuDS) this will reduce the pressures on the sewers which could save billions in investment from water and sewerage companies.

[15] Consistent with the advice set out Committee on Climate Change (2017) Advice on the Design of Welsh Carbon Targets

[16] The Welsh Government National Strategy for Flood and Coastal Erosion Risk Management 2011 https://gov.wales/docs/desh/publications/111114floodingstrategyen.pdf

[17] See for example EPC (2017) Sustainable Drainage Systems on new developments, analysis of evidence https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf

4.19 SuDS provide an opportunity to avoid many of the new connections and to develop an alternative infrastructure to public sewers – offering significant savings in investment.

5. Consultation

5.1 In developing the evidence to support the Regulatory Impact Assessment (RIA)[18], consultation has taken place with a wide range of organisations and sectors, including:

- Local authorities
- Developers and home builders
- Water and sewerage companies
- Natural Resources Wales
- Non-government organisations and the third sector
- Consumer bodies
- Academia
- Sector professionals

5.2 The RIA has been completed alongside this Explanatory Memorandum. Further details of the consultations undertaken are included in the RIA below (Part 2).

[18] See for example EPC (2017) Sustainable Drainage Systems on new developments, analysis of evidence https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf.

PART 2 – Regulatory Impact Assessment

Section	Page
Policy options considered	13
The preferred option	14
Cost-benefit analysis of options	14
Option 1 – Do Nothing	19
Option 2 – Commence Schedule 3 of the 2010 Act	20
Option 3 – Planning Approach	34
Summary of costs and benefits	43
Summary of responses to consultations and the Government response	45
Competition assessment	50
Specific impact assessments	51
Post implementation review	55

Annexes

Annex 1 – Housing development
Annex 2 – Commercial and industrial development
Annex 3 – Developers in Wales

6. Policy options considered

6.1 The Welsh Government has considered three main policy options (Table 1).

Table 1: Summary of policy options considered

Policy option	Name	Description
1	Do nothing	The baseline option, involving continuation of current non-regulatory policy.
2	Commence Schedule 3	Mandatory use of SuDS compliant with national standards on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares).
3	Planning approach	Expectation that SuDS will be provided on all minor and major development wherever this is appropriate and unless demonstrated to be inappropriate. Use of planning conditions or planning obligations to ensure that there are clear arrangements in place for ongoing maintenance over the lifetime of the development.

6.2 In addition to the three options outlined above, a number of other options were discussed but excluded from full consideration in the RIA. However, some of these may not be inconsistent with the policy options set out above, and these are discussed in the broader consultation paper. These options, and the reason for their exclusion, are shown in Table 2.

Table 2: Options discussed but excluded from full consideration in RIA

Option	Description	Reason for exclusion
Water company adoption	Water and sewerage company (WaSC) required to adopt, and responsible for maintaining, certain SuDS (e.g. below ground, proprietary) compliant with standards.	Options for voluntary adoption of SuDS and maintenance by water company are considered in the broader consultation paper. Non-voluntary adoption would need a change in primary legislation (S104 of the Water Industry Act 1991), and legislation to remove automatic right to connect. Creates incentive to install systems where adoption more certain (likely to be below ground, as in Scotland).
Amended Schedule 3	SAB established for SuDS approval, but SuDS adopted by different groups, such as local authority, WaSC or housing association,	Options for amending Schedule 3, e.g. through regulations and orders, are discussed in broader consultation paper.

	depending on functionality, benefits, etc.	High risk of differing approaches in different areas and duplication of standards. Also proliferation of bodies with SuDS responsibilities likely to create confusion.
Sewers for adoption	Update Sewers for Adoption (guidance for design and construction of sewers that will be adopted by Sewerage Undertakers in accordance with Section 104 of the Water Industry Act 1991) to include SuDS.	No mandatory requirement, so unlikely to significantly change current situation.

What is the preferred option?

6.3 Option 2 is the preferred option. The NPV (net present value) for Option 2 is estimated to be £164.9m (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society. The NPV for Option 1 is zero. The NPV for Option 3 is estimated to be £54.3m, i.e. around one-third of the benefits of the preferred option (although the range at £20.4m to £460.4m overlaps with Option 2.

7. Cost benefit analysis of options

7.1 We have used guidance provided by HM Treasury[19] to carry out a Cost Benefit Analysis (CBA) for the three policy options.

7.2 The appraisal period is assumed to run from 2018 to 2026. The final year (2026) was chosen as this correlates with the end-point of many of the local development plans in Wales, i.e. there is greater certainty regarding the scale and extent of housing and other development over this period. Of course, a longer appraisal period could be justifiable and may be appropriate, although the scale and extent of new development and exogenous changes would be more uncertain. Nevertheless, adopting a longer period would give greater importance to those impacts recurring over time. This is examined through sensitivity analysis.

7.3 The impacts of the options have been classed as either:

- One-off – impacts are assumed at the start of the appraisal period (2018); or
- Recurring – impacts are assumed to occur each year (from 2018 to 2026 inclusive).

[19] HM Treasury (2011) Green Book

7.4 In accordance with HM Treasury guidance, a discount rate of 3.5% has been applied to future costs and benefits, in order to calculate the present value (PV) of the impacts. Changing this rate is examined through sensitivity analysis.

7.5 Total estimated figures given throughout the RIA are rounded so may not sum precisely with values in supporting tables.

7.6 The focus in the RIA is on additional/marginal costs and benefits associated with options 2 and 3. Therefore, any costs/benefits under Option 1 (the 'Do Nothing' option) are not additional to current situation and are assumed to be zero.

7.7 The costs and benefits accruing to a number of key groups and organisations have been considered. These are

- Welsh Government
- Local authorities/SABs
- Developers
- Water and sewerage companies
- Property owners/occupiers
- Natural Resources Wales
- General population

7.8 The specific impacts considered in the RIA draws on engagement with stakeholders, a range of previous work, including Defra (2010)[20], the SuDS Manual[21] and the CIRIA Benefits of SuDS Tool (BeST), and expert knowledge. The full list of impacts considered is shown in Table 3.

Table 3: Impacts considered (full list)

Potential impacts	Description
Construction	Construction of compliant SuDS
Fees (developers)	Application/approval/certification/inspection/adoption fee
Land take	Additional land take from SuDS
Start-up (developers)	Capacity building, upskilling and training
Connection charges (developers)	Avoided surface water connection applications/charges
Adoption, O&M (developers)	Reduced operation and monitoring (O&M), and certainty of adoption, leading to efficiencies in planning process and development, as well as reduced or simplified interaction with a complex array of interests, including the WaSC, Planning

[20] Commencement of the Flood and Water Management Act 2010, Schedule 3 for Sustainable Drainage: Impact Assessment

[21] CIRIA (2015) The SuDS Manual (C753)

	Authority, Highways Authority and NRW.
Start-up (local authorities/SABs)	Establish SAB, including administration, accounting, legal fees, registration charges, advertising, promotional activity, engagement, employee training, etc
O&M (local authorities/SABs)	Operation and maintenance of SuDS
Adoption (local authorities/SABs)	Additional duty/responsibility to maintain, potentially offset by reduced risk from orphaned or abandoned schemes
Revenue (local authorities/SABs)	Revenue from application/approval fees
Monitoring & enforcement (local authorities/SABs)	All aspects of monitoring and enforcement of SuDS, including appeals and ensuring proper functioning (e.g. porous pavements and soakaways)
Consultation (local authorities/SABs)	Additional costs of consultation as LLFAs become statutory consultee on all planning applications in relation to surface water drainage. Also, costs of additional planning conditions/funding agreements for construction and maintenance of the drainage system on all developments.
Consultation (others)	Additional costs of consultation on planning applications for statutory and other consultees. It is likely that most consultation requirements will be dealt with through standing advice, as with existing planning processes. Therefore, no significant additional costs are expected as a result of the proposed changes.
Asset base (WaSC)	Opportunity cost of foregone increase in asset base, on which companies can earn a return
Connection charges (WaSC)	Reduced revenue from surface water connection applications/charges
Infrastructure	Reduced/deferred future investment need in sewerage infrastructure, reduced O&M costs for conventional sewers (e.g. pumping, treatment) and improved ability to take an integrated approach to urban water systems.
Monitoring & enforcement (WaSC)	Reduced need for monitoring and enforcement of sewer connections
Surface water charges	Reduction in charges paid by property owners/occupiers for surface water drainage
Flood risk	Avoided damage and associated impacts (e.g. on psychological health) from reduced flood risk
Amenity	Enhanced attractiveness and liveability of developments

O&M (property owners/occupiers)	Added responsibilities for surface water in curtilage
Building temperature	Impact of SuDS on cooling (summer) or insulation (winter)
Crime	Reduced crimes against property or people
Traffic calming	Risk of road accidents or street-based recreation opportunities
Infraction	Avoided risk of infraction of water quality related EU directives
Growth	Economic growth
Enabling development	Contribution to affordable housing targets
Appeals	Costs of establishing and running Planning Inspectorate (PINS) to deal with appeals
Wider benefits	Related to goals in the Well-being of Future Generations Act 2015, including prosperous, resilient, healthier Wales, etc
Rainwater harvesting	Reduced flows, pollution or mains consumption
Tourism	Attractiveness of tourist sites
Regulation	Improved ability of NRW to tackle diffuse pollution, surface water flood risk and deliver ecosystem benefits
Flood risk	Increased risk of flooding in public areas (e.g. roads) due to exceedance
Biodiversity	New or enhanced habitats and opportunities for wildlife
Carbon	Reduction or sequestration of greenhouse gas emissions resulting from reduced pumping/treatment or new/additional planting
Education	Increased opportunities for learning and development
Climate change	Enhanced ability to mitigate or adapt to the expected impacts of climate change
Water quantity	Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity
Health	Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs)
Recreation	Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports)
Water quality	Reduced sewer/surface water overflows and natural infiltration of surface water before it enters watercourses, leading to improved

	or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive

7.9 A proportionate approach has been taken, with the impacts above 'screened' for significance. Where costs and benefits are likely to be small, or impacts considered likely to affect only a few organisations/firms, or many organisations/firms to a very small degree, these have not been valued. Significant environmental and social impacts have been valued using BeST.

7.10 In many cases, there is no overall net change anticipated, although some degree of redistribution (a 'transfer' of costs and benefits from one group to another) is expected. In these cases, the effects have been assessed in the RIA.

7.11 For the purposes of the RIA, which is concerned with net impacts across the economy, aggregated estimates of costs and benefits across the country are appropriate. However, we recognise that individual groups and organisations associated with the list in paragraph 7.7 will be impacted differently by the proposals.

7.12 Each valued impact in the RIA comprises two components:

- A quantified estimate of the annual impact; and
- A monetary unit value.

These are multiplied together to calculate a monetised annual value for each significant impact. Where possible, low and high estimates for each component are considered (as well as the central or best estimate). As a result, the RIA includes a range for each monetised annual value. Further sensitivity analysis, considering changes to the key parameters of the discount rate and the assessment period, has also been undertaken.

7.13 In the analysis and presentation that follows, positively valued impacts indicate a benefit, whilst impacts with a negative value indicate a cost.

Assumptions

7.14 The key assumptions applied in undertaking the RIA are set out in Table 4.

Table 4: Key assumptions in RIA

	General assumptions
1	Administrative changes expected to be cost neutral
2	All valued impacts are presented as benefits. Therefore, costs appear as negative values.
3	Significant wider benefits assessed using BeST. These include amenity, education and carbon.
4	Commercial and industrial developments include those over 0.1ha (1,000m^2).

5	Benefits are assumed to start accruing from 2018, the first year of the appraisal period.
6	The timescale for the assessment is 2026, to maintain consistency with the end date for the majority of local development plans in Wales.
7	Historic values have been updated to 2016 prices using Bank of England online inflation calculator.
8	Weighted average salary and salary-related costs for employers (e.g. NI contributions), of SAB officer ranges from £30,369 (av salary of civil engineer) to £61,467 (Defra, 2010) (£72,326 in 2016 prices), mean (central) £51,348. Salaries likely to vary across Wales.
9	SAB running costs - Based on Defra (2010), we assume 1 Full Time Employee (FTE) per 100 major or 150 major and minor drainage applications/ year.
10	The average number of applications requiring SAB approval will be between 100 and 150 (central estimate 125) per year (though recognising that individual local authorities may see significantly fewer or more applications than this average).
11	Current situation (baseline) includes compliant SuDS on 20% to 40% of new development. Anecdotal evidence suggests that this may be optimistic (so the benefits of the two policy options may be larger than those estimated here).
12	Planning option will lead to compliant SuDS on 30% (low), 40% (central) or 50% (high) of new development
13	Estimates for projections for housing development are set out in Annex 1, and for commercial and industrial development in Annex 2. These projections are generally higher than actual construction over recent years and, as such, may be challenging to achieve.
14	Evidence relating to costs of construction and operation are largely based on EPC (2017) report. This report is based on a comparison of the costs of SuDS and non-SuDS approaches at an overall scheme/development level, rather than the costs of specific or individual measures or technologies.

<u>Option 1: Do nothing</u>

7.15 This is the baseline option and involves a continuation of current non-regulatory policy.

7.16 Although there will be costs and benefits associated with this option (for example due to urban growth or climate change), they are assumed to impact on all options equally. Therefore, they are not considered to be additional and are not analysed in the RIA.

Option 2: Commence Schedule 3

7.17 This is the preferred option and involves the mandatory use of SuDS compliant with national standards on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares).

7.18 A summary of the impacts considered likely under Option 2 is shown in Table 5 below. This also includes the group impacted, a description of the impact, whether the impact is likely to be a cost or a benefit to the impacted group, whether the impact is one-off or recurrent, whether it has been valued and comments setting out the reasons for this.

Table 5: Impacts of Option 2

Group	Impact	Description	Cost or Benefit?	One-off or recurrent?	Value in RIA?	Comments
Developers	Construction	Construction of compliant SuDS	Benefit	Recurrent	Yes	Evidence from EPC (2017) report[22] suggests capital costs are lower for compliant SuDS than for conventional systems. Some of this benefit may accrue to water and sewerage companies, so could also be some redistributional impact.
	Fees	Application/approval/certification/inspection/adoption fee	Cost	Recurrent	Yes	Administrative changes expected to be cost neutral, so costs will be offset by SAB revenue and no overall net change. However, will be redistributional impact so effects need to be assessed.
	Land take	Additional land take from SuDS	Cost	Recurrent	Yes (sensitivity only)	CIWEM (2017) concludes that "*We consider that arguments for not delivering SuDS on the basis of site constraints may be overstated... with good planning there may be no additional requirement for land or that the additional land needed for SuDS can be small and affordable*". If SuDS are planned into developments from the outset, and there is clarity of requirements for SuDS in the planning process, there appears to be no impact on the number of units, and this appears to be a perceived cost which is therefore not valued. However, evidence subsequently provided by the House Builders Federation (HBF), based on information previously provided to Defra, suggests there are examples where SuDS have reduced number of units on developments. This evidence is therefore used for sensitivity analysis.
	Start-up	Capacity building, upskilling and training	Cost	One-off	Yes	Include in RIA

[22] https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf

	Connection charges	Avoided surface water connection applications/charges	Benefit	Recurrent	Yes	May be offset by any potential reduction in water and sewerage company revenue.
	Adoption, O&M	Reduced O&M, and certainty of adoption, leading to efficiencies in planning process and development, as well as reduced/simplified interaction with a complex array of interests, including the WaSC, Planning Authority, Highways Authority and NRW	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
Local authorities/SABs	Start-up	Establish SAB, including administration, accounting, legal fees, registration charges, advertising, promotional activity, engagement, employee training, etc	Cost	One-off	Yes	Include in RIA
	O&M	Operation and maintenance of SuDS	Benefit	Recurrent	Yes	Evidence from EPC report suggests O&M costs are lower for compliant SuDS than conventional systems (so no increase in commuted sums paid to local authorities is expected). Some of this benefit may accrue to water and sewerage companies, so could be some distributional impact.
	Adoption	Additional duty/responsibility to maintain, potentially offset by reduced risk from orphaned or abandoned schemes	Cost or benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Revenue	Revenue from application/approval fees	Benefit	Recurrent	Yes	Administrative changes expected to be cost neutral, so benefits will be offset by developer costs and no overall net change. However, will be redistributional impact so effects need to be assessed.
	Monitoring & enforcement	All aspects of monitoring and enforcement of SuDS, including appeals and ensuring proper functioning (e.g. porous pavements and soakaways)	Cost	Recurrent	Yes	May be offset by any potential increase in water and sewerage company revenue.
Water and sewerage companies	Asset base	Opportunity cost of foregone increase in asset base, on which companies can earn a return	Cost	Recurrent	No	Any savings to companies would be returned to customers through regulatory process, resulting in no net gain.
	Connection charges	Reduced revenue from surface water connection applications/charges	Cost	Recurrent	No	Under this option, most developments would still connect to the foul/combined public sewer, so it is likely that water and sewerage companies would still need to consent and charge for connections and inspection (although companies could see

						reduction in adoption fees). Any potential impacts therefore not valued.
	Infrastructure	Reduced/deferred future investment need in sewerage infrastructure, reduced O&M costs for conventional sewers (e.g. pumping, treatment) and improved ability to take an integrated approach to urban water systems.	Benefit	Recurrent	No	Already largely captured in construction benefit to developers and O&M benefit to local authorities/SABs
	Monitoring & enforcement	Reduced need for monitoring and enforcement of sewer connections	Benefit	Recurrent	No	Under this option, most developments would still connect to the foul/combined public sewer, so it is likely that water and sewerage companies would still have the same asset base and still need to undertake the same level of inspection, monitoring and enforcement. Any potential impacts therefore not valued.
Property owners/occupiers	Surface water charges	Reduction in charges paid for surface water drainage	Benefit	Recurrent	No	Any reduction in charges paid to water and sewerage company likely to be offset by development management charge, so no overall impact.
	Flood risk	Avoided damage and associated impacts (e.g. on psychological health) from reduced flood risk	Benefit	Recurrent	No	Any benefit should be equal for both SuDS and piped systems (unless standards are higher for properties than for sewers, which is unlikely). Therefore, no net benefit anticipated.
	Amenity	Enhanced attractiveness and liveability of developments	Benefit	Recurrent	Yes	Valued in BeST using estimates of willingness of pay of residents for 'street improvements through greening'. These may capture elements of other benefits to the wider population (particularly biodiversity, health, recreation and water quality), so these are not valued separately due to risk of double counting.
	O&M	Added responsibilities for surface water in curtilage	Cost	Recurrent	No	Unlike pipes, SuDS cannot be ignored and, although this may be perceived as an additional cost/nuisance (at least initially), it could equally be a benefit as there is less likelihood/consequence of problems from SuDS. So overall, no net impact assumed.

	Building temp	Impact of SuDS on cooling (summer) or insulation (winter)	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Crime	Reduced crimes against property or people	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Traffic calming	Risk of road accidents or street-based recreation opportunities	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
Welsh Government	Infraction	Avoided risk of infraction of water quality related EU directives	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Growth	Economic growth	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Enabling development	Contribution to affordable housing targets	Benefit	Recurrent	No	Any reduced housing construction costs already counted (under 'developers') and could be offset by possible reduced housing densities (also counted under 'developers')
	Appeals	Costs of establishing and running Planning Inspectorate (PINS) to deal with appeals	Cost	Recurrent	No	PINS work funded by cost recovery on case-by-case basis. No 'set-up' costs or impacts on Welsh Government.
	Wider benefits	Related to WBFG Act goals, including prosperous, resilient, healthier Wales, etc	Benefit	Recurrent	No	Overlaps with impacts on 'general population', so high risk of double counting if included here.
	Rainwater harvesting	Reduced flows, pollution or mains consumption	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Tourism	Attractiveness of tourist sites	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
NRW	Regulation	Improved ability to tackle diffuse pollution, surface water flood risk and deliver ecosystem benefits	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
General population	Flood risk	Increased risk of flooding in public areas (e.g. roads) due to exceedance	Cost	Recurrent	No	Likely to be offset by any reduced risk of hydraulic overload flooding resulting from lower volumes in sewerage system
	Biodiversity	New or enhanced habitats and opportunities for wildlife	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Carbon	Reduction or sequestration of greenhouse gas emissions resulting from reduced pumping/treatment or new/additional planting	Benefit	Recurrent	Yes	Include in RIA
	Education	Increased oportunities for learning and development	Benefit	Recurrent	Yes	Include in RIA
	Climate change	Enhanced ability to mitigate or adapt to the expected impacts of climate change	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.

	Water quantity	Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity	Benefit	Recurrent	No	Not enough evidence to identify or quantify impact robustly.
	Health	Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs)	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Recreation	Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports)	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.
	Water quality	Reduced sewer overflows and natural infiltration of surface water before it enters watercourses, leading to improved or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive	Benefit	Recurrent	No	Not valued due to potential for double counting with amenity benefit to property owners/occupiers.

7.19 Table 6 summarises the PV impacts for Option 2. Each valued impact is considered, in turn, below Table 6. The NPV for Option 2 is estimated to be £164.9 million (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society.

Table 6: Summary table of PV impacts for Option 2 (2018-2026)

Group	Impact	Total PV impact (£ million)		
		Low	Central	High
Developers	Construction	80.3	160.5	955.9
	Fees	- 9.9	- 14.1	- 19.0
	Start-up	- 0.1	- 0.3	- 0.5
	Connection charges	5.6	15.0	27.5
Local authorities/SABs	Start-up	- 0.4	- 0.5	- 0.6
	O&M	- 0.1	0.2	0.3
	Revenue	9.9	14.1	19.0
	Monitoring & enforcement	- 5.0	- 15.3	- 29.9
Property owners/occupiers	Amenity	2.1	4.7	7.5
General population	Carbon	0.1	0.3	0.6
	Education	0.1	0.2	0.6
	TOTAL	**82.6**	**164.9**	**961.4**

7.20 **Developers: Construction of SuDS**

The annual impact on developers associated with the construction of SuDS is as follows.

Residential
Low: £9,594,000
Central: £19,597,000
High: £117,083,000

Commercial and industrial
Low: £606,000
Central: £785,000
High: £4,315,000

These estimates are based on the information provided in Table 7.

Table 7: Impact on developers: Construction of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	5,220	New homes per year	Public Policy Institute for Wales (2015)[23]	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development[24].
	Central	10,010		Housing White Paper (2012)[25]	
	High	12,946		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	1,838	Capex saving per unit £	EPC (2017)[26]	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value
Quantified estimate of impact (commercial & industrial)	Low	330	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)[27]	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	401		As above (mean)	
	High	477		As above (max)	
Monetary value (commercial & industrial)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value

7.21 **Developers: SAB fees**

The annual impact on developers associated with SAB fees is as follows.

Low: - £1,254,000
Central: - £1,787,000
High: - £2,409,000

These estimates are based on the information provided in Table 8.

[23] Public Policy Institute for Wales (2015) Future Need and Demand for Housing in Wales

[24] The figures in the 'value' column have been adjusted to reflect the assumption (low value multiplied by 0.6, central by 0.7 and high by 0.8.

[25] Based on Holmans, A. and Monk, S. (2010) Housing need and demand in Wales 2006–2026. Social Research Number 03/2010. Cardiff: Welsh Government

[26] Sustainable Drainage Systems on new developments, Analysis of evidence including costs and benefits of SuDS construction and adoption. Final Report for the Welsh Government, January 2017. This report is based on a comparison of the costs of SuDS and non-SuDS approaches at an overall scheme/development level, rather than the costs of specific or individual measures or technologies. It also encompasses all expected capital costs (e.g. off-site disposal of excavation arisings).

[27] ONS, NEWOGOR New Orders for Construction: by Government Office Region (Wales), accessed April 2017

Table 8: Impact on developers: SAB fees

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	- 597	Fee per application	Defra (2010)	Original value (£507) updated to 2016 prices
	Central	- 681			Average of low and high
	High	- 765			Original value (£650) updated to 2016 prices

7.22 **Developers: start-up**

The one-off impact on developers associated with start-up costs is as follows.

Low: - £76,766
Central: - £259,593
High: - £548,472

These estimates are based on the information provided in Table 9.

Table 9: Impact on developers: start-up

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	4,550	Total days	WG analysis of IDBR (see Annex 2)	Number of developers (910) assumed to be those involved in 'Development of building projects'. We assume each developer invests 5 (low), 10 (central) or 15 (high) person-days of transitional, one-off time (for training, skills, etc)
	Central	9,100			
	High	13,650			
Monetary value	Low	- 16.9	Cost per day	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348. Assume
	Central	- 28.5			
	High	- 40.2			

					1,800 days per FTE p.a. (8 hours/day x 5 days/week x 45 weeks/year)

7.23 **Developers: connection charges avoided**

The annual impact on developers associated with connection charges is as follows.

Low: £716,000

Central: £1,905,000

High: £3,499,000

These estimates are based on the information provided in Table 10. *Table 10: Impact on developers: Connection charges*

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21[28] local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	341	Charge per development	Defra (2010), using data from DCWW[29] and SVT[30]	Assume each development with compliant SuDS would save one application charge, one sewer connection charge and inspection charge. For DCWW and SVT, these are, respectively: £155 (DCWW) and £114.90 (SVT); £183 (DCWW) and £455.67 (SVT); £43 (DCWW) and £500 (SVT). We take the average of each to generate a central value (£135 + £319 + £272 = £726), and low and high estimates for each to generate low (£341) and high (£1,111).
	Central	726			
	High	1,111			

[28] Based on the local authorities listed in Annex 1

[29] Developer services schedule of charges 2016-17

[30] Developer charges 2015/16

7.24 **Local authorities/SABs: start-up**

The one-off impact on local authorities/SABs associated with start-up costs is as follows.

Low: - £420,000
Central: - £525,000
High: - £630,000

These estimates are based on the information provided in Table 11. *Table 11: Impact on local authorities/SABs: start-up*

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Number of local authorities	-	-
	Central	21			
	High	21			
Monetary value	Low	- 20,000	Cost per local authority	Consultation with local authorities	Cost of 1 FTE for approx 3 months, plus additional set-up costs (e.g. IT, training)
	Central	- 25,000			
	High	- 30,000			

7.25 **Local authorities/SABs: Operation and maintenance of SuDS**

The annual impact on local authorities/SABs associated with the operation and maintenance of SuDS is as follows.

Residential
Low: - £13,000
Central: £29,000
High: £38,000

Commercial and industrial
Low: - £813
Central: £1,000
High: £1,000

These estimates are based on the information provided in Table 12.

Table 12: Impact on local authorities/SABs: Operation and maintenance of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	5,220	New homes per year	Public Policy Institute for Wales (2015)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	10,010		Housing White Paper (2012)	
	High	12,946		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value
Quantified estimate of impact (commercial & industrial)	Low	330	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development.
	Central	401		As above (mean)	
	High	477		As above (max)	
Monetary value (commercial & industrial)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value

7.26 **Local authorities/SABs: Revenue from application/approval fees**

The annual impact on local authorities/SABs associated with revenue from application/approval fees is as follows.

Low: £1,254,000
Central: £1,787,000
High: £2,409,000

These estimates are based on the information provided in Table 13.

Table 13: Impact on local authorities/SABs: Revenue from application/approval fees

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,100	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities
	Central	2,625			
	High	3,150			
Monetary value	Low	597	Per application	Defra (2010)	Original value (£507) updated to 2016 prices
	Central	681			Average of low and high
	High	765			Original value (£650) updated to 2016 prices

7.27 **Local authorities/SABs: Monitoring and enforcement**

The annual impact on local authorities/SABs associated with monitoring and enforcement is as follows.

Low: - £638,000
Central: - £1,941,000
High: - £3,797,000

These estimates are based on the information provided in Table 14.

Table 14: Impact on local authorities/SABs: Monitoring and enforcement

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Total FTEs (full-time equivalents)	Info provided by LAs (4 Apr 2017)	Each of 21 local authorities/SABs in Wales requires 1.8 FTEs (min 1, max 2.5)
	Central	38			
	High	53			
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.28 **Property owners/occupiers: Amenity**

The annual impact on property owners/occupiers associated with amenity is as follows.

Low: £269,000
Central: £595,000
High: £955,000

These estimates are based on the information provided in Table 15.

Table 15: Impact on property owners/occupiers: Amenity

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	13,050	Residents	Public Policy Institute for Wales (2015)	Assume compliant SuDS currently on 20-40% of new developments, so option applies to additional 60% (low), 70% (central) and 80% (high) of new development. Assume 2.5 residents per property
	Central	25,025		Housing White Paper (2012)	
	High	32,365		Information from local development plans provided by WG (March, 2017)	
Monetary value	Low	20.64	Per resident per year	BeST	Use values in BeST associated with 'street improvements through greening'
	Central	23.76			
	High	29.52			

7.29 **General population: Carbon**

The PV impact on the general population associated with carbon is as follows.

Low: £96,000 (1,918 tonnes carbon sequestered)
Central: £336,000 (6,711 tonnes carbon sequestered)
High: £642,000 (12,845 tonnes carbon sequestered)

These estimates are based on the information provided in Table 16.

Table 16: Impact on general population: Carbon

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	6,868	Additional trees	As per previous impacts for residential and commercial & industrial development	Assume additional 1 (low), 2 (central) and 3 (high) medium-sized trees per new home, and 5 (low), 10 (central) and 15 (high) trees per new commercial and industrial development.
	Central	24,030			
	High	45,995			
Monetary value	Low	34	£ per tonne CO2e	Based on values in BeST for non-traded price of carbon (2020) (values vary slightly from 2018 to 2026)	PV calculated automatically in BeST
	Central	67			
	High	101			

7.30 **General population: Education**

The annual impact on the general population associated with education is as follows.

Low: £10,000
Central: £30,000
High: £73,000

These estimates are based on the information provided in Table 17.

Table 17: Impact on general population: Education

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	600	Student visits per year	-	Assume 2 (low), 5 (central) and 10 (high) schools built with compliant SuDS per year, each leading to additional 300 student visits (10 visits for 30 children each) to see and study SuDS
	Central	1,500			
	High	3,000			
Monetary value	Low	15.94	Value of visit	BeST	Use values in BeST associated with 'value of visit'
	Central	20.16			
	High	24.38			

Option 3: Planning approach

7.31 This option provides an expectation that SuDS will be provided on all minor and major development (more than 1 dwelling or sites larger than 0.1 hectares) wherever this is appropriate and unless demonstrated to be inappropriate. It entails the use of planning conditions or planning obligations to ensure that there are clear arrangements in place for ongoing maintenance over the lifetime of the development where SuDS are used. Where SuDS are not used, current arrangements (e.g. related to O&M) are expected to continue (i.e. no change from the baseline).

7.32 The impacts considered likely under Option 3 are largely the same as those considered likely under Option 2 and included in Table 5. The differences under Option 3 compared with Option 2 are that, under Option 3, we assume:

- There are no start-up costs for SABs or developers;
- There are no SAB-related fees for developers or concurrent revenue for SABs;
- Construction and O&M costs are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2 (i.e. 50-70% of new developments do not include compliant SuDS);

- Additional/reduced connection charges are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2;
- Amenity, carbon and education impacts are applicable to 30% (low), 40% (central) and 50% (high) of the developments that would achieve compliant SuDS under Option 2; and
- There are additional, recurring costs to local authorities/SABs of consultation, planning conditions and funding agreements in relation to surface water drainage on all planning applications. General consultation requirements, and consultation requirements for statutory and other consultees, are expected to be dealt with through standing advice, as with existing planning processes.

7.33 Table 18 summarises the PV impacts for Option 3. Each valued impact is considered, in turn, below Table 18. The NPV for Option 3 is estimated to be £54.3m (range £20.4m to £460.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society.

Table 18: Summary table of PV impacts for Option 3 (2018-26)

Group	Impact	Total PV impact (£ million)		
		Low	Central	High
Developers	Construction	24.1	64.2	477.9
	Connection charges	1.7	6.0	13.8
Local authorities/SABs	Consultation	- 1.0	- 2.8	- 6.0
	O&M	- 0.0	0.1	0.2
	Monitoring & enforcement	- 5.0	- 15.3	- 29.9
Property owners/occupiers	Amenity	0.6	1.9	3.8
General population	Carbon	0.0	0.1	0.3
	Education	0.0	0.1	0.3
	TOTAL	**20.4**	**54.3**	**460.4**

7.34 **Developers: Construction of SuDS**

The annual impact on developers associated with the construction of SuDS is as follows.

Residential
Low: £2,878,000
Central: £7,839,000
High: £58,541,000

Commercial and industrial

Low: £182,000
Central: £314,000
High: £2,158,000

These estimates are based on the information provided in Table 19.

Table 19: Impact on developers: Construction of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	1,566	New homes per year	Public Policy Institute for Wales (2015)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	4,004		Housing White Paper (2012)	
	High	6,473		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value
Quantified estimate of impact (commercial & industrial)	Low	99	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	160		As above (mean)	
	High	239		As above (max)	
Monetary value (commercial & industrial)	Low	1,838	Capex saving per unit £	EPC (2017)	Outliers removed
	Central	1,958			Median value
	High	9,044			Mean value

7.35 **Developers: connection charges avoided**

The annual impact on developers associated with connection charges is as follows.

Low: £215,000
Central: £762,000
High: £1,749,000

These estimates are based on the information provided in Table 20.

Table 20: Impact on developers: Connection charges

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	630	Applications per year	Consultation with local authorities	Average number of applications requiring SAB approval (though recognising that individual local authorities may see significantly fewer or more applications than this average). Low 100, central 125, high 150, across 21 local authorities. Assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS
	Central	1,050			
	High	1,575			
Monetary value	Low	341	Charge per development	Defra (2010), using data from DCWW[31] and SVT[32]	Assume each development with compliant SuDS would save one application charge, one sewer connection charge and inspection charge. For DCWW and SVT, these are, respectively: £155 (DCWW) and £114.90 (SVT); £183 (DCWW) and £455.67 (SVT); £43 (DCWW) and £500 (SVT). We take the average of each to generate a central value (£135 + £319 + £272 = £726), and low and high estimates for each to generate low (£341) and high (£1,111).
	Central	726			
	High	1,111			

7.36 **Local authorities/SABs: consultation**

The annual impact on local authorities/SABs associated with consultation is as follows.

Low: - £128,000
Central: - £359,000
High: - £759,000

These estimates are based on the information provided in Table 21.

[31] Developer services schedule of charges 2016-17
[32] Developer charges 2015/16

Table 21: Impact on local authorities/SABs: Consultation

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	4.2	Number of FTEs required	Consultation with local authorities and Defra (2010)	Assume 30% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
	Central	7.0			Assume 40% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
	High	10.5			Assume 50% take-up of compliant SuDS. 1 FTE per 150 major and minor drainage applications/year
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.37 **Local authorities/SABs: Operation and maintenance of SuDS**

The annual impact on local authorities/SABs associated with the operation and maintenance of SuDS is as follows.

Residential
Low: - £4,000
Central: £12,000
High: £19,000

Commercial and industrial
Low: - £244
Central: £467
High: £694

These estimates are based on the information provided in Table 22.

Table 22: Impact on local authorities/SABs: Operation and maintenance of SuDS

		Value	Units	Source	Assumptions
Quantified estimate of impact (residential)	Low	1,566	New homes per year	Public Policy Institute for Wales (2015)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	4,004		Housing White Paper (2012)	
	High	6,473		Information from local development plans provided by WG (March, 2017)	
Monetary value (residential)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value
Quantified estimate of impact (commercial & industrial)	Low	99	New developments per year	New industrial and commercial orders for construction 2018-2026 (min)	Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	160		As above (mean)	
	High	239		As above (max)	
Monetary value (commercial & industrial)	Low	- 2.5	Opex saving per unit £	EPC (2017)	Median value
	Central	2.9			Outliers removed
	High	2.9			Mean value

7.38 **Local authorities/SABs: Monitoring and enforcement**

The annual impact on local authorities/SABs associated with monitoring and enforcement is as follows.

Low: - £638,000
Central: - £1,941,000
High: - £3,797,000

These estimates are based on the information provided in Table 23.

Table 23: Impact on local authorities/SABs: Monitoring and enforcement

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	21	Total FTEs (full-time equivalents)	Info provided by LAs (4 Apr 2017)	Each of 21 local authorities/SABs in Wales requires 1.8 FTEs (min 1, max 2.5)
	Central	38			
	High	53			
Monetary value	Low	- 30,369	Per FTE	Defra (2010)	Annual salary/related costs of staff: Min £30,369 (av salary of civil engineer), max £61,467 (£72,326 in 2016 prices), mean (central) £51,348.
	Central	- 51,348			
	High	- 72,326			

7.39 **Property owners/occupiers: Amenity**

The annual impact on property owners/occupiers associated with amenity is as follows.

Low: £81,000
Central: £238,000
High: £478,000

These estimates are based on the information provided in Table 24.

Table 24: Impact on property owners/occupiers: Amenity

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	3,915	Residents	Public Policy Institute for Wales (2015)	Assume 2.5 residents per property. Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	10,010		Housing White Paper (2012)	
	High	16,182		Information from local development plans provided by WG (March, 2017)	
Monetary value	Low	20.64	Per resident per year	BeST	Use values in BeST associated with 'street improvements through greening'
	Central	23.76			
	High	29.52			

7.40 **General population: Carbon**

The PV impact on the general population associated with carbon is as follows.

Low: £29,000 (575 tonnes carbon sequestered)
Central: £134,000 (2,684 tonnes carbon sequestered)
High: £321,000 (6,422 tonnes carbon sequestered)

These estimates are based on the information provided in Table 25. *Table 25: Impact on general population: Carbon*

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	2,060	Additional trees	As per previous impacts for residential and commercial & industrial development	Assume additional 1 (low), 2 (central) and 3 (high) medium-sized trees per new home, and 5 (low), 10 (central) and 15 (high) trees per new commercial and industrial development. Under this option, assume 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	9,612			
	High	22,997			
Monetary value	Low	34	£ per tonne CO2e	Based on values in BeST for non-traded price of carbon (2020) (values varies slightly from 2018 to 2026)	PV calculated automatically in BeST
	Central	67			
	High	101			

7.41 **General population: Education**

The annual impact on the general population associated with education is as follows.

Low: £3,000
Central: £12,000
High: £37,000

These estimates are based on the information provided in Table 26.

Table 26: Impact on general population: Education

		Value	Units	Source	Assumptions
Quantified estimate of impact	Low	180	Student visits per year	-	Assume additional visits based on 30% (low), 40% (central) and 50% (high) take-up of compliant SuDS compared to Option 1.
	Central	600			
	High	1,500			
Monetary value	Low	15.94	Value of visit	BeST	Use values in BeST associated with 'value of visit'
	Central	20.16			
	High	24.38			

Non-monetised impacts

7.42 A number of potential impacts have not been valued, largely due to difficulties in quantifying/monetising the possible change with any certainty, and the risk of double counting with other (valued) impacts. These non-monetised impacts would be more likely to be positive impacts (benefits) than negative. Furthermore none of the negative impacts (if they could be monetised) would be expected to be significant enough to overturn the net benefit identified above. These include:

- Potential impacts on water and sewerage companies, e.g. reduced revenue from surface water connection applications/charges (a transfer from developers to the water and sewerage companies), or the reduced need for monitoring and enforcement of sewer connections. This is because, even under the policy changes considered, most developments would still connect to the foul/combined public sewer. It is therefore likely that companies would still need to consent and charge for connections and inspection, and would still have the same asset base and need to undertake the same level of inspection, monitoring and enforcement.
- Certainty of adoption for developers, leading to efficiencies in planning process and development, as well as reduced/simplified interaction with a complex array of interests, including the WaSC, Planning Authority, Highways Authority and NRW;
- Reduced risk to local authorities from orphaned or abandoned schemes;
- General consultation requirements, and consultation requirements for statutory and other consultees. These are expected to be dealt with through standing advice, as with existing planning processes.
- Avoided risk of infraction of water quality related EU directives;
- Economic growth;
- Biodiversity - new or enhanced habitats and opportunities for wildlife;
- Enhanced ability to mitigate or adapt to the expected impacts of climate change;

- Additional surface or groundwater available for abstraction, or to help alleviate drought/water scarcity;
- Improved health and well-being due to increased/enhanced access and use of green space or, depending on type of SuDS used, improved air quality and temperature regulation (e.g. using green roofs). Where assessed, the benefits to health from SuDS and green infrastructure can be substantial, to the extent that they may dominate financial benefits;
- Improved or enhanced recreational opportunities (e.g. walking, fishing, watersports); and
- Reduced sewer overflows and natural infiltration of surface water before it enters watercourses, leading to improved or enhanced water quality of surface, ground, transitional or coastal waters, consistent with objectives of Water Framework Directive.

Summary of costs and benefits

7.43 Option 2 is the preferred option. The NPV (net present value) for Option 2 is estimated to be £164.9m (range £82.6m to £961.4m). It is positive suggesting that the net benefits to society outweigh the net costs to society. The NPV for Option 1 is zero, and the NPV for Option 3 is estimated to be £54.3m, i.e. around one-third of the benefits of the preferred option and lacking the security of outcomes of Option 2.

7.44 Sensitivity analysis has been applied to these results by adjusting two of the key parameters used in the appraisal, the timeframe for the appraisal period and the discount rate. As indicated in table 19 construction cost savings are identified as the main financial / quantified benefit, but even if construction costs were found to be neutral there would still be a net benefit from the proposal and wider unquantified benefits.

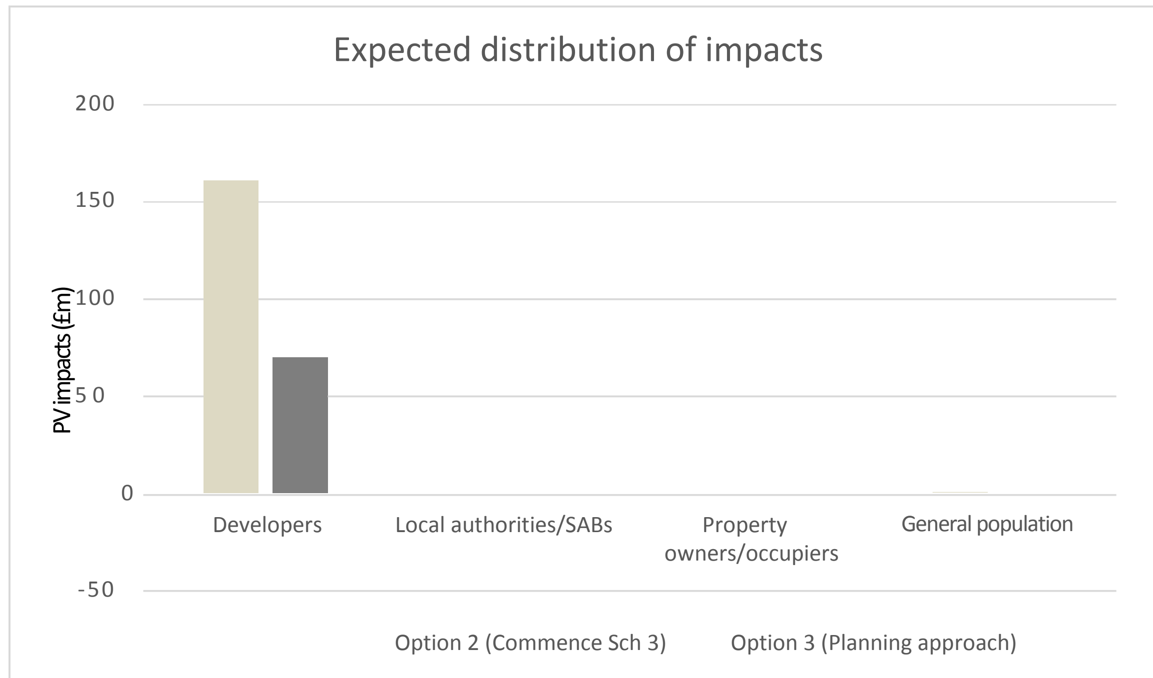
7.45 Extending the appraisal by 10 years (so that it becomes from 2018 to 2035) results in an increase in NPV for Option 2 to £286.8m (central estimate), an increase of 74%. The NPV for Option 3 increases to £94.2m, a similar percentage increase. This provides an even stronger justification for the preferred option.

7.46 Reducing the discount rate from 3.5% to 2% increases the NPV for Option 2 to £174.4m and for Option 3 to £57.4m. Increasing the discount rate to 5% decreases the NPV for Option 2 to £156.3m and for Option 3 to £51.5m, i.e. the impact is marginal and the relative situation does not change. Option 2 is still strongly preferred.

7.47 As indicated in Table 5, sensitivity analysis has also been applied to the potential impact of SuDS on land take. This is based on an additional cost to developers of £900 (low), £1,200 (central) or £1,500 (high) per dwelling. This results in a significant decrease in NPV for Option 2 to £70.0m, and for Option 3 to £10.5m (central estimates). However, the NPV is still positive in all cases and Option 2 remains the strongly preferred option.

7.48 The expected distribution of impacts across the key groups considered is shown in Figure 1. This suggests that developers are expected to benefit significantly

(especially under Option 2), primarily due to reduced construction costs. Local authorities may incur a small net cost (slightly larger under Option 3), largely due to the impact of additional monitoring and enforcement. The overall monetised impacts to property owners/occupiers and the general population are expected to be relatively modest, albeit positive and significant. The benefits to these groups are expected to be larger under Option 2. In short, all impacted groups are expected to be better off under Option 2 than they would be under Option 3.



8. Summary of responses to consultations and the Government response

First consultation

8.1 The Welsh Government consulted on the proposed approach for delivering effective SuDS on new developments, for 12 weeks starting on 19 May 2017. There were 43 responses to the consultation, the largest proportion of which were from local authorities. Other responses included non-governmental organisations, professional and industry representative bodies, consultants, utilities, trade bodies and individuals.

8.2 The summary of responses to the consultation and the Government response is available at https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments. An outline in respect of key proposals is provided below:

Commence Schedule 3 of the 2010 Act for sustainable drainage:

8.3 Overall there was strong support for implementing Schedule 3 of the 2010 Act . The majority (64%) of those who responded supported our proposal to commence Schedule 3. A number of local authority responses conveyed a sense of urgency and a need to provide clarity and certainty for surface water management for new developments for both developers and local authorities. The single industry response expressed concern over potential land take for SuDS and disagreed with assumptions in the impact assessment. In the Government response we noted that the industry response did not provide any Welsh supporting evidence and that it focussed largely on the approach in England, which contrasts substantially to the proposals for Wales. Sewage utilities expressed support but were concerned that they would potentially lose control over connections to their networks.

8.4 Following the consultation we further engaged industry and amended the RIA to take into account additional evidence provided by developers on land take.

8.5 We have also met sewerage undertakers on the issue of control over connections to their networks. Schedule 3 to the 2010 Act, once commenced will make the right to connect surface water to the public sewer network conditional on receiving approval from the SAB. The sewerage undertaker will be a statutory consultee in the SuDS approval process which will enable the sewerage undertaker to ensure suitable measures to protect the sewerage network are communicated to the SAB. We will monitor this matter closely as Schedule 3 is implemented and will seek evidence from the undertakers to inform the post implementation review (see paragraph 11). Ultimately, sewerage undertakers will benefit from the significant reduction in flows afforded by surface water systems for new and redeveloped sites approved and built to the SuDS Standards.

8.6 Taking into account the overall strong support for implementing Schedule 3 to the 2010 Act, the Government response to the consultation outlined our intention to move forward with a second stage consultation to further engage stakeholders on the draft statutory instruments needed for its implementation.

The body appointed to approve and adopt SuDS (the SAB):

8.7 Under Schedule 3 to the 2010 Act, the local authority becomes responsible for the duties of the SAB. Over half of all local authority responses indicated the local authority is best placed to undertake the SAB function. Most saw the benefit of taking responsibility for the SAB role, citing close links to their Lead Local Flood Authority (LLFA) Role, planning responsibilities and highways function. However a significant proportion expressed concerns over funding, staff skills and implementation costs. A number felt our impact assessment had not adequately represented this.

8.8 We have continued to develop the RIA in close consultation with the SuDS Advisory Group, which is representative of key stakeholders including the Welsh Local Government Association, local authorities, developers, water utilities and other regulators. In the Government response we outlined our approach to engaging further with the Advisory Group and more widely with local authorities during the second stage consultation to improve the evidence base on their resource and support needs and costs. The estimates in the final RIA have since been adjusted to reflect the additional input, although the overall findings and conclusions in the RIA do not change as a result.

8.9 Our approach enables the SAB to fully recover costs incurred in undertaking its approval and inspection functions. The fee rate set in the regulations has been developed through the first and second consultations and in working closely with the SuDS Advisory Group. Setting a national fee rate was broadly welcomed in consultation responses as it was felt this would provide consistency for developers and ensure fairness and transparency. There was also support for our proposal that the application of fees by SABs should be subject to reporting and review. Going forward with implementation we shall be working closely with SABs to gather information needed to report initially on an annual basis.

8.10 We have also developed a guidance and training package to support local authorities with implementing Schedule 3 to the 2010 Act. This work has been informed by the SuDS Advisory Group, responses received during consultation and through a series of workshops held during the second consultation. We have continued to work closely with stakeholders to ensure the package meets the needs of local authorities and is available before regulations come into effect.

The requirement for SAB approval:

8.11 Schedule 3, once commenced will require drainage systems for managing surface water for new developments of more than 1 dwelling or of an area equal to or larger than 100 square meters to be approved by the SAB before construction begins.

8.12 Over half of those responding agreed with our proposal to exempt three specific types of development from the requirement for SAB approval:

- Trunk roads and motorways managed by the Welsh Government in Wales,
- Construction work carried out by Natural Resources Wales as the internal drainage board in exercise of its functions under the Land Drainage Act 1991, and
- Construction of a railway.

8.13 A number of responses highlighted the cumulative impact of small scale developments and wanted clarity on the interface with permitted development rights and the status of single domestic dwellings. The Government response to the consultation outlined our approach to engage further on whether exemptions should include single domestic dwellings and works carried out by LLFAs. We also clarified our intention that exceptions from the requirement for approval would not extend to permitted developments exceeding 100 square meters, which addresses concerns that multiple benefits of SuDS may not otherwise be realised for larger scale permitted development.

8.14 Most responders agreed that time-limits for when the SAB must determine applications for approval should be set. A number of responses highlighted the issue of adequate resources for the SAB to deliver these timescales and the links and potential impact on planning processes. The Government response outlined our approach to include time-limits in the statutory instruments, which were the subject of our second consultation. Our response also clarified that SAB approval may be sought entirely separately from planning permission and that the time-limits are aimed at ensuring the SuDS approval process does not impact on overall development time-scales. Information on this is also provided in the guidance we have developed with the WLGA and local authorities.

Mandatory National SuDS Standards:

8.15 Schedule 3 to the 2010 Act, requires the Welsh Ministers to publish mandatory National SuDS Standards for the design, construction, operation and maintenance of SuDS. In the consultation response, those with experience of the planning system and the current interim SuDS Standards (published as voluntary National SuDS Standards in January 2016) reported they were not being used due to their voluntary status and they needed statutory status to be effective. There was consensus that the interim SuDS standards if made mandatory could deliver sustainable and affordable surface water management. An overwhelming majority (81%) of those responding agreed with the principles in the interim SuDS Standards and expressed support for implementing mandatory SuDS standard so the principles become a statutory requirement for new developments.

Second consultation

8.16 The Welsh Government undertook a further consultation for 12 weeks starting on 16 November 2017 on the draft statutory instruments and National SuDS Standards needed to implement Schedule 3. There were 42 responses to this consultation. Most responses were again from local authorities and a good spread of responses was also received from non-governmental organisations, professional and industry representative bodies, consultants, utilities, trade bodies and individuals.

8.17 The summary of responses to the consultation and the Government response is available at https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments-draft-regulations-and-national. An outline in respect of key proposals is provided below:

Commence Schedule 3 of the 2010 Act in May 2018 and bring forward the statutory instruments needed for its implementation:

8.18 The majority who responded agreed our proposed timescale for commencing Schedule 3 was reasonable. Many of the local authorities suggested implementation six months after the statutory instruments are laid would allow adequate time to establish the SAB and new approval processes. A number suggested a longer period and highlighted issues relating to training and support for implementation. Some statutory consultees expressed concern about workloads. Developers wanted all related information and guidance to be published before commencement.

8.19 In the Government response to the consultation we confirm our aim to commence Schedule 3 in May 2018 and lay related statutory instruments so that these come into effect in January 2019. This takes into account the time local authorities have indicated is needed to prepare for implementation.

8.20 Views were also sought on transitional arrangements for the implementation of the new requirement for SAB approval. The proposed arrangements have been widened in response to the consultation to support our objective that we do not adversely impact on planned development. The regulations now provide that SAB approval will not be required for any development for which there is an existing planning permission or for which a valid application has been made before the SuDS requirement comes into force. With the exception of single dwellings and sites with a construction area equal to or larger than 100 square meters, all new planning applications made following the coming into force date will require SAB approval.

Exemptions from the requirement for SAB approval:

8.21 Views were sought on whether LLFAs should be exempt from the requirement for SAB approval. However no clear evidence was provided to support the need for such an exemption and those opposed to an exemption cited transparency and accuracy as important factors. We have therefore decided against exempting LLFAs at this stage. We will invite any new evidence to be submitted to inform the post implementation review.

8.22 Further views have also been sought on the proposed exemption of single domestic dwellings from the requirement for SAB approval. Taking into account input from the SuDS Advisory Group and other stakeholders at the series of workshops held during the second consultation period we have included in regulations the exemption for single domestic dwellings. This addresses concerns some local authorities raised in relation to developing capacity to deal with SuDS approval for single domestic dwellings.

Enforcement and appeals regime:

8.23 The majority of responses agreed SAB enforcement powers should be given to both the SAB and the local planning authority (LPA). This will enable the SAB and the LPA to deal more efficiently with enforcement action in circumstances where this concerns both SuDS and planning applications. This proposal has therefore been included in regulations.

8.24 There was clear support for the proposed framework powers for SAB enforcement which include:

- powers of entry,
- a four year time-limit on when the SAB is able to issue an enforcement notice,
- provisions for compensation to be sought by the developer or other person where a loss is suffered as a result of the SAB exercising its powers for entry and stop notices, and
- the duty on the SAB to maintain a register of SuDS enforcement notices.

The majority of responses agreed our proposed regulations are proportionate and align with requirements under similar regimes. We have therefore included these provisions in regulations.

8.25 There is an increased risk of flooding and water pollution in the event of a development not complying with the law. Most responders did not answer our question about the proposed non-criminal sanctions and criminal sanctions which we believe are necessary for encouraging compliance. Those that did answer largely agreed the proposals were appropriate and proportionate and in line with those used for planning enforcement. The proposed intervention powers have therefore been included in regulations.

8.26 There was clear support for the proposed right to appeal against SAB decisions with most responders welcoming the proposed appeal processes which align closely with those in place for planning. We have therefore included the proposed provisions in regulations.

SAB adoption duty and administrative processes:

8.27 In Schedule 3 to the 2010 Act, SuDS that serve properties within a single curtilage are excluded from the SAB adoption duty. The majority of responders agreed with our proposed definition of a single property drainage system which will help determine the types of development that will be exempt from the duty to adopt. However many responses mistakenly conflated this adoption exemption with the SAB approval process, it is therefore evident that further clarity is needed, which we will provide in guidance.

8.28 The proposed four week time-limit for the SAB to complete administrative processes including returning any non-performance bond to the developer was also somewhat misunderstood. We will be making it clear in guidance that the four week time-limit only takes effect from the date when the SAB conditions of

approval are met; this may include an appropriate time period for the effectiveness of the drainage system to be proven (known as the defect period).

Statutory works:

8.29 Those who commented on our proposals in relation to works undertaken by statutory undertakers provided useful information which we have taken into account as follows;

- Telecommunications has been added to the list in regulations to safeguard SuDS on public land owned by local authorities in respect of work undertaken by statutory undertakers.

- We have decided at this stage to include in regulations the proposed four weeks timeframe within which statutory undertakers must notify the SAB of works that may affect the SuDS operation. Going forward we will monitor the situation which will include inviting evidence to be submitted to inform the post implementation review.

- We have amended the timescale in regulations to allow a three year period for the SAB to determine if it is satisfied that the SuDS reinstated following works by a statutory undertaker functions in accordance with the SuDS Standards. This aligns with similar provisions under highway legislation.

Consultation workshops

8.30 A series of consultation workshops were held across Wales in February 2018, around 120 people attended in total from local government (60%), civil engineering and consultants, water industry, the construction sector, design/planning consultancies, environmental NGOs and regulators. Although invited, no one from the agriculture industry attended.

8.31 A full report of the workshops is available from the Welsh Government on request. In summary the following themes which have informed our approach to implementation were discussed:

- Cost impacts for local authorities and developers,
- The importance of communicating the new process,
- Training and the need for skilled staff,
- The need for consistency across SABs,
- Dealing with single properties for approvals and adoption,
- Links with the planning process and its distinction from the SAB role, a technical approval process which is independent of planning, and
- Guidance and information requirements for SABs

9. Competition Assessment

9.1 Expected impacts on competition are set out in Table 27 below.

Table 27: Competition filter test

Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	Yes

9.2 The regulation is likely to create a shift away from the use of underground proprietary SuDS products, and more traditional engineering-based drainage solutions, towards novel, greener above-ground solutions and products. However, the analysis presented here suggests that this move is likely to result in lower costs for developers, their supply chains and others. In addition, no restrictions on the type or price of existing or new products associated with the regulation are foreseen or expected.

9.3 In summary, the regulation is unlikely to have a significant detrimental effect on competition.

10. Specific impact assessments

Small Firms Impact Test

10.1 The start-up costs for developers are based on an estimate of 5 (low), 10 (central) or 15 (high) person-days of transitional, one-off time (for training, skills, etc). The start-up costs for local authorities/SABs are based on the cost of 1 FTE for approximately 3 months, plus additional set-up costs (e.g. IT, training). These costs are likely to have a larger impact on smaller firms or local authorities with fewer employees than a larger organisation.

10.2 However, the analysis presented here suggests that any additional costs will be more than offset by reduced construction costs and other impacts.

Greenhouse Gas Assessment

10.3 The preferred option is likely to provide benefits in terms of both climate change adaptation and mitigation. The analysis presented here suggests that between 1.9 and 12.8 thousand tonnes of carbon could be sequestered under the preferred option over the eight year period analysed, although this benefit would continue beyond this period.

Wider Environmental Issues Impact Test

10.4 As highlighted in the analysis and the non-monetised section above, the increased use of good quality compliant SuDS under the preferred option is likely to have a number of positive environmental impacts, including supporting localised biodiversity, reducing air pollution and improving the quality of water.

10.5 Evidence of the potential multiple and wide ranging benefits of SuDS is further illustrated in the EPC report. Overall the findings indicate use of SuDs on new developments in Wales is variable in quality and performance. There is currently a preponderance of 'hard' SuDS (largely comprising underground measures and attenuation ponds), with fewer 'landscaped' (vegetated) SuDS that can potentially deliver multiple benefits, including enhanced biodiversity.

10.6 Potential benefits of good quality SuDS are similarly emphasised in SuDS guidance "Maximising the potential for people and wildlife" (RSPB and WWT, 2012)[33]. This concludes that, where SuDS are designed to integrate surface water management and water quality improvements with people and wildlife, they have the potential to:

- manage volume and flow rates of run-off to reduce the downstream flow and destructive power of surface water, and reduce the risk of flooding,
- improve water quality by reducing pollution locally and downstream in streams, rivers and estuaries,
- encourage natural groundwater recharge to help maintain river and stream flows in periods of dry weather, and support wetlands in the wider landscape,
- protect and enhance water quality and provide significant opportunities for wetland habitat creation,
- support the well-being of people and communities and increase the amenity value of developed land, and
- increase evapotranspiration and climate regulation in urban areas.

10.7 Numerous studies highlight key concerns about the significant effects of entrapment in conventional drainage of wildlife. A recent survey[34] in a single local authority area found these *"number in the hundreds over the course of a single year",* posing a key risk to amphibians and small mammals, some of which are protected species. In conclusion the study recommended that the implementation of good quality SuDS designed for wildlife, as well as for flood risk, is undertaken.

[33] https://www.rspb.org.uk/Images/SuDS_report_final_tcm9-338064.pdf
[34] PKC SuDS Biodiversity Review and Report, A Study of Mitigation, Tayside Biodiversity Partnership, August 2015

Also that the requirement for SuDS on new developments has the potential to provide a valuable new resource to halt the recent global amphibian declines associated with habitat loss.

Health and Well-being Impact Test

10.8 As highlighted in the non-monetised section above, the increased use of SuDS under the preferred option is likely to have a number of positive impacts on health and well-being. Due to the risk of double counting (particularly with amenity benefits to property owners/occupiers), these impacts have not been monetised, though they could be very substantial.

Further, the Natural Resource Policy (2017) for Wales states that "increasing access to green spaces and providing community facilities to bring people together is highlighted as a 'best buy' to prevent mental ill health and improving mental well-being by Public Health Wales. The World Health Organisation suggests that public health approaches with health, social, economic and environmental benefits, such as safe green spaces and active transport, have been shown to be cost-effective with potential returns on investment. Studies also suggest that people living closer to good-quality green space are more likely to have higher levels of physical activity, and are more likely to use it and more frequently".

By helping to adapt to flooding, extreme weather events and climate change, SuDS can reduce risks to public health and associated burdens upon health services[35]. Further, where opportune, SUDS schemes should include or link with initiatives with other population health benefits e.g. including the creation of greener, cleaner and tranquil spaces, to mitigate population exposure to environmental noise[36], air pollution and any potential for a respite location during heat-waves.

Human Rights Impact Test

10.9 It is envisaged that the preferred option will have no impact on human rights.

Justice Impact Test

10.10 It is envisaged that the preferred option will have no impact on the justice system.

Rural Proofing Impact Test

---

[35] UK Climate Change Risk Assessment 2017: Evidence Report Summary for Wales https://www.theccc.org.uk/wp-content/uploads/2016/07/UK-CCRA-2017-Wales-National-Summary.pdf.
PB5: Risks to people, communities and buildings from flooding
http://gov.wales/docs/desh/publications/131217noise-action-plan-for-wales-en.pdf

[36] A noise action plan for Wales 2013–2018 December 2013
http://gov.wales/topics/environmentcountryside/epq/noiseandnuisance/environmentalnoise/noisemonitoringmapping/noise-action-plan/?lang=en

10.11 The preferred policy option is to make the use of SuDS mandatory for all new developments. There are no specific impacts on rural communities, the requirement for SAB approval will apply in both urban and rural areas for all minor and major development of more than a single dwelling and construction area equal to or larger than 100 square metres.

10.12 In response to our second consultation we have considered in earnest whether agricultural developments should be exempt from the requirement for SAB approval. Research indicates there is potential for industrial developments to benefit from effective SuDS. The opportunities for industrial developments are illustrated alongside other categories of development in evidence and case studies in the EPC[37] report. In particular the analysis shows good quality compliant SuDS can:

- Reduce contamination of groundwater sources used to provide drinking water,
- Improve water quality by reducing pollution locally and downstream in streams, rivers and estuaries,
- Manage flow rates to reduce the destructive power of surface water,
- Reduce sediment load in runoff,
- Reduce the risk of flooding,
- Save energy for heating and cooling by shading buildings, lowering summertime temperature, providing insulation in winter and reducing wind speeds,
- Contribute to reduced or sequestered greenhouse gas emissions.

It is our aim to keep exemptions from the requirement for SAB approval to a minimum in order to maximise the potential opportunities SuDS can deliver for all new developments.

Sustainable Development Impact Test

10.13 The preferred option supports and is fully consistent with the principles of sustainable development and will contribute to a more sustainable Wales.

10.14 Future generations are expected to benefit significantly from the preferred option.

10.15 It fully reflects the following principles which underpin the sustainable development principle in the Well-being of Future Generations (Wales) Act 2015:

- **Long-term thinking:** ensuring a greater emphasis on long-term outcomes, the proposed policy to make mandatory the requirement for sustainable drainage on new developments fully reflects the need to protect and enhance the environment for present and future generations. A principle of the national standards is to ensure that the design of the SuDS take account of the likely impacts of climate change. Adapting to a changing climate is an important safeguard of lives and property over the long-term.

[37] https://gov.wales/docs/desh/publications/170209-suds-evidence-epc-final-report-en.pdf

- **Integration:** the evidence suggests good quality, SuDS compliant with the national standards may have multiple benefits, integrating:

  - Social issues, SuDS may result in increased amenity through enhanced attractiveness and liveability of developments, improved or enhanced recreational opportunities, increased educational opportunities for learning and development.

  - Environmental issues, evidence suggests SuDS may contribute to reduced or sequestered greenhouse gas emissions and positive impacts on water quality, new or enhanced opportunities for habitat and wildlife.

  - Economic issues, through balancing positive impacts of SuDS in the community, for developers and householders, against the marginal increase in costs for Local Authorities for undertaking enforcement and monitoring.

- **Working across organisational boundaries:** the preferred option has been developed with the involvement of government, private and voluntary organisations and individuals who are representative of stakeholders in the sector.

- **Focusing on prevention:** the preferred option focuses on implementing good quality sustainable drainage. It is envisaged this will have positive impacts, ranging from climate change mitigation to improved health and well-being and protecting habits and wildlife.

- **Engagement and involvement:** Implementation of Schedule 3 of the 2010 Act continues to be informed by an advisory group representing a wide range of stakeholders in the sector.

Welsh Language

10.16 It is not envisaged that the preferred option will have any impact on the Welsh language.

Statutory Equality Duties Impact Test

10.17 It is envisaged that preferred option will have no impact on statutory equality duties.

11. Post Implementation Review

11.1 The Welsh Government will undertake a review of the usage of these regulations. In particular we will ask the SAB and other stakeholders to assess the effectiveness of these regulations; this will include inviting evidence to be submitted on key aspects of the regulations. We will also ask the SAB to provide information to the Welsh Government on the application of fees which will inform a review by the Welsh Government of the level of fees.

11.2 It is our intention to conduct the review at least two years following the date when the regulations come into effect. This is to ensure sufficient evidence is available to inform the review.

Annex 1: Housing development

Residential							
	Local authority	**Date of adoption of LDP**	**LDP Period**	**Housing allocations**	**Delivery since start of plan to April 2016**	**Estimated new homes to end LDP period**	**Estimated new homes per year**
	South Wales						
1	**Caerphilly**	Nov-10	2006-2021	8,625	4,239	4,386	877
2	**Rhondda Cynon Taf**	Mar-11	2006-2021	14,385	4,645	9,740	1,948
3	**Merthyr Tydfil**	May-11	2006-2021	3964	1580	2,384	477
4	**Blaenau Gwent**	Nov-12	2006-2021	3,500	1,084	2,416	483
5	**Bridgend**	Sep-13	2006-2021	9,690	4,589	5,101	1,020
6	**Torfaen**	Dec-13	2006-2021	3,897	1888	2,009	402
7	**Monmouthshire**	Feb-14	2011-2021	4,500	1,265	3,235	647
8	**Newport**	Jan-15	2011-2026	10,350	2,697	7,653	765
9	**Cardiff**	Jan-16	2006-2026	41,415	13,585	27,830	2,783
10	**Vale of Glamorgan**	Expected 2017	*2011-2026*	9,460	1,358	8,102	810
	West Wales						
11	**Swansea**	Expected 2018	2010-2025			0	-
12	**Carmarthenshire**	Dec-14	2006-2021	13,352	5,606	7746	1,549
13	**Ceredigion**	Apr-13	2007-2022	6,000	1,745	4255	709
14	**Neath Port Talbot**	Jan-16	2011-2026	7,800	1.501	7798	780
15	**Powys**	Expected 2017/18	2011-2016			0	-
16	**Pembrokeshire**	Feb-13	2011-2021	5,724	2,052	3672	734
	North Wales						
17	**Flintshire**	Expected 2019	2015-2030			0	-
18	**Denbighshire**	Jun-13	2006-2021	7,000	2,227	4773	955
19	**Wrexham**	Expected 2018	2013-2028			0	-
20	**Conway**	Oct-13	2007-2022	6,520	2,274	4246	708
21	**Gwynedd/Anglesey**	Expected 2017				0	-
	National Parks						
	Brecon Beacons	Dec-13	2007-2022	2,045	526	1,519	253
	Pembrokeshire CNP	Sep-10	2006-	1,600	485	1,115	223

			2021				
	Snowdonia	Jul-11	2007-2022	800	448	352	59
	TOTALS			160,627	52,295	108,332	**16,182**

The Principal Projection of Additional Homes Required by period

		2011-2031	per year
Total New Dwellings Required	%	174000	**8,700**
Market sector	63	109000	5,500
Social sector	37	65000	3,300
Source			

Public Policy Institute for Wales (2015) Future Need and Demand for Housing in Wales

The Principal Projection of Additional Homes Required by period

	per year
Total New Dwellings Required	**14,300**
Market sector	9,200
Social sector	5,100

Housing White Paper (2012) - most recent published strategy

Based on Holmans, A. and Monk, S. (2010) Housing need and demand in Wales 2006–2026. Social Research Number 03/2010. Cardiff: Welsh Government

Annex 2: Commercial and industrial development

		Industrial	Commercial
Actual	2010	74	528
	2011	73	359
	2012	82	462
	2013	73	562
	2014	116	360
	2015	180	337
	2016	105	555
Projections	2017	111	455
	2018	117	454
	2019	126	432
	2020	128	447
	2021	117	469
	2022	120	451
	2023	122	451
	2024	122	450
	2025	122	453
	2026	121	455
	Source	ONS, NEWOGOR New Orders for Construction: by Government Office Region (Wales), accessed April 2017	
	Notes	New orders in the construction industry estimates are a short-term indicator of construction contracts for new construction work awarded to main contractors by clients in both the public and private sectors within the UK. The estimates are produced and published both seasonally and non-seasonally adjusted at current prices (including inflationary price effects) and at constant prices (with inflationary effects removed). Since quarter 2 (Apr to Jun) 2013 these data have been supplied by Barbour ABI.	
		Projections based on average over previous 5 years	

Figures for RIA

Commercial	**Industrial**	
Estimated new developments per year		
117	432	Low
122	451	Central
128	469	High

Annex 3: Developers in Wales

Description	SIC Wales	Employee Sizeband	Enterprises	Total
Development of building projects	41100	0	585	
	41100	1-4	245	
	41100	5-9	45	
	41100	10-19	25	
	41100	20 - 49	10	
	41100	50 - 99	0	
	41100	100 - 199	0	
	41101	200 - 249	0	
	41102	250 - 499	0	
	41103	500 - 999	0	
	41104	1,000 +	0	910
Construction of commercial buildings	41201	0	205	
	41201	1-4	290	
	41201	5-9	65	
	41201	10-19	15	
	41201	20 - 49	10	
	41201	50 - 99	5	
	41201	100 - 199	0	
	41201	200 - 249	0	
	41201	250 - 499	0	
	41201	500 - 999	0	
	41201	1,000 +	0	590
Construction of domestic buildings	41202	0	550	
	41202	1-4	710	
	41202	5-9	160	
	41202	10-19	70	
	41202	20 - 49	40	
	41202	50 - 99	20	
	41202	100 - 199	10	
	41202	200 - 249	0	
	41202	250 - 499	0	
	41202	500 - 999	0	
	41202	1,000 +	10	1570

Source: WG analysis of IDBR (Inter-Departmental Business Register), ONS

Notes: Figures include a small number of enterprises where the headquarters is outside Wales but have economic activity inside Wales. Figures are rounded to the nearest five (so zeros may not be true zeros), are for 2016 and sourced from the IDBR (ONS). The SIC code used is based on the Welsh part of the business.

SL(5)267 – The Town and Village Greens (Landowner Statements) (Wales) (No. 2) Regulations 2018

Background and Purpose

Land may be registered as a town or village green in the circumstances specified in section 15 of the Commons Act 2006 ("the 2006 Act"). A characteristic of each of those circumstances is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, must have indulged 'as of right' in lawful sports and pastimes on the land in question for a period of at least 20 years.

Section 15A(1) of the 2006 Act permits the owner of such land to deposit with the commons registration authority a statement, the effect of which is to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates. The statement must be accompanied by a map.

These Regulations make provision in respect of the deposit of statements under section 15A(1) of the 2006 Act and associated matters.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We welcome the changes made by these Regulations with regard to the privacy and human rights concerns we raised when scrutinising the original Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

We also welcome the Welsh Government's swift response to the concerns raised. In that respect, we agree that breach of the 21 day rule (i.e. the rule that there must be at least 21 days between the date of laying a negative resolution statutory instrument before the Assembly and the date it comes into force), is justified in this case.

Implications arising from exiting the European Union

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

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
26 October 2018

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1100 (W. 230)

COMMONS, WALES

The Town and Village Greens (Landowner Statements) (Wales) (No. 2) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

Land may be registered as a town or village green in the circumstances specified in section 15 of the Commons Act 2006 ("the 2006 Act"). A characteristic of each of those circumstances is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, must have indulged 'as of right' in lawful sports and pastimes on the land in question for a period of at least 20 years.

Section 15A(1) of the 2006 Act permits the owner of such land to deposit with the commons registration authority a statement, the effect of which is to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates. The statement must be accompanied by a map.

These Regulations make provision in respect of the deposit of statements under section 15A(1) of the 2006 Act and associated matters.

Regulation 3 prescribes the form of statement that may be deposited with the commons registration authority and the form of the map which must accompany it.

Regulation 4 enables the commons registration authority to prescribe a reasonable fee in relation to the deposit of a statement

Regulation 5 makes provision relating to when a statement is to be treated as having been deposited with the commons registration authority.

Regulation 6 makes provision relating to the manner in which the commons registration authority must manage and publicise the deposit of a statement.

Certified copy from legislation.gov.uk Publishing

Regulation 7 contains requirements relating to specific information that must be included in the register required under section 15B(1) of the 2006 Act.

Regulation 8 makes provision relating to the manner in which that register required under section 15B(1) of the 2006 Act must be kept by the commons registration authority, including requirements relating to paper and electronic versions.

Regulation 9 makes provision which permits the commons registration authority to remove an entry from that register, or any part of an entry, in the case of a material error, subject to prior notice.

Regulation 10 revokes the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

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

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1100 (W. 230)

COMMONS, WALES

The Town and Village Greens (Landowner Statements) (Wales) (No. 2) Regulations 2018

Made 17 October 2018

Laid before the National Assembly for Wales 19 October 2018

Coming into force 22 October 2018

The Welsh Ministers, in exercise of the powers conferred on the appropriate national authority by sections 15A, 15B and 59 of the Commons Act 2006(**1**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Town and Village Greens (Landowner Statements) (Wales) (No. 2) Regulations 2018 and they come into force on 22 October 2018.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"the 2006 Act" ("*Deddf 2006*") means the Commons Act 2006;

"the authority" ("*yr awdurdod*") means the commons registration authority;

(**1**) 2006 c. 26. Sections 15A and 15B were inserted by section 15 of the Growth and Infrastructure Act 2013 (c. 27). Section 15A was amended by section 53 of the Planning (Wales) Act 2015 (anaw 4) ("the 2015 Act"). For the definition of "prescribed" see sections 15A(9) and 15B(5). See the definitions of "regulations" and "appropriate national authority" in section 61(1). Section 55 of, and paragraph 9 of Schedule 7 to, the 2015 Act amended section 61(1) so that the "appropriate national authority" means the Welsh Ministers in relation to Wales.

Certified copy from legislation.gov.uk Publishing

"notice of deposit" ("*hysbysiad adneuo*") has the meaning given in regulation 6(3)(b);

"register" ("*cofrestr*") means the register which the authority is required to keep under section 15B(1) of the 2006 Act with respect to maps and statements deposited under section 15A of that Act;

"relevant land" ("*tir perthnasol*") means the land to which the statement in question relates;

"relevant owner" ("*perchennog perthnasol*") means the owner depositing a statement;

"statement" ("*datganiad*") means a statement under section 15A(1) of the 2006 Act.

Prescribed forms of statement and map

3.—(1) A statement under section 15A(1) of the 2006 Act must be—

(a) in the form set out in Schedule 1, or in a form substantially to the like effect, with such insertions or omissions as are necessary in a particular case; and

(b) signed—

(i) by, or by a duly authorised representative of, every owner of the relevant land who is an individual; and

(ii) by the secretary or some other duly authorised officer of every owner of the relevant land which is a body corporate or an unincorporated association.

(2) The map which must accompany the statement in accordance with section 15A(3) of the 2006 Act must be an Ordnance Map, at a scale of not less than 1:10,560, showing the boundary of the relevant land in coloured edging.

Fees

4.—(1) The authority may determine a reasonable fee for the deposit of a statement.

(2) The relevant owner must pay any fee determined in accordance with paragraph (1) to the authority.

Timing of deposit

5. A statement is to be regarded as having been deposited under section 15A(1) of the 2006 Act on the day when the following have been received by the authority—

(a) a statement which complies with regulation 3(1);

(b) a map which complies with regulation 3(2); and

Certified copy from legislation.gov.uk Publishing

(c) any fee payable in accordance with regulation 4.

Managing and publicising the statement

6.—(1) Where the authority considers that any of the requirements referred to in regulation 3 or 4(2) have not been complied with, it must give notice to the relevant owner to that effect.

(2) Such notice must—

(a) identify the requirement in question; and

(b) set out the reasons why the authority considers that any requirement has not been complied with.

(3) As soon as practicable after receiving a statement in accordance with regulation 3(1), a map in accordance with regulation 3(2) and any fee required by regulation 4, the authority must—

(a) send an acknowledgement of receipt to the relevant owner; and

(b) give notice that a statement has been deposited ("notice of deposit") in accordance with paragraph (4).

(4) The authority must—

(a) publish notice of deposit on its website;

(b) serve notice of deposit on any person who has previously asked to be informed of all statements that have been deposited with the authority and who has given the authority an email or postal address for that purpose;

(c) display notice of deposit for at least 60 days—

(i) at or near at least one obvious place of entry to the relevant land; or

(ii) in any case where there are no such places, at or near at least one conspicuous place on the boundary of such land.

(5) The notices required by paragraph (4) must be in the form set out in Schedule 2, or in a form substantially to the like effect, with such insertions or omissions as are necessary in a particular place.

(6) Where a notice displayed under paragraph (4)(c) is, without any fault or intention of the authority, removed, obscured or defaced before the period of 60 days has elapsed, the authority is to be treated as having complied with the requirements of that paragraph.

Information to be contained in the register

7.—(1) The register must include—

Certified copy from legislation.gov.uk Publishing

(a) the contact details of the person in the authority to whom enquiries about the register may be made;

(b) an index to the register; and

(c) any other information which the authority considers appropriate.

(2) The register must contain the following information with respect to each map and statement deposited with the authority—

(a) a copy of the map and any legend accompanying or forming part of the map;

(b) a copy of Part B of the statement;

(c) the name and address, including the postcode, of the relevant owner;

(d) the date on which the statement and map were deposited with the authority;

(e) details of the land delineated on the map, including—

(i) the Ordnance Survey six-figure grid reference of a point within the area delineated;

(ii) the name of the electoral ward, district or community in which the land is situated;

(iii) the address and postcode of those buildings on the land to which a postcode has been assigned; and

(iv) the name of the town or city which is nearest to the point referred to in paragraph (i).

Manner of keeping the register

8.—(1) The register must—

(a) be kept in electronic and paper form;

(b) be kept in parts so that each part—

(i) relates to land within a particular electoral ward, district or community; and

(ii) contains the information referred to in regulation 7.

(2) The authority must keep the register in such manner as is suitable to enable a copy of any of the particulars contained in the register to be taken by or for any person who requests a copy in person at the relevant office.

(3) The paper version of the register must be kept at the relevant office.

(4) In this regulation “relevant office” (*“swyddfa berthnasol”*) means—

Certified copy from legislation.gov.uk Publishing

(a) where the authority has specified an office for the purpose of these Regulations on its website, the office so specified;

(b) otherwise, the principal office of the authority.

Removal of entries from the register

9.—(1) The authority may remove an entry from the register, or any part of an entry, if it is satisfied that the map or statement in question contains a material error.

(2) Before removing an entry from the register, the authority must give to the relevant owner not less than 28 days notice of its intention to do so.

Revocation of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

10. The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018(**1**) are revoked.

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
17 October 2018

(**1**) S.I. 2018/1021 (W. 212).

Certified copy from legislation.gov.uk Publishing

SCHEDULE 1

Regulation 3(1)(a)

Form of Statement

Form of statement under section 15A(1) of the Commons Act 2006

Please read the following guidance before completing this form

1. Parts A to C must be completed in all cases.

2. The statement must be signed and dated by, or by a duly authorised representative of, every owner of land to which the statement relates who is an individual; and by the secretary or some other duly authorised officer of every owner of land to which the statement relates where that owner is a body corporate or an unincorporated association.

3. In the case of land in joint ownership, all the joint owners must complete paragraphs 2 and 3 of Part A and complete and sign Part C, unless a duly authorised representative completes and signs the form on behalf of all the owners of the land. Paragraph 2 of Part A must be completed in full to clearly explain the capacity of the person submitting the statement for deposit (e.g. trustee, landowner's managing agent, executor etc.).

4. 'Owner' is defined in section 61(3) of the Commons Act 2006 and broadly means a legal owner of the freehold interest in the land.

5. Where the statement relates to more than one parcel of land, a description of each parcel should be included in paragraph 5 of Part A and the remainder of the form should be completed to clearly identify which statement relates to which parcel of land. This may require the insertion of additional wording. Multiple parcels of land must be clearly identified by coloured edging on any accompanying map.

6. A statement must be accompanied by an ordnance map, which must be at a scale of not less than 1:10,560 showing the boundary of the land to which the statement relates in coloured edging.

7. A statement must be accompanied by the requisite fee – please consult the relevant Commons Registration Authority for further details.

PART A: Information relating to the person submitting the statement for deposit and land to which the statement relates

1. Name of the commons registration authority (or authorities) to which the statement is addressed:

2. Status of person submitting the statement for deposit (tick relevant box or boxes):

   I am:

   (a) The owner of the land described in paragraph 5 ☐

   (b) Submitting the statement for deposit on behalf of [*insert name of the landowner*] who is

Certified copy from legislation.gov.uk Publishing

the owner of the land described in paragraph 5 in my capacity as [*insert details*] ☐

3. Name, full postal address (including postcode), email address and contact telephone number of the owner(s) of the land to which the statement relates. If there is more than one landowner, the names, full postal addresses (including postcodes), email addresses and contact telephone numbers of all landowners must be stated:

4. Name, full postal address (including postcode), email address and contact telephone number of any person submitting the statement for deposit on behalf of the owner(s):

5. Description of the land to which the statement relates (including full address and postcode):

6. Ordnance Survey six-figure grid reference(s) of a point within the area of the land to which the statement relates (if known):

PART B: Statement under section 15A(1) of the Commons Act 2006

[I am / [*insert name of owner*] is] the owner of the land described in paragraph 5 of Part A of this form and shown coloured [*insert colour*] on the map accompanying this statement.

[I / [*insert name of owner of the land*]] [wish/wishes] to bring to an end any period during which persons may have indulged as of right in lawful sports and pastimes on the whole or any part of the land shown coloured [*insert colour*] on the accompanying map.

(*delete wording in square brackets as appropriate and/or insert information as required*)

PART C: Statement of truth

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

I believe the facts and matters contained in this form are true

Signature (of the person making the statement of truth):

Full name (printed):

Certified copy from legislation.gov.uk Publishing

Date (day / month / year):

You should keep a copy of the completed form

PART D: Additional information relevant to the statement

Insert any additional information relevant to the statement

Certified copy from legislation.gov.uk Publishing

SCHEDULE 2

Regulation 6(5)

Form of Notice of Deposit

Notice of landowner deposits under section 15A(1) of the Commons Act 2006

[*Insert name of relevant Commons Registration Authority*]

A statement under section 15A(1) of the Commons Act 2006 ("the 2006 Act") has been deposited in relation to the land described below and shown [*insert colouring*] on the accompanying map.

PLEASE NOTE:

Deposits made under section 15A(1) of the 2006 Act may affect the ability to register such land as a town or village green under section 15 of that Act.

Description of the land(s) (including full address and postcode):

The statement was submitted [for deposit by [*insert name of owner*] / [on behalf of [*insert name of stated owner*]] and was received by this authority on [*insert date*].

The authority maintains a register of maps and statements under section 15B of the 2006 Act.

The register can be accessed online at [*insert web address and link*] or can be inspected free of charge at the address and times indicated below:

[*Insert address of where the register can be viewed*]
[*Insert opening times of the address where the register can be viewed*]

Signed on behalf of [*name of authority*]:

Name and position of signatory:

Date:

Explanatory Memorandum to:

The Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
19 October 2018

Part 1 – Explanatory Memorandum

1. Description

1.1 The Town and Village Greens (Landowner Statements) (Wales) Regulations (No.2) 2018 ("the Regulations"):

- prescribe the form of landowner statements, which when deposited with commons registration authorities, have the effect of bringing to an end any period during which persons have indulged in lawful sports or pastimes on the land as of right, thereby restricting the ability for land to be registered as a town or village green; and

- Detail the processes and procedures required for landowner statements to be submitted.

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

2.1 The Explanatory Memorandum covers the following statutory instrument:

- The Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018.

2.2 The Regulations are subject to the negative resolution procedure and are therefore subject to annulment by a resolution in accordance with Standing Order 27.2

2.3 The Regulations replace with amendments the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018. The amendments remove the requirement for a landowner's telephone number and email address to be published on a public register.

2.4 Further details regarding the amendments are contained in paragraphs 4.6 – 4.14.

3. Legislative background

3.1 The Welsh Ministers make the Regulations in exercise of the powers conferred on them by the following provisions off the Commons Act 2006 ("the 2006 Act"):

- Section 15A(1) (as amended by section 52(1) of the Planning (Wales) Act 2015), (3), (6), 7(3)(c) and (d), and (9);

- Section 15B(1), (4)(b) and (5); and

- Section 59(2).

3.2 In accordance with section 59(6) of the 2006 Act, the Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

Policy rationale

4.1 The general purpose of the legislation is to:

- Prevent the town and village green registration system being used to stop or delay planned development;

- Reduce the financial burden on local authorities in considering applications, as well as the costs to landowners whose land is affected by applications; and

- Remove the unnecessary uncertainty and delays, which are difficult for those affected in the community.

Effect of legislation

4.2 Section 15(1) of the 2006 Act provides that any person may apply to the commons registration authority to register land where, amongst other things, a significant number of inhabitants of any locality, or any neighbourhood within a locality have indulged in lawful sports or pastimes on the land for a period of at least 20 years.

4.3 In broad terms, section 29 of the Commons Act 1876 and section 12 of the Inclosure Act 1857 provide that development on town or village greens constitutes nuisance. It is therefore the case that development can be wilfully frustrated by registering the land in question as a town or village green.

4.4 However, section 15A(1) enables the owner of any such land to deposit with the authority a statement, the effect of which is to bring to an end any period during which persons have indulged in lawful sports or pastimes on the land to which the statement relates. Under section 15(3), the statement must be accompanied by a map identifying the land to which the statement relates.

4.5 The Regulations therefore provide for:

- Prescribing the form in which a statement and map must be deposited with the commons registration authority (regulation 3 and Schedule 1);

- enabling the authority to specify a reasonable fee for the deposit of a statement (regulation 4);
- a statement is to regarded as having been deposited with the authority when a compliant statement, map and fee have been received by the authority (regulation 5);
- the manner in which the deposit of a statement is to be managed and publicised by the authority, including various notice requirements (regulation 6 and Schedule 2);
- the information that is to be contained in the register that is required to be kept by the authority under section 15B of the 2006 Act (regulation 7);
- the manner in which that register is to be kept by the authority (regulation 8);
- removal of an entry (or any part of an entry) from the register by the authority if it is satisfied that the statement or map contains a material error, and notice requirements relevant to their removal (regulation 9); and
- the revocation of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 (regulation 10).

Amendments to the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

4.6 The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 contained a provision which required a degree of personal information about a landowner depositing a statement under section 15B(1) of the Commons Act 2006, or a person depositing such a statement on the landowner's behalf, to be set out in the register required to be kept by a commons registration authority.

4.7 Upon their consideration of the original Regulations 2018, the Assembly's Constitutional and Legislative Affairs Committee produced a draft report raising concerns regarding the extent of the personal information to be published on a public register and how this could potentially amount to interference with the privacy rights of landowners under Article 8 of the European Convention on Human Rights.

4.8 The Government response to the report accepted amendments were required.

4.9 Therefore, the Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018 do not require landowners' telephone number and email addresses to be published on a public register, nor will any personal information be required to be kept on the register in respect of any person depositing a statement on behalf of a landowner.

4.10 However, there will be remain a requirement for landowners' names and postal addresses to be published on a public register.

4.11 The justification for doing so is because the deposit of a statement by a landowner under section 15A(1) the Commons Act 2006 (“2006 Act”) brings to an end any period during which persons have indulged as of right in lawful sports or pastimes on the land to which the statement relates.

4.12 The exercise of a landowner’s discretion under section 15A(1) therefore itself removes a right previously enjoyed by the local community and by members of the public generally. As such, it is in the public interest for those whose rights may be curtailed, to know who has deposited the statement, and to enable the making of informal representations and enquiries should they so wish.

4.13 This represents the least intrusive means of facilitating the public interest objective and strikes a fair balance between the rights of the landowner and the interests of the community.

4.14 Additional personal information, including telephone numbers and email addresses, will remain part of the information required to submit a landowner statement to the Commons Registration Authority. It is advantageous for all parties involved if Commons Registration Authorities have the ability to contact landowners and their representatives quickly and at short notice if required for administration queries. However, there will be no requirement for this additional personal information to be published on a public register as the information is required solely to assist Commons Registrations Authorities in their administrative procedures.

5. Consultation

5.1 Proposals to reform the Town and Village regime in Wales were first consulted on in December 2013 as part of the ‘Positive Planning’ consultation paper, containing the draft Planning (Wales) Bill.

5.2 The ‘Positive Planning’ consultation paper proposed amending the Commons Act 2006, in relation to Wales, to:

- Prohibit applications being made to register land as a town or village green, where land has entered the planning system i.e. been identified for development in a development plan or has received planning permission; and

- Enable landowners to submit declarations to Commons Registration Authorities, which would have the effect of rendering all use of land indicated inconsistent with the ‘as of right’ criterion required for town and village green registration.

5.3 The proposals put forward in the consultation paper were well received by respondents, with the majority agreeing with the proposals to reform the town and village green regime in Wales. The proposals were carried forward into the Planning (Wales) Act 2015.

5.4 The ‘Town and Village Greens’ consultation paper was launched on 23 October 2017 and was open for responses until 2 February 2018. The consultation paper proposed commencing the relevant sections from the Planning (Wales) Act 2015 relating to town and village greens, and set out detailed proposals for the processes and procedures for submitting landowner statements.

5.5 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 22 responses.

5.6 A summary of the consultation and government response will be published alongside this Explanatory Memorandum and Regulatory Impact Assessment and can be found here:

https://beta.gov.wales/registration-town-and-village-greens

5.7 Overall, there was clear support for the proposals set out in the consultation paper, with each of the 7 questions receiving positive responses (either “Yes” or “Yes, subject to comment”). These proposals included:

- The information contained within a landowner statement and how one should be deposited;
- The ability for Commons Registration Authorities (“CRAs”) to charge fees;
- How registers should be kept and what information they should contain; and
- Procedures when submitting incorrect or incomplete information.

REGULATORY IMPACT ASSESSMENT

Town and Village Greens

6.1 Information contained in this Regulatory Impact Assessment has been taken from the Explanatory Memorandum and Regulatory Impact Assessment which accompanied the Planning (Wales) Act 2015, to reflect more recent data.

6.2 Two options have been considered:

- Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.
- Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.

Description

6.3 Under this option there would be no changes to the town and village green system in Wales as set out in section 15 of the Commons Act 2006 ("the 2006 Act").

6.4 Commons Registration Authorities ("CRAs") are responsible for maintaining the registers of Common Land and Town or Village Greens ("TVGs") in Wales. There are 22 CRAs in Wales, corresponding with each Unitary Authority. They undertake the determination process for applications to register land as a TVG.

6.5 At present, anyone can apply to a CRA for land to be registered as a TVG under section 15(1) of the 2006 Act if specific criteria apply, and there is no fee for doing so. The process is quasi-judicial in that applications require appraisal of both the facts and the law for a decision to be made. The criteria for determining TVG applications are that the local inhabitants have used the land 'as of right' for a period of at least 20 years. This assumes long, uninterrupted use, without permission, force or secrecy.

6.6 Where a site is registered as a TVG, it is granted protection by the Inclosure Act 1857 and the Commons Act 1876 from development or disturbance. The site may be de-registered under section 16 of the Commons Act 2006 in exchange for other land which will be registered as a TVG by order of the Welsh Ministers.

Cost

Welsh Government

6.7 There is no cost to the Welsh Government in relation to applications for TVG registration as they have no role to play in their determination. CRAs may engage a Planning Inspector to hold an inquiry into an application for registration, with the Inspector reporting to the CRA and not the Welsh Government or Planning Inspectorate. The CRA will reimburse the Planning Inspectorate directly for the Inspector's costs.

Local Planning Authorities

6.8 Although the CRA is normally within the same authority as the Local Planning Authority ("LPA"), they must both co-operate on applications where land is registered as a TVG. The cost of the LPA contacting the CRA where there is a planning proposal would form part of their administrative duties, this is anticipated to be a standardised notification memorandum or letter for a national park authority, and is estimated to cost local planning authorities £49 a year.

6.9 The estimated cost of an LPA producing a notification letter is based on 10 minutes for a planning officer to check if land has entered the planning system and 20 minutes to form a response. A planning officer has an average hourly rate of £17. Therefore, to respond to town and village green applications per year for LPAs would be:

£8 x 6.1 (average number of applications per year) = £49

Commons Registration Authorities

6.10 The 22 CRAs are responsible for maintaining the register of TVGs in Wales under section 1 of the Commons Act 2006. They bear the cost of the registration process, which can include administrative and management-level staff processing the application, internal and external legal advice, and the costs associated with a public inquiry and/or committee hearing, where applicable.

6.11 An application to register land as a TVG is often administered by a legal officer of a CRA and is decided by the authority. Some TVG applications are decided through a public inquiry, often in cases where the CRA owns the land or to demonstrate transparency in reaching a decision.

6.12 Evidence that we have received from 19 of the 22 CRAs suggests that there were 16 TVG applications between 2015 and 2016 in Wales. This equates to 5.3 applications per year. Assuming an equal distribution of applications and adjusting the figures to reflect the remaining 3 CRAs, suggests a total of 6.1 applications per year in Wales. Each application took an average of 2 years to consider.

6.13 The cost of administering an application for a TVG may vary on a case by case basis, depending on whether that application went to a public inquiry or otherwise. The cost to the Planning Inspectorate of undertaking a public inquiry has not been assessed as part of this impact assessment, as their costs are borne by the CRAs.

Table 1

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.3), averaged to 22 CRAs. ((22 / 19) x 5.3)
B	Share of applications going to public inquiry	49%	Average number of applications going to inquiry per year (2.6) divided by the 5.3 TVG applications per year
C	Estimated average cost of public inquiries	£29,000	Based on the average of the case studies received from CRAs which went to public inquiry.
D	Basic CRA processing costs, excluding public inquiries	£1,400	Based on CIPFA benchmarking survey of CRAs.
E	Estimated cost to CRA per application	£15,600	(B x C) + D
F	**Total annual cost to CRAs**	**£95,200**	**A x E**

Development Industry

6.14 There are direct costs to landowners and developers arising from the current TVG registration system, irrespective of the outcome of an application. Such costs are incurred through activities such as objecting to a TVG application, legal costs, delays to development or even the total abandonment of a project.

6.15 Developers acquire land at a certain value, which reflects the potential of that land for development. The potential development value of land can reduce, in some cases significantly, upon registration as a TVG. This is perceived to be due to the difficulties in being able to develop land registered as a TVG because of the protection afforded to it. This can leave developers with a devalued area of land which can be difficult to dispose of. Whilst this cost is not quantified due to the commercially sensitive nature of land transactions, it is an issue that has been raised by developers when making observations on the TVG regime.

6.16 The most frequent direct costs to landowners or developers arise from professional fees paid to address objections to TVG applications. This may involve the instruction of a solicitor, Counsel, a surveyor and providing evidence to prove that the land has not been in uninterrupted recreational use, without permission, force or secrecy for 20 years. Those costs will increase further where the application is heard at a public inquiry.

6.17 Other costs to landowners or developers relate to the abandonment or delaying of plans to develop land. Such costs are difficult to quantify and vary depending on the development type and financial model of each proposal, as well as the length of delay or whether the development must be restricted or abandoned altogether. Losses to developers resulting from delays may include contracting costs, the loss of potential rental or investment income, extra finance costs and project management fees. Abandonment of a development where building work is completed, or partially completed may result in further costs, including the total loss of investment and depreciation in land value.

6.18 Evidence submitted by developers in England to DEFRA's consultation on the registration of new town or village greens indicated that the average cost of a TVG application to the developer is £48,588. This cost does not include the loss of development land value. There is no reason to assume that this figure would be substantially different for applications in Wales given that the procedure for the determination of TVG applications follows a similar process.

Table 2

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.8), averaged to 22 CRAs ((22 / 19) x 5.3)
B	Estimates cost to developer per TVG application	£48,588	Based on consultation responses to DEFRAs consultation on the registration of new TVG (July 2011)
C	**Costs to the developer**	**£296,400**	**A x B**

Applicants for TVG registration

6.19 Responses to DEFRA's consultation on the registration of town and village greens (TVGs) indicated that the time taken to produce a TVG application ranges from 9 days to 22 days, based on three responses. It is assumed that a similar figure applies to Wales, given the similar requirements to put together an application. However, this range and amount of responses is not considered sufficient to provide quantified estimates of applicants' costs.

Further, it is difficult to estimate the cost of a person's time, given that little is known of their background, skills, qualifications and availability.

6.20 Whilst there is no application fee for the production of a TVG application, it is expected that an applicant collects evidence forms from residents, generates support, prepares an application, gives evidence at a public inquiry and incurs legal costs.

Third Parties

6.21 There are costs to third parties for engaging in the process in terms of time spent and any donation that they make towards a campaign for the registration of a TVG.

6.22 It is difficult to quantify the cost of third party participation in the process as there is no evidence available as to the average amount of time that a member of the public would spend contesting or supporting a TVG application. Much is dependent on whether third parties share similar characteristics to either the applicant or the developer.

Benefits

Welsh Government

6.23 There are no identifiable benefits to the Welsh Government.

Local Planning Authorities

6.24 The existing TVG registration system impacts on LPAs by introducing delays where an application to register a TVG is made where land has entered the planning system.

Commons Registration Authorities

6.25 There are no known benefits to CRAs.

Development Industry

6.26 Unless a landowner voluntarily registers their land as a TVG, there are very few benefits that the landowner may accrue from the registration of a TVG. Aside from the recreational benefit that registration as a TVG may bring the development value of that land may decrease.

6.27 Whilst our evidence suggests that the determination of an application to register a TVG may be costly and time-consuming, the determination of such an application will resolve any uncertainty about the status of the land, be it a

successful or unsuccessful application. This will provide the landowners with certainty and confidence in any future plans for their sites.

6.28 For those developers who are looking to gain consent for development on their land, a disadvantage will arise through the increased difficulty in gaining permission for development on that land and through the time spent objecting to applications to register a TVG.

Applicants for TVG registration

6.29 Whilst there are no evident financial benefits to the present system, benefits to the applicant arise in situations where the land is registered as a TVG, and is protected from development and interference. This may promote health and wellbeing locally, or may be motivated by a desire to maintain the value of existing property in the area.

6.30 Where an application is unsuccessful, any delay caused by the period for determination of the TVG application may be seen as generating short-term benefits. Any delay allows for continued use for recreation, and the potential for the abandonment of development proposals, should the delay cause a scheme to be unviable. Any delay caused may also allow time for publicity and for local support to be generated to secure the land for future recreational use.

6.31 There is presently no fee for TVG applications, allowing any potential applicant to register a TVG at no cost.

6.32 Whilst there is a cost to the applicant (reflecting the time spent completing the application and gathering evidence), the perceived benefit to them far outweighs the costs incurred to register a TVG.

Third Parties

6.33 Depending on the stance of the third party, they will share similar assessed benefits to either the landowner or to the applicant for a TVG registration.

Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Description

6.34 This option would see the commencement of sections 52 and 53 of, and Schedule 6 to the 2015 Act, together with relevant subordinate legislation.

6.35 Section 52 of the 2015 Act amends section 15A of the 2006 Act so the ability to deposit landowner statements applies in Wales. The deposit of a landowner statement brings an end to any period during which persons have undertaken

sports and pastimes on the land in question as of right and limits the time period in which an application to register land as a TVG can be submitted.

6.36 Section 53 of the 2015 Act amends section 15C of the 2006 Act and introduces Schedule 6 to the 2015 Act into the 2006 Act. Section 15C of the 2006 Act excludes the right of a person to apply for the registration of a TVG, in certain circumstances (trigger events), unless a corresponding terminating event is applied.

6.37 Regulations will provide the necessary detail for deposit of landowner statements under section 15A of the 2006 Act.

Cost

Welsh Government

6.38 This option will result in a one-off cost to the Welsh Government by providing guidance on the reforms this option proposes for CRAs.

6.39 Based on the average daily salary for a HEO grade officer and the time taken to produce guidance, it is estimated to cost the Welsh Government will be approximately £1200[1].

Local Planning Authorities

6.40 LPAs would incur similar costs as those identified in Option 1, however, we would expect to see a reduction in the number of applications submitted to register land as a town or village green under this option. Therefore, we would anticipate the £49 cost to LPAs in Option 1 to be reduced.

Commons Registration Authorities

6.41 CRAs would expect to incur similar costs to those identified in Option 1, however, as with LPAs, these cost would be expected to reduce based on the anticipated reduction of applications submitted to register land as a town or village green. However, as we are unable to calculate a projected reduction in application numbers, we cannot put a monetary figure to these costs.

6.42 Similarly, there will no additional costs to CRAs for undertaking the work which would arise from this option, as they would have the ability to charge a relevant fee to applicants which would recover their costs for providing this service.

[1] Based on the average weekly salary of an HEO employee, multiplied by 2 weeks to produce guidance

Development Industry

6.43 Where a landowner wishes to deposit a statement to a CRA under this option, they will also be required to submit a relevant fee to offset the costs incurred by the CRA.

6.44 However, it is not possible to quantify these costs to applicants as our evidence indicates CRAs have different people in different roles undertaking work relating to commons land, which results in different costs. For example, there may be solicitors, rights of way officers and dedicated commons land officers doing the same work and setting standard fees would not achieve true cost recovery.

6.45 Therefore, any fee set by CRAs to achieve cost recovery will vary from authority to authority. For example, a sample of CRAs in England sees fees ranging from £220 to £504, however, these costs are discretionary and will only apply if landowners deposit a statement.

Applicants for TVG registration

6.46 The costs to applicants to register land as a TVG will be the same as option 1. However, because this option seeks to prevent applications being submitted to register land as a TVG solely as a means to prevent lawful development, we would anticipate there being a reduction in the number of these applications being submitted due to the implementation of trigger events.

Third parties

6.47 There are no identifiable costs to third parties under this option.

Benefits

Welsh Government

6.48 This option will have a positive impact to the Welsh Government as the overlap between the commons registration system and the planning regime will be removed.

6.49 Furthermore, it also provides greater certainty for proposed developments which may be put before the Welsh Ministers. For example, if a large housing development was proposed, the Welsh Government can have greater certainty this development will go ahead, without the threat of a TVG application being put forward to prevent development.

Local Planning Authorities

6.50 The main benefit to LPAs is land allocated for development in their Local Development Plans will no longer be subject to potential TVG applications.

6.51 This allows Local Development Plans to be implemented as adopted and would reduce the amount of abortive work carried out by LPAs where proposed development, as allocated in a development plan, is subsequently restricted or abandoned because the land becomes registered as a TVG.

Commons Registration Authorities

6.52 This option will result in a reduction of applications submitted to register land as a TVG. However, although CRAs would now have to process landowner statements deposited under section 15A of the Commons Act 2006, they would require far less time and resource, when compared to TVG applications.

Development Industry

6.53 Where an application is submitted to register land as a TVG, this creates uncertainty among the development industry as to the future of the land, particularly where it has entered the planning process. This option will therefore provide more certainty for developers.

6.54 Furthermore, the submission of landowner statements under section 15A of the Commons Act 2006 will be entirely at the discretion of landowners. They would be able to protect their land from TVG registration and retain the development value of the land, which would be lost as a result of TVG registration.

Applicants for TVG registration

6.55 Although this option seeks to prevent the submission of applications to register land as a TVG solely to prevent lawful development, there will continue to be opportunities for these applications to be submitted within a prescribed timeframe.

6.56 Similarly, landowners may also allow continued recreational use of their land by the public if they wish, which is a benefit to the community.

Justification for two options

6.57 The principle for reforming the TVG system in Wales has already been established through the implementation of the 2015 Act[2].

6.58 Therefore, the only potential options available would be to retain the current system for TVG, or bring into force those relevant provisions contained within the 2015 Act which seek to address the issues surround the registration of TVGs creating barriers to development.

Summary and preferred option

6.59 The current TVG registration system provides legal protection to land from development and interference on sites which have been used for recreational purposes by local or nearby residents for the preceding 20 years, or over.

6.60 Registered TVGs can have positive impacts on people and communities, though promoting health and wellbeing, as well as providing a public good.

6.61 There is however, evidence that the TVG registration system is being used as a method for preventing the development of land. TVGs can be registered on sites which have deemed planning permission, on which building work may have commenced or have been completed. The system may also be used to undermine land which is subject to a Local Development Order or a Development Consent Order. The Commons Act 2006 and planning legislation are at cross purposes. Development which is considered acceptable under planning legislation can be subject to delays and abandonment with associated economic benefits. It also places a burden of substantial costs on developers and landowners.

6.62 Landowners can also suffer a significant loss in the value of their land following registration as a TVG, given that it would be extremely difficult to develop that land thereafter. In those circumstances, a TVG can be proven to be a barrier to development.

6.63 Option 2 is the preferred option as it will allow for continued recreational use of land by the public while giving landowners a proactive mechanism for working constructively with the community. Option 2 is considered to be a less restrictive approach to the community and those who engage in the planning system. Whilst it does not address all issues of overlap between the TVG registration system and the planning system, additional protection to development from such applications would be added compared with the existing situation.

6.64 Option 2 also draws a clear line that an application to register a TVG cannot be made where relevant trigger events have occurred.

[2] Sections 52 and 53 of, and Schedule 6 to the Planning (Wales) Act 2015.

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L-LG-0624-18

Elin Jones AM
Presiding Officer
National Assembly for Wales

19 October 2018

Dear Elin,

THE TOWN AND VILLAGE GREENS (LANDOWNER STATEMENTS) (WALES) (NO.2) REGULATIONS 2018

I am notifying you the 21 day rule will be breached in relation to the above Regulations. The Regulations will be laid on 19 October and are due to come into force on 22 October 2018. They replace and revoke the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 (S.I 2018/1021 (W. 212)) were made on 21 September and laid before the National Assembly for Wales on 24 September. The Regulations were due to come into force on 22nd October.

In reviewing the Regulations, the Constitutional and Legislative Affairs Committee identified and reported a potential breach of Article 8 of the European Convention on Human Rights in relation to the inclusion of personal details in a public register, where their inclusion could not be justified, thereby raising doubt as to the power to make the Regulations.

Both sets of Regulations are made under section 15A of the Commons Act 2006. Section 15A relates to the registration of greens. It allows a landowner to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on their land, by depositing a statement with the commons registration authority. The statement must be in the prescribed form. Amendments to section 15A, made by section 52 of the Planning (Wales) Act 2015 (anaw 4) have the legal effect of applying section 15A to land in Wales.

Section 52 comes into force on 22nd October 2018 by virtue of article 2 of the Planning (Wales) Act 2015 (Commencement No. 5 and Transitional Provisions) Order 2018 (S.I. 2018/1022 (W. 213)). It is essential that the form of landowner statements is prescribed in Regulations under section 15A on 22 October 2018. Failure to prescribe the form as at that date will render section 15A ineffective in relation to Wales.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

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

The Cabinet Secretary for Energy, Planning and Rural Affairs has reflected on comments made by CLAC and reconsidered the inclusion of personal details in a public register. The replacement Regulations remove the requirement to include email addresses and telephone numbers of landowners in a public register. The Cabinet Secretary considers that the inclusion of landowners' names and postal addresses has a legitimate aim sufficient to justify any possible infringement of rights under Article 8.

It is essential that the form of landowner statements is prescribed as the day in which section 15A comes into force, in order to give full effect to this section. For this reason it is considered necessary to breach the 21 day rule, such as the earlier Regulations are revoked on 22 October 2018 and the replacement Regulations come into force on this day.

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

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Service.

Yours sincerely,

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@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.

Agenda Item 3.3

SL(5)266 – The Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018

Background and Purpose

This Order amends the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 (S.I. 2006/1495 (W. 145)) in order to correct errors and update references to the relevant EU legislation, to secure proper enforcement.

It also amends the Tope (Prohibition of Fishing) (Wales) Order 2008 (S.I. 2008/1438 (W. 150)) and the Shrimp Fishing Nets (Wales) Order 2008 (S.I. 2008/1811 (W. 175)) in order to update references to the relevant EU legislation.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We welcome the inclusion of a map in the Explanatory Memorandum, which sets out an easy, at-a-glance summary of the areas of sea included within the Welsh zone.

Implications arising from exiting the European Union

This Order implements various EU obligations in respect of sea fishing, and therefore this Order will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks provides that fisheries management and support is a policy area likely to be subject to regulations made under section 12 of the EU (Withdrawal) Act 2018. Therefore, the law covered by this Order is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
19 October 2018

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1095 (W. 228)

SEA FISHERIES, WALES

The Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 (S.I. 2006/1495 (W. 145)) in order to correct errors and update references to the relevant EU legislation. It also amends the Tope (Prohibition of Fishing) (Wales) Order 2008 (S.I. 2008/1438 (W. 150)) and the Shrimp Fishing Nets (Wales) Order 2008 (S.I. 2008/1811 (W. 175)) in order to update references to the relevant EU legislation.

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.

Certified copy from legislation.gov.uk Publishing

WELSH STATUTORY INSTRUMENTS

2018 No. 1095 (W. 228)

SEA FISHERIES, WALES

The Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018

Made *16 October 2018*

Laid before the National Assembly for Wales *18 October 2018*

Coming into force *20 November 2018*

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 3(1), 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish (Conservation) Act 1967(**1**), which are now vested in

(**1**) 1967 c. 84 ("the 1967 Act"). Section 3(1) was amended by article 4 of and paragraph 43(1) and (2)(b) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 5(1) was substituted by section 198(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act"). *See* section 5(9) of the 1967 Act for a definition of "the appropriate national authority". Section 5(9) was inserted by section 198(3) of the 2009 Act and amended by article 4(2) and (4) of S.I. 2010/760. Section 5(6) was amended by section 22(2) of the Fisheries Act 1981 (c. 29) and section 201 of and paragraphs 3(1) and 4(a), (b) and (c) of Schedule 15 to the 2009 Act. Section 6(1) was amended by article 4 of, and paragraph 43(1) and (6)(a) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 6(1A) was inserted by section 23(2) of the Fisheries Act 1981 and amended by article 4 of and paragraph 43(1) and (2)(b) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 15(3) was substituted by section 22(1) of and Part 2 of Schedule 1 to the Sea Fisheries Act 1968 (c. 77) and amended by section 9(1) of and paragraph 16(1) of Schedule 2 to the Fishery Limits Act 1976 (c. 86) and further amended by article 4 of and paragraphs 43(1) and (2)(b) of Schedule 2 to S.I. 1999/1820. *See* section 22(2) of the 1967 Act for a definition of "the Ministers" for the purposes of sections 3, 5, 6, and 15(3) of that Act. Section 22(2) was amended by sections 19(2)(d), 45(a), (b) and (c) and 46(2) of, and Part 2 of Schedule 5 to the Fisheries Act 1981, and by article 4 of and paragraph 43(1) and (12) of Part 1 and Part 4 of Schedule 2 to S.I. 1999/1820.

Certified copy from legislation.gov.uk Publishing

them(1), and section 2(2) of, and paragraph 1A of Schedule 2(2) to the European Communities Act 1972(3) ("the 1972 Act").

The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Union(4).

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for any reference in this Order, the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(5), the Tope (Prohibition of Fishing) (Wales) Order 2008(6) or the Shrimp Fishing Nets (Wales) Order 2008(7), to the following Regulations to be construed as a reference to those Regulations as amended from time to time—

(a) Commission Regulation (EC) No. 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets(8), and

(b) Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community

---

(1) By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 3, 5, 6 and 15 of the 1967 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as exercisable in relation to Wales (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)). Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) ("the 2006 Act"). By virtue of articles 4(1)(b) and 5(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760), functions exercisable under sections 3, 5, 6 and 15 of the 1967 Act were further transferred to the Welsh Ministers in so far as exercisable in relation to the Welsh zone (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)).

(2) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and was amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and by article 3 of and paragraph 1 of Schedule 1 to S.I. 2007/1388. It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (*see* section 20 of that Act).

(3) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008. It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 from exit day (*see* section 20 of that Act).

(4) S.I. 2010/2690.

(5) S.I. 2006/1495 (W. 145).

(6) S.I. 2008/1438 (W. 150).

(7) S.I. 2008/1811 (W. 175).

(8) OJ No L 151, 11.6.2008, p. 5.

Certified copy from legislation.gov.uk Publishing

control system for ensuring compliance with the rules of the common fisheries policy(**1**).

Title, application, interpretation and commencement

1.—(1) The title of this Order is the Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018.

(2) Save as provided in paragraph (3), this Order applies in relation to Wales and the Welsh zone.

(3) Articles 3 and 4 of this Order apply in relation to Wales.

(4) In this article, "Wales" ("*Cymru*") and the "Welsh zone" ("*parth Cymru*") have the meanings given by section 158(1) of the Government of Wales Act 2006(**2**).

(5) This Order comes into force on 20 November 2018.

Amendments to the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006

2.—(1) The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(**3**) are amended as follows.

(2) In regulation 1 (title, commencement and application), in paragraph (2), after "Wales" insert "and the Welsh zone".

(3) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definition of "Article 9";

(ii) omit the definition of "the CFP Regulation";

(iii) insert in the appropriate place in alphabetical order—

""the Control Regulation" ("*y Rheoliad Rheolaeth*") means Council Regulation (EC) No. 1224/2009 of 20 November 2009

(**1**) OJ No L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) 2015/812 (OJ No L 133, 29.5.2015, p. 1).

(**2**) 2006 c. 32. There are amendments to section 158 which are not relevant to this definition. For the purposes of the definition of "Wales" in section 158(1) of the 2006 Act, the boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as adjacent to Wales and those which are not are, in each case, a line drawn between the co-ordinates set out in Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect. The definition of "Welsh zone" in section 158(1) was inserted by section 43 of the 2009 Act. The Welsh zone is specified in the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

(**3**) S.I. 2006/1495 (W. 145).

Certified copy from legislation.gov.uk Publishing

establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time;";

""Wales" ("*Cymru*") has the same meaning as it has by virtue of section 158 of the Government of Wales Act 2006;";

""Welsh zone" ("*parth Cymru*") has the same meaning as it has by virtue of section 158 of the Government of Wales Act 2006." ;

(iv) in the definition of "equivalent provisions", for "Article 9, or Article 22 of the CFP Regulation" substitute "Chapter II of Title V"; and

(v) in the definition of "fish", for "Article 9 or Article 22 of the CFP Regulation" substitute "the Control Regulation";

(b) for paragraph (3) substitute—

"(3) Terms used in these Regulations which are not defined in paragraph (1) or (2) and which appear in the Control Regulation have the same meaning in these Regulations as they have for the purposes of the Control Regulation.

(4) In these Regulations, a reference to an Article means an Article of the Control Regulation, and a reference to Chapter II of Title V means Chapter II of Title V of the Control Regulation."

(4) In regulation 3 (registration of fish sellers)—

(a) in paragraph (1), for "Article 9" substitute "Chapter II of Title V (Control of marketing : post-landing activities)";

(b) in paragraph (4), for "Article 9, Article 22 of the CFP Regulation" substitute "Articles 59, 62, 63, 64, 66 and 67"; and

(c) in paragraph (8)(b) for "Article 9, Article 22 of the CFP Regulation" substitute "Articles 59, 62, 63, 64, 66 or 67".

(5) In regulation 5 (maintenance of records by registered fish seller), in paragraph (3), for "until the end of the second calendar year following that sale" substitute "for 3 years".

(6) In regulation 6 (designation of fish auction sites)—

(a) in paragraph (1), for "Article 9 and Article 22 of the CFP Regulation" substitute "Chapter II of Title V";

(b) in paragraph (3), for "Article 9, Article 22 of the CFP Regulation" substitute "Chapter II of Title V"; and

Certified copy from legislation.gov.uk Publishing

(c) in paragraph (7)(b), for "Article 9, Article 22 of the CFP Regulation" substitute "Chapter II of Title V".

(7) In regulation 7 (registration of fish buyers)—

(a) in paragraph (1), for "Article 22(2)(b) of the CFP Regulation" substitute "Article 59";

(b) in paragraph (3), for "Article 9, Article 22 of the CFP Regulation" substitute "Articles 62, 63, 64, 66 and 67"; and

(c) in paragraph (7)(b), for "Article 9, Article 22 of the CFP Regulation" substitute "Articles 62, 63, 64, 66 or 67".

(8) For regulation 8 (purchase of fish by an unregistered buyer) substitute—

> "**8.** Any person who buys fish contrary to Article 59(2) is guilty of an offence, unless the exemption in Article 59(3) applies."

(9) In regulation 9 (maintenance of records by registered fish buyer), in paragraph (3), for "until the end of the second calendar year following that purchase" substitute ", for 3 years".

(10) In regulation 13 (powers of British sea-fishery officers in relation to fishing boats), in paragraph (1), after "Wales" insert "and the Welsh zone".

(11) For regulation 15 (powers of British sea-fishery officers to seize fish) substitute—

> "**15.** Any British sea-fishery officer may seize any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that an offence under these Regulations or under any equivalent provision has been committed."

(12) In Schedule 1 (conditions applicable to registrations of fish sellers), in paragraph 2, for "Article 9" substitute "Articles 62 to 64".

(13) In Schedule 3 (conditions applicable to registrations of fish buyers), in paragraph 2, for "Article 22(2) of Council Regulation (EC) 2371/2002" substitute "Articles 62 to 64".

Amendments to the Tope (Prohibition of Fishing) (Wales) Order 2008

3. In the Tope (Prohibition of Fishing) (Wales) Order 2008(**1**), in article 1 (title, commencement and application), for paragraph (3) substitute—

> "(3) This Order only applies to British fishing boats which are either—

(**1**) S.I. 2008/1438 (W. 150).

Certified copy from legislation.gov.uk Publishing

(a) registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(**1**); or

(b) owned wholly by persons qualified to own British ships for the purposes of that Part of that Act."

Amendments to the Shrimp Fishing Nets (Wales) Order 2008

4. In the Shrimp Fishing Nets (Wales) Order 2008(**2**), in article 2 (interpretation), in paragraph (2), for the words "Commission Regulation (EC) No. 129/2003" to the end, substitute "Commission Regulation (EC) No. 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets".

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
16 October 2018

(**1**) 1995 c. 21.
(**2**) S.I. 2008/1811 (W. 175); relevant amending instruments are S.I. 2008/3144 (W. 279) and 2011/1043.

Explanatory Memorandum to The Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

This Explanatory Memorandum has been prepared by the Marine and Fisheries 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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

18 October 2018

Description

1. This Order amends the following existing pieces of fisheries legislation in order to correct errors and update references to the relevant EU legislation following the introduction of Council Regulation (EC) No 1224/2009):
   - The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006
   - The Tope (Prohibition of Fishing)(Wales) Order 2008
   - The Shrimp Fishing Nets (Wales) Order 2008

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

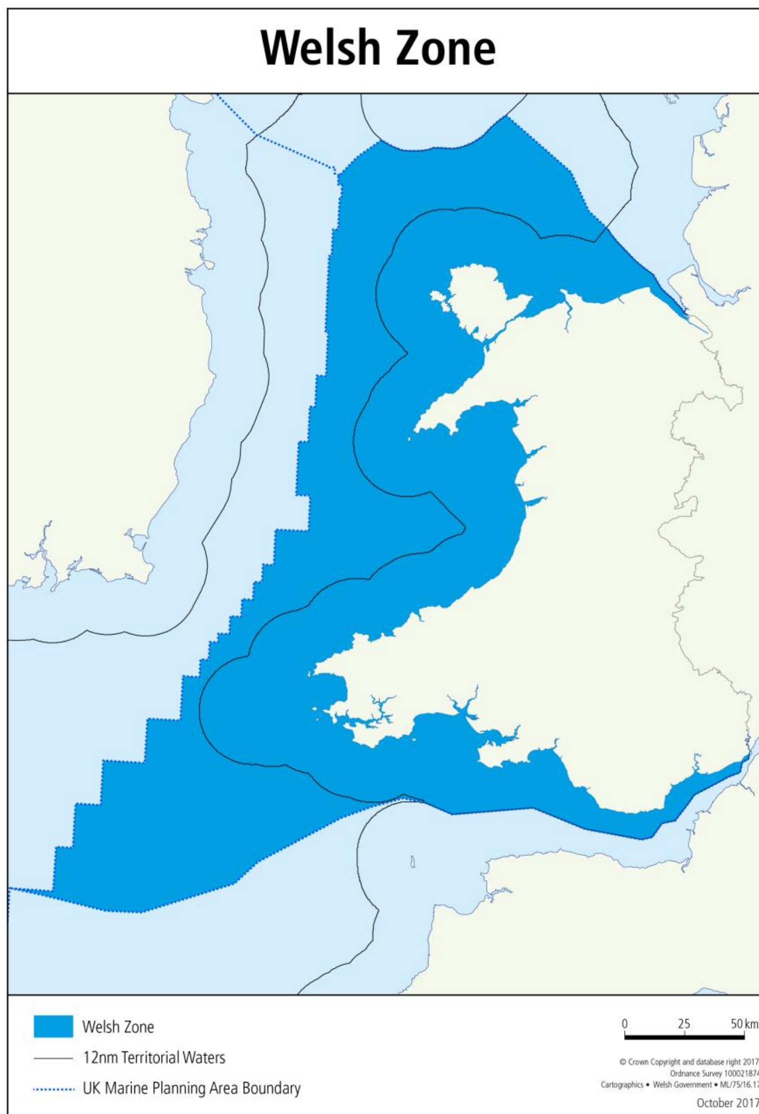
Legislative background

3. This Order is made in exercise of the powers conferred by Sections 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish Conservation Act 1967 and Section 2(2) of, and paragraph 1A of Schedule 2 to the European Communities Act 1972.
4. The Order follows the negative resolution procedure (pursuant to section 316(8) of the 2009 Act).

Purpose & intended effect of the legislation

5. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 No.1495 (W.145), provides that any individual or company purchasing first sale fish for commercial purposes must be a registered buyer of fish and provide sales notes to Welsh Government. The submission of sales notes is the main mechanism for monitoring the exploitation of fisheries resources to ensure compliance with national quotas. This is an important part of the audit process to ensure all fish landed in Wales is legitimately sourced.
6. The Registration of Buyers and Sellers (RBS) is an EU requirement through the Common Fisheries Policy and associated Control Regulations. Member States are required to ensure this requirement is met through domestic legislation where necessary.
7. The above Statutory Instrument (No.1495 (W.145)) currently makes reference to the former EU Regulations (Council Regulation (EEC) No. 2847/93 and Council Regulation 2371/2002) rather than the current Regulation (Council Regulation (EC) No 1224/2009). Therefore there is a significant risk the current regulations cannot be enforced until an amendment is made.
8. In addition, the 2006 SI extends to “Wales” but that term is not defined in the Regulations. Consequently, the Interpretation Act definition of “Wales” applies and the 2006 SI is, therefore, limited to the land mass of Wales only. A definition of “Wales” was omitted in error when those Regulations were originally made. Since that time the Welsh Zone has also been

created (as defined by the Government of Wales Act 2006 and illustrated below). The existing English Legislation (SI 2005/1605 as amended) does not apply to either Wales or the Welsh Zone.



9. At present, therefore, there is no Registered Buyers and Sellers regime which applies throughout the territorial waters of Wales or the Welsh Zone. The purpose of this legislation is to reinstate the regime and ensure it applies throughout the territorial waters of Wales and the Welsh Zone.

10. The Tope (Prohibition of Fishing) (Wales) Order 2008 No.1438 (W.150), prohibits fishing for Tope (a species of shark) in Welsh waters other than by rod and line. The Order also prohibits the landing of Tope caught by rod and line. It allows for a small by-catch for commercial vessels (45kg per day). The Order therefore prevents a targeted fishery, while allowing recreational rod and line vessels to target Tope for catch and release fishing. The Order currently references the previous Common Fisheries Policy and this reference needs updating to ensure it applies in Welsh waters.

11. The Shrimp Fishing Nets (Wales) Order 2008 No. 1811 (W.175) regulates the carriage and use of any fishing nets with mesh size between 16 and 31 millimeters. The Order applies to British fishing boats in Wales and prohibits them from carrying or using such nets, other than in certain specified circumstances. The Order currently references a previous EU regulation which lays down detailed rules for determining the mesh size and thickness of twine of fishing nets. This reference needs updating to the current EU regulation to ensure it applies in Welsh waters

Consultation

12. The amendments required are of a technical nature and do not alter the intended purpose of the specified Regulations. Therefore, no consultation process was considered necessary.

Regulatory Impact Assessment (RIA)

13. The amendments required within this regulation are of a technical nature and do not alter the intended purpose of the specified Regulations. There are no costs or benefits associated with its introduction, therefore there is not requirement to carry out a Regulatory Impact Assessment. This legislation has no impact on the statutory duties (sections 77-79 GOWA 06) or statutory partners (sections 72-75 GOWA 06)

Agenda Item 4.1

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/LG/0654/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

29 October 2018

Dear Mick

This letter is to inform you I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A.

I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis our interest in this SI is restricted to making corrections to out of date references in law that will arise as a result of the UK leaving the EU.

The provisions of the SI are technical in nature, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Regards

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly**
DATE	**30 October 2018**
BY	**Julie James AM, Leader of the House and Chief Whip**

The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018

The SI's impact in relation to Wales:
In terms of the SI's impact in Wales, it only goes as far as to make a technical correction to the definition of waste in section 336 of the Town and Country Planning Act 1990, which applies to both England and Wales. This correction is required to ensure that the statute book is up to date.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SI (where relevant) to Wales makes provision within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principle is that it is appropriate, we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

As there is some Welsh equivalent legislation in place, corrections to deficiencies will be addressed in Wales-only EU Exit SIs.

The purpose of the amendment
The purpose of the this SI (negative procedure), to be introduced by the Ministry for Housing, Communities & Local Government is to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. The purpose of the provision, which applies in Wales, is to correct an out-of-date reference to EU legislation. It is made under the European Union (Withdrawal) Act 2018 and the European Communities Act 1972. This instrument will not introduce any policy changes.

The SI and accompanying Explanatory Memorandum, setting out the effect of this amendment is available here:
https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-assessments-and-miscellaneous-planning-amendment-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make this correction in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the minor and technical nature of the amendment. Making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book.
This amendment is to update an out of date reference, which is needed to ensure the legislation can operate effectively post EU exit. The amendment has been considered and there is no divergence in policy between the Welsh Government and the UK Government. Therefore, it is appropriate for the UK Government to make the SI in this instance.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 were laid before Parliament on 24 October 2018. The Regulations can be found at:

https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-assessments-and-miscellaneous-planning-amendment-eu-exit-regulations-2018

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arsing from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also corrects out-of-date references to EU legislation.

4. The SI makes amendments to a number of pieces of legislation:
    - Town and Country Planning Act 1990;
    - Planning and Compulsory Purchase Act 2004;
    - Planning Act 2008;
    - Environmental Assessment of Plans and Programmes Regulations 2004;
    - Town and Country Planning (Environmental Impact Assessment) Regulations 2017, and
    - Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Relevant provision to be made by the SI

5. In particular this SI makes a technical correction to the definition of waste in section 336 of the Town and Country Planning Act 1990, which applies to both England and Wales. This correction is required to ensure that the statute book is up to date.

6. It is the view of the Welsh Government that the provision described in the paragraph above falls within the legislative competence of the National Assembly for Wales in so far as it relates to planning; which is not listed as a specific reservation under Part 2 of Schedule 7A to the Government of Wales Act 2006, as amended by the Wales Act 2017.

7. Where there is Welsh equivalent legislation in place, corrections to deficiencies will be addressed in Wales EU Exit SIs

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

October 2018

EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL ASSESSMENTS AND MISCELLANEOUS PLANNING (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Act.

1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes, which arise as a result of the UK leaving the European Union, in the following pieces of legislation:

The main part of this instrument amends the following:

- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/571
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/572
- The Environmental Assessment of Plans and Programmes Regulations 2004, S.I. 2004/1633 ("SEA Regulations")

The instrument also contains amendments to:

- The Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
- The Planning Act 2008

2.2 The instrument (in regulations 2(3) and 5(3)(a)) also uses section 2(2) of the European Communities Act 1972 to update references. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste. The amendment in regulation 5(3)(a) replaces an out of date reference in regulation 3 of the SEA Regulations to Council Directive 85/337/EEC with Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment. These provisions come into force before exit day.

2.3 Explanations

What did any relevant EU law do before exit day?

This instrument principally concerns the Environmental Impact Assessment and Strategic Environmental Assessment regimes.

Directive 2011/92/EU[1] of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive") is implemented, as respects developments of land, by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572). The EIA Directive requires that development consent for public or private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of these projects has been carried out. The two sets of regulations apply to the environmental impact assessment of certain public or private projects which are given development consent through the town and country planning regime and through the Nationally Significant Infrastructure Planning regime respectively. These two sets of Regulations provide that development consent must not be granted until an assessment has been carried out. They set out what an environmental impact assessment is, what it must identify, describe and assess, what is to be included in any environmental report prepared and the public consultation and other procedures relating to environmental impact assessments.

Directive 2001/42/EC[2] of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment ("the SEA Directive") is implemented by the SEA Regulations. The SEA Directive aims to ensure that Member States integrate environmental assessment into their plans and programmes at the earliest stages. The Regulations apply to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of certain projects. The projects being those listed in Annex I or II of the EIA Directive and are either—

(a) subject to preparation or adoption by an authority at national, regional or local level; or

(b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

These Regulations set out what a strategic environmental assessment must include and the public consultation and other procedures relating to such assessments.

In relation to the other amendments in this instrument, across the UK's domestic planning regime there are a number of references to complying with obligations under EU law which this instrument amends to become references to complying with retained EU law. Namely these are references to complying with EU obligations in:

- sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town and Country Planning Act 1990,
- section 38A of, and Schedule A2 to, the Planning and Compulsory Purchase Act 2004, and
- paragraph 3 of Schedule 6 to the Planning Act 2008.

[1] OJ No L 26, 28.1.2012, p. 1.
[2] OJ No L 197, 21.7.2001, p. 30

Why is it being changed?

This instrument uses powers in the European Union (Withdrawal) Act to make necessary changes to the above legislation to ensure that the law functions correctly after the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union. No substantive changes are being made by this instrument to the way the EIA or SEA regimes operate or the other legislation amended by this instrument. The changes remove unnecessary references, for example to the United Kingdom being a Member State.

What will it now do?

The SEA and EIA regimes amended by this instrument will continue to function as they did before Exit. The changes are:

- references to complying with EU obligations have been replaced with references to complying with retained EU law (regulations 5(3), 5(4), 5(7), 5(8), 6(2), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11))
- references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6))
- references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day (regulations 5(2), 6(2), 6(11) and 6(12) and 7(2), 7(8) and 7(9))
- references to the UK as a Member State are amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)).

In relation to the other amendments in this instrument they relate to references to obligations in EU law which are redundant or no longer appropriate. Namely these are references to complying with EU obligations etc have been replaced with references to complying with retained EU obligations etc (regulations 2(2), 2(4), 2(5), 3, and 4).

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

3.1 This instrument is being laid for sifting as required under the European Union (Withdrawal) Act 2018. A statement regarding the use of the legislative powers in that Act is contained in Part 2 of the Annex to this memorandum.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The amendments made by this instrument have the same extent and territorial application as the instruments which they amend.

5. European Convention on Human Rights

5.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse, has made the following statement regarding human rights:

"In my view the provisions of the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 and section 2(2) of the European Communities Act 1972.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. The European Union (Withdrawal) Act 2018 creates a new body of domestic legislation from directly applicable EU law being brought into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the European Union; together this will be retained EU law.

6.3 The European Union (Withdrawal) Act 2018 contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law. This instrument makes a number of amendments to legislation in the field of environmental assessments and the planning regime in order to ensure that the legislation continues to function properly following the exit of the United Kingdom from the European Union. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the European Union. See paragraph 2 above for further details.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments to correct deficiencies in certain environmental and planning related legislation. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. it remains coherent and workable following the United Kingdom's exit from the European Union. Details of the amendments are set out in paragraph 2 above.

7.2 The instrument also makes provisions under section 2(2) of the European Communities Act 1972, to bring references to EU law up to date before exit day – details of these amendments are provided in paragraph 2 above. The purpose of these amendments is to ensure that UK legislation includes the up to date reference to EU law.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 to bring references to EU law up to date before exit day – more details on these amendments are provided in paragraph 2.

9. Consolidation

9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged. The devolved administrations were consulted at an early stage and are content with the approach taken.

11. Guidance

11.1 No guidance is necessary. The existing planning practice guidance will be updated where necessary to reflect the amendments made by this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen due to the nature of the operability fixes contained within this instrument. This conclusion has been verified by an internal panel of economists.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, however the amendments introduced by this instrument seek only to maintain the way the current regimes function, as such it is not necessary to take any steps to minimise impacts. The approach of this instrument (i.e. to ensure the continuation of the relevant regimes as they currently function) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.

14. Monitoring & review

14.1 In relation to the amendments to secondary legislation made by this instrument under section 2(2) of the European Communities Act 1972, the amendments made by this instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse MP has made the following statement:

"Having had regard to the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make a provision for review in this instrument because it would be disproportionate taking into account the economic impact of the amendments made by this instrument. There are no substantive policy

changes and the amendments to legislation are being made to ensure that the existing position is maintained. Furthermore, as this is an EU Exit related instrument and is merely updating existing references to EU law, as such the measure has no, or no significant regulatory impact, and consequently a review clause would not be appropriate."

14.2 As the remainder of this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

15.1 David Hughes at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0282 or email: david.hughes@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Gallagher, Director for Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018

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

1. Sifting statement

1.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. These Regulations correct deficiencies in retained planning legislation arising out of the UK's withdrawal from the European Union. The instrument makes changes of a minor and technical nature to ensure the continued effective operability of the relevant legislation.

2. Appropriateness statement

2.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate".

2.2 This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

3. Good reasons

3.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are ensuring that the legislation amended by this instrument continues to function correctly once the UK has left the European Union and ensuring clarity for the public and stakeholders. In particular the amendments update references in UK

legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

4. Equalities

4.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Kit Malthouse MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.

STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

TOWN AND COUNTRY PLANNING

The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018

Sifting requirements satisfied	*[?? November 2018]*
Made - - - -	*[?? November 2018]*
Laid before Parliament	*[?? November 2018]*

Coming into force in accordance with regulation 1

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(**a**) (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

The Secretary of State has been designated(**b**) for the purposes of section 2(2) of the European Communities Act 1972(**c**) in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of the European Union (Withdrawal) Act 2018.

DRAFT

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulations 2(3) and 5(3)(a) come into force on 31st December 2018.

(**a**) 2018 c. 16.
(**b**) S.I. 2008/301.
(**c**) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51); and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(4) The amendments made by these Regulations have the same extent as the provisions they amend.

PART 2

Amendments to primary legislation

Amendments to the Town and Country Planning Act 1990

2.—(1) The Town and Country Planning Act 1990(**a**) is amended as follows.

(2) In section 61E(8) (neighbourhood development orders) for "EU obligation" substitute "retained EU obligation".

(3) In section 336(1) (interpretation), in the definition of "waste" at the end of paragraph (a), before the "and" insert "as last amended by Council Regulation (EU) 2017/997,".

(4) In Schedule 4B (process for making neighbourhood development orders), in paragraphs 8(2)(f), 13B(1)(c)(ii) and 13B(6)(a), for "EU obligations" substitute "retained EU obligations".

(5) In Schedule 4C (community right to build orders), in paragraph 10(5)(a), for "EU obligations" substitute "retained EU obligations".

Amendments to the Planning and Compulsory Purchase Act 2004

3.—(1) The Planning and Compulsory Purchase Act 2004(**b**) is amended as follows.

(2) In section 38A(6) (meaning of "neighbourhood development plan") for "EU obligation" substitute "retained EU obligation".

(3) In Schedule A2 (modification of neighbourhood development plans)—

(a) in paragraphs 11(2)(d) and 14(6)(a), for "EU obligations" substitute "retained EU obligations"; and

(b) in paragraph 14(4), for "EU obligation" substitute "retained EU obligation".

Amendments to the Planning Act 2008

4.—(1) The Planning Act 2008(**c**) is amended as follows.

(2) In Schedule 6 (changes to, and revocation of, orders granting development consent)—

(a) in paragraph 3(7)(a) for "EU law" substitute "relevant retained EU law"; and

(b) in paragraph 3(8) for the definition of "EU law" substitute—

""relevant retained EU law" means—

(a) any right, power, obligation, liability or restriction that—

(i) was created or arose by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law, and

(b) any remedy or procedure that—

(i) was provided for by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law,

as modified from time to time.".

(**a**) 1990 c. 8. Section 61E was inserted by paragraph 2 of Schedule 9 to the Localism Act 2011 (c. 20). Schedule 4B and 4C were inserted by Schedules 10 and 11 to the Localism Act 2011. Paragraph 13B was inserted by section 141 of the Housing and Planning Act 2016 (c. 22).

(**b**) 2004 c. 5. Section 38A was inserted by paragraph 7 of Schedule 9 to the Localism Act 2011. Schedule A2 was inserted by section 4(10) of, and Schedule 1 to, the Neighbourhood Planning Act 2017 (c. 20).

(**c**) 2008 c. 29. Paragraph 3 of Schedule 6 was amended by S.I. 2011/1043. There are other amendments not relevant to this instrument.

DRAFT

PART 3

Amendments to secondary legislation

Amendments to the Environmental Assessment of Plans and Programmes Regulations 2004

5.—(1) The Environmental Assessment of Plans and Programmes Regulations 2004(**a**) are amended as follows.

(2) In regulation 2(1)—

(a) at the end of the definition of "the Environmental Assessment of Plans and Programmes Directive" add ", as it had effect immediately before exit day"; and

(b) in the definition of "the Habitats Directive" for "as last amended by Council Directive 97/62/EC" substitute "as it had effect immediately before exit day".

(3) In regulation 5—

(a) in paragraph (2)(b), for "Council Directive 85/337/EEC(**b**) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC(**c**)" substitute "Directive 2011/92/EU(**d**) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment"; and

(b) in paragraph (3) after "pursuant to" insert "any law that implemented".

(4) In regulation 12(4) for "EU legislation" substitute "retained EU law".

(5) In regulation 14, in paragraphs (1) and (3)(a), for "another" substitute "a".

(6) In regulation 15—

(a) in the heading, omit "other";

(b) in paragraph (1), omit the words from "in that behalf" to "Directive"; and

(c) in paragraph (4)—

(i) in sub-paragraph (b) for "under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive" substitute "by the Member State";

(ii) in sub-paragraph (d) for "under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive" substitute "by the Member State".

(7) In Schedule 1, in paragraph 1(e), for "EU legislation" substitute "retained EU law".

(8) In Schedule 2—

(a) in paragraph 4, for the words "such as" to the end substitute "such as a European site (within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017(**e**))"; and

(b) in paragraph 5, for "Member State" substitute "national".

Amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

6.—(1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2017(**f**) are amended as follows.

(2) In regulation 2(1)—

(**a**) S.I. 2004/1633, amended by S.I. 2011/1043; there are other amending instruments but none is relevant to this instrument.
(**b**) OJ No L 175, 5.7.1985, p. 40.
(**c**) OJ No L 73, 14.3.1997, p. 5.
(**d**) OJ No L 26, 28.1.2012, p. 1
(**e**) S.I. 2017/1012.
(**f**) S.I. 2017/571.

DRAFT

(a) at the end of the definition of "the Directive" add "as it had effect immediately before exit day";

(b) for the definition of "EU environmental assessment" substitute—

""EU environmental assessment" means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;".

(3) In regulation 4(2)(b) after "under" insert "any law that implemented".

(4) In regulation 26(3)(c) after the second occurrence of "under" insert "any law that implemented".

(5) In regulation 32(6)(n)(i), in the text substituting regulation 58(1)(a), for "another" substitute "an".

(6) In regulation 35—

(a) after "requirements" insert "of any law that implemented the Directive"; and

(b) after "and" insert "the".

(7) In regulation 46(a), in the text substituting regulation 58(1)(a), for "another" substitute "an".

(8) In regulation 58—

(a) in the heading and in paragraphs (1) and (2), for "another", in each place it occurs, substitute "an";

(b) in paragraph (4) for "referred to in Article 6(1) of the Directive" substitute "which the EEA State designated to be consulted about the project";

(c) in paragraph (5)—

(i) omit "in accordance with Article 7(4) of the Directive"; and

(ii) in sub-paragraph (b) omit "other".

(9) In regulation 59—

(a) in the heading for "another" substitute "an";

(b) in paragraph (1)—

(i) for "another" substitute "an";

(ii) omit ", pursuant to Article 7(1) or 7(2) of the Directive,";

(iii) omit ", in accordance with Article 7(4) of the Directive";

(iv) in sub-paragraph (b)—

(aa) for "in that EEA State" substitute "(which the EEA State designated as responsible for performing the duties arising from the Directive)";

(bb) omit "pursuant to Article 7(3)(b) of the Directive"; and

(c) in paragraph (2)(c) omit "in order to comply with Article 9(2) of the Directive".

(10) In regulation 63—

(a) in paragraphs (3)(b) and (5)(b) for "another", in each place it occurs, substitute "an"; and

(b) omit paragraph (6).

(11) In Schedule 1—

(a) in paragraph 22 after "pursuant to" insert "Chapter 3 of Part 1 of the Energy Act 2008(**a**) and any law that implemented"; and

(b) in paragraph 23 for "pursuant to Directive 2009/31/EC(**b**)" substitute "(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)".

(**a**) 2008 c. 32.
(**b**) OJ No L 140, 5.6.2009, p. 114.

DRAFT

(12) In Schedule 2, in the table in paragraph 1 in item 3(j), for “pursuant to Directive 2009/31/EC” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(13) In Schedule 3, in paragraph 2(1)(c)(vi), for “Union legislation” substitute “retained EU law”.

(14) In Schedule 4—

(a) in paragraph 5—

(i) for “or Member State” substitute “level (as they had effect immediately before exit day) or United Kingdom”;

(ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”; and

(b) in paragraph 8—

(i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”; and

(ii) after “requirements of” insert “any law that implemented”.

Amendments to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

7.—(1) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**a**) are amended as follows.

(2) In regulation 3(1)—

(a) at the end of the definition of “the Directive” add “as it had effect immediately before exit day”;

(b) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;”.

(3) In regulation 5(2)(b) after “under” insert “any law that implemented”; and

(4) In regulation 21(3)(c) after “other than under” insert “any law that implemented”.

(5) In regulation 25(3)(c) after “other than under” insert “any law that implemented”.

(6) In regulation 32—

(a) in paragraphs (1) and (3) for “another”, in each place it occurs, substitute “an”;

(b) in paragraph (5) for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”; and

(c) in paragraph (6)—

(i) omit “in accordance with Article 7(4) of the Directive”; and

(ii) in sub-paragraph (b) omit “other”.

(7) In regulation 33—

(a) in paragraphs (3)(b) and (5)(b) for “another”, in each place it occurs, substitute “an”; and

(b) omit paragraph (6).

(8) In Schedule 1—

(a) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”; and

---

(**a**) S.I. 2017/572.

DRAFT

(b) in paragraph 23 for "pursuant to Directive 2009/31/EC(**a**)" substitute "(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)".

(9) In Schedule 2, in paragraph 3(j), for "pursuant to Directive 2009/31/EC" substitute "(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)".

(10) In Schedule 3, in paragraph 2(1)(c)(vi), for "Union legislation" substitute "retained EU law".

(11) In Schedule 4—

(a) in paragraph 5—

(i) for "or Member State" substitute "level (as they had effect immediately before exit day) or United Kingdom";

(ii) after "those established under" insert "the law of any part of the United Kingdom that implemented"; and

(b) in paragraph 8—

(i) for "EU legislation such as" substitute "retained EU law such as any law that implemented"; and

(ii) after "requirements of" insert "any law that implemented".

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Name
Address — Parliamentary Under Secretary of State
Date — Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Apart from regulations 2(3) and 5(3)(a), these Regulations are made under section 8 of that Act and correct deficiencies of the type mentioned in section 8(2)(a) and (g) of that Act – matters which have no practical application to the United Kingdom or are otherwise redundant, and EU references which are no longer appropriate.

These Regulations make amendments to legislation in the field of town and country planning and infrastructure planning.

These Regulations are also made under section 2(2) of the European Communities Act 1972. Regulations 2(3) and 5(3)(a), which come into force on 31st December 2018, are made under that Act. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3). The amendment in regulation 5(3)(a) reflects the repeal and replacement of Council Directive 85/337/EEC (OJ L 175, 5th July 1985, p.40) on the assessment of the effects of certain public and private projects on the environment, by Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28th January 2012, p.1).

Part 2 of these Regulations amends primary legislation. In particular it amends sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town

(**a**) OJ No L 140, 5.6.2009, p. 114.

DRAFT

and Country Planning Act 1990, section 38A of the Planning and Compulsory Purchase Act 2004, and paragraph 3 of Schedule 6 to the Planning Act 2008 so that references to complying with EU obligations have been replaced with references to complying with retained EU obligations (regulations 2(2), 2(4), 2(5), 3 and 4).

Part 3 of these Regulations amends subordinate legislation. In particular, the references to complying with or having regard to EU or union law have been replaced with references to complying with or having regard to retained EU law such as domestic law which implemented Directives (regulations 5(3), 5(4), 5(7), 5(8), 6(2)(b), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2)(b), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11)); references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6)); amending references to certain Directives (regulations 5(2), 6(2)(a), (11) and (12) and 7(2)(a), (8) and (9)); references to the UK as a Member State has been amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)) and removing requirements to notify the European Commission (regulations 6(10)(b) and 7(7)(b)).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

DRAFT

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Agenda Item 4.2

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-(L) FM -/0641/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

31 October 2018

Dear Mick

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU. The provisions of the SI are technical in nature, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time and I will not myself be seeking to initiate such a debate.

Yours sincerely

CARWYN JONES

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

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

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	**Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly**
DATE	**31 October 2018**
BY	**Julie James AM, Leader of the House and Chief Whip**

The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

The retained EU Law which is being amended

- The Inquiries Act 2005.
- The Coroners and Justice Act 2009.
- The Coroners Act (Northern Ireland) 1959.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SI has no impact on the National Assembly's legislative competence or the Welsh Minister's executive competence as it is purely technical in nature.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union in relation to public inquiries. The regulations will replace references to "EU obligations" and "enforceable EU obligations" with "retained EU obligations" and "retained enforceable EU obligations".

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-inquiries-and-coroners-amendment-eu-exit-regulations-2018

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the Inquiries Act 2005.

The SI also makes technical corrections to the Coroners and Justice Act 2009 and the

Coroners Act (Northern Ireland) 1959, but since these amendments could not be made by the Welsh Ministers (as they are outside devolved competence) they do not require approval.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a coherent approach wherever possible in preparing the statute book to function properly after the UK has left the EU. This approach will promote the clarity and accessibility of legislation across the UK. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("the Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 was laid before Parliament on 29 October and is now being laid before the Assembly. The order can be found at: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-inquiries-and-coroners-amendment-eu-exit-regulations-2018

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to public inquiries and coroners inquests.

4. This SI makes technical corrections to the Inquiries Act 2005. These corrections are required to ensure that the statute book will continue to operate after exit.

5. This SI also makes technical corrections to the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959, but since these amendments could not be made by the Welsh Ministers (as they are outside devolved competence) they do not require approval.

Relevant provision to be made by the SI

6. The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 amend sections 19, 22 and 25 of the Inquiries Act 2005 by replacing references to "EU obligations" and "an enforceable EU obligation" with references to "retained EU obligations" and "a retained enforceable EU obligation."

    - Section 19 of the Inquiries Act 2005 sets out the powers of Ministers (including Welsh Ministers) and inquiry chairs to restrict public access to inquiries. Section 19(3)(a) limits these powers by stating that such restrictions must only relate to areas covered by "any statutory provision, enforceable EU obligation or rule of law". The reference to "enforceable EU obligation" will be replaced by "retained enforceable EU obligation".

- Section 22(1)(b) of the Inquiries Act 2005 provides that a person cannot be required to produce evidence to an inquiry, if such a requirement would be incompatible with an EU obligation. This provision is being amended by the regulations to ensure it will continue to apply to "retained EU obligations".

- Section 25 of the Inquiries Act 2005 enables persons to withhold elements of an inquiry report where required by an enforceable EU obligation. The regulations will ensure that such persons continue to be able to withhold information in pursuance of a retained enforceable EU obligation.

7. These amendments retain the status quo following the UK's exit from the European Union.

8. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to public inquiries.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Carwyn Jones AM
First Minister of Wales
October 2018

EXPLANATORY MEMORANDUM TO

THE INQUIRIES AND CORONERS (AMENDMENT) (EU EXIT) REGULATIONS 2018

[2018] No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Act.

1.2 This memorandum contains information for the Committees on the UK's exit from the European Union (EU).

2. Purpose of the instrument

2.1 This instrument amends references to "obligations" and "enforceable obligations" under EU law in the Inquiries Act 2005 and the Coroners and Justice Act 2009, and amends references to "community obligations" in the Coroners Act (Northern Ireland) 1959, to ensure reference is now made to "retained EU obligations" and to "retained enforceable EU obligations" following the United Kingdom's withdrawal from the European Union. It also amends s43 of the Inquiries Act 2005 to provide a definition of 'retained enforceable EU obligation' for the purposes of this SI with reference to the European Union (Withdrawal) Act 2018.

2.2 In the Inquiries Act 2005 the amendments relate to powers restricting public access to proceedings, producing evidence and publishing the inquiry report. In the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959 the amendment relates to coroners' powers to require the production of evidence or documents.

2.3 Explanations

- ***What did any relevant EU law do before exit day?*** Before exit day a person could rely on an EU obligation or an enforceable EU obligation under the sections listed below. In relation to the Inquiries Act 2005, there are four relevant sections:
- Section 19, which gives a minister or an inquiry chair powers to restrict public access to an inquiry's proceedings. One of these powers is where a restriction is required by an enforceable EU obligation. Other reasons to restrict attendance include that the Minister or chairman considers it to be conducive to the inquiry fulfilling its terms of reference or it is necessary in the public interest.
- Section 22, which says that a person cannot be required to produce evidence to an inquiry if it would be incompatible with an EU obligation. Other reasons include that the evidence or document could not be required in civil court proceedings or it is in the public interest not to produce it.
- Section 25, where the person whose duty it is to arrange for the publication of a report – such as a minister publishing the Inquiry Report – may withhold material in the report from publication where this is required by an enforceable

EU obligation. Other reasons include that it would not be in the public interest to publish the material.

- It also amends section 43(1) (interpretation) to define “retained enforceable EU obligation” as “an obligation (as modified from time to time) which forms part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018;”.

In relation to the Coroners and Justice Act 2009, there is one relevant Schedule:

- Schedule 5, which gives a coroner the power to require the production of evidence or documents, and provides that a person may not be required to give, produce or provide any evidence or document if the requirement would be incompatible with an EU obligation. Other reasons include that it could not be required in civil court proceedings or it is in the public interest not to produce evidence.

In relation to the Coroners Act (Northern Ireland) 1959, there is one relevant provision:

- Section 17B(2)(b). Section 17A gives a coroner the power to require the production of evidence or documents, section 17B contains further provisions including restrictions on the power of a coroner providing, in section 17B(2)(b), that a person cannot be required to give or produce any evidence or document if to do so would be incompatible with a Community obligation. Other reasons in section 17B include that it could not be required in civil court proceedings or it is in the public interest not to produce evidence.

We believe that the ability to rely on an EU obligation or enforceable EU obligation in relation to the above is not used in practice, rather inquiries and inquests use the other reasons within the sections for when evidence could be restricted, for example when public access is restricted or when certain materials are withheld from publication, such as on reasons of national security.

Why is it being changed?

The references to EU obligations and enforceable EU obligations need to be amended to ensure retained EU law continues to apply to these Acts once the UK leaves the EU. If the references to EU obligations and enforceable EU obligations are not amended then the relevant provisions will no longer operate correctly because those terms will no longer have a clear meaning. The terms need to be amended to refer to the new terminology relating to retained EU law to be introduced by the European Union (Withdrawal) Act 2018.

What will it now do?

Where the UK decides to keep an EU obligation or enforceable EU obligation as retained EU law on exiting the EU, a person could rely on those obligations under the sections/Schedules above.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union]

3.1 None.

3.2 This instrument is being laid in draft for sifting under the European Union (Withdrawal) Act 2018 by the ESIC and SLSC.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

3.4 We consider the negative resolution procedure is appropriate as the changes it makes are technical to fix defects in these three Acts following withdrawal of the United Kingdom from the EU. It does not make substantive policy changes. The choice of procedure has been guided by the power to make regulations in section 43 of the Coroners and Justice Act 2009, the power in section 41 of the Inquiries Act 2005 and the power in section 36A of the Coroners Act (Northern Ireland) 1959 to make rules, all of which are subject to the negative resolution procedure.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is the United Kingdom (in respect of the Regulation amending the Inquiries Act 2005), England and Wales (in respect of the Regulation amending the Coroners and Justice Act 2009) and Northern Ireland (in respect of the Regulation amending the Coroners Act (Northern Ireland 1959).

5. European Convention on Human Rights

5.1 Lucy Frazer QC MP has made the following statement regarding Human Rights:

"In my view the provisions of The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

Inquiries Act 2005

6.1 The Inquiries Act 2005 established a statutory framework for the conduct of public inquiries in the UK. From time to time events occur which are of such concern that it is in the public interest to establish an inquiry to examine what happened and make recommendations, with a view to ensuring that lessons are learned to prevent recurrence and to restore public confidence.

6.2 Whilst most inquiries are established under the Inquiries Act 2005, Ministers are not bound to use it. They may rely instead on specific legislation or establish non-statutory inquiries or a Royal Commission. There have been a number of non-statutory inquiries established since the Act came into force, for example the Chilcot Inquiry. Section 15 provides a means for a non-statutory inquiry to be converted into a statutory inquiry.

6.3 The 2005 Act extends to the whole of the UK, and governs the establishment of inquiries by UK Ministers, as well as Ministers of the devolved administrations (s1). S33 makes provision for inquiries involving more than one administration.

6.4 The Act makes provision for the establishment and constitution of an inquiry (ss.1-14), conversion of non-statutory inquiries into inquiries under the Act (ss.15-16), inquiry proceedings (ss.17-23), inquiry reports (ss.24-26), inquiries in the devolved administrations (ss.27-31), inquiries for which more than one Minister is responsible (ss.31-34), and supplementary provision (ss.35-51).

6.5 Section 19 provides that restrictions may be imposed on attendance at an inquiry, or particular parts of an inquiry, or disclosure of any evidence. Section 22 provides for evidence not to be disclosed in certain circumstances. Section 25 provides for the publication of the Report and makes provision on withholding material from publication.

6.6 The Inquiry Rules 2006 deal with matters of evidence and procedure and apply to inquiries established under the 2005 Act by UK Ministers. The Inquiries (Scotland) Rules 2007 apply to inquiries established under the 2005 Act by Scottish Ministers. Northern Ireland and Wales have not so far made Rules for inquiries established under the 2005 Act by Welsh Ministers.

6.7 Twenty three inquiries have been established under the 2005 Act, some of which were established under other legislation but were subsequently converted into 2005 Act inquiries. The most recent 2005 Act Inquiries are the Grenfell Tower Inquiry (established 14 June 2017) and the Infected Blood Inquiry (established 8 February 2018).

Coroners and Justice Act 2009

6.8 Part 1 of the Coroners and Justice Act 2009 provides for the duties and powers of coroners in England and Wales. Coroners have a duty to investigate deaths in certain circumstances, such as where the death is violent or unnatural. Section 1(1) of the CJA places a duty on a senior coroner who is made aware that the body of a deceased person is within that coroner's area to conduct, as soon as practicable, an investigation into the person's death if one of the triggers in section 1(2) for an investigation applies. The triggers in section 1 are that the coroner has reason to suspect that:

(a) the deceased died a violent or unnatural death;

(b) the cause of death is unknown; or

(c) the deceased died while in custody or otherwise in state detention.

6.9 Under section 5(1) of the CJA the purpose of a coroner's investigation is to determine:

(a) who the deceased was;

(b) how, when and where the deceased came by his or her death; and

(c) the particulars (if any) required by the Births and Deaths Registration Act 1953 to be registered concerning the death.

6.10 Under section 5(2), where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)), the purpose in paragraph (b) above is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

6.11 An inquest must be held as part of all investigations, subject to section 4(3)(a). Section 4(3)(a) provides that a coroner may discontinue an investigation without holding an inquest if the cause of death is revealed by a post-mortem examination and the death was not violent, unnatural or in custody or otherwise in state detention. Section 10 sets out the determinations and findings to be made at the inquest and they cover the same matters as the purposes of the investigation under section 5.

6.12 Schedule 5 provides further powers including powers relating to the production of evidence and circumstances when it may not need to be disclosed.

There is further detail on coroners' powers in the Coroners (Investigations) Regulations 2013 (SI 2013/1629) (made under section 43 of the CJA). There are also the Coroners (Inquests) Rules 2013 (SI 2013/1616) (made under section 45 of the CJA

The Coroners Act (Northern Ireland) 1959

6.13 The Coroners Act (Northern Ireland) 1959 sets out the law in Northern Ireland in relation to Coroners' appointment and powers.

6.14 Amendments to the Coroners Act (Northern Ireland) 1959 were introduced by section 49 of the Coroners and Justice Act 2009. Section 49(2) of the Coroners and Justice Act 2009 introduced Schedule 11, which substituted for section 17 of the Coroners Act (Northern Ireland) 1959 new sections 17A to 17C to make provision concerning witnesses, evidence and related offences in relation to inquests in Northern Ireland. The amendments brought Northern Ireland in line with the reformed system in England and Wales as the provisions in sections 17A-C are broadly equivalent to those contained in Schedule 5 to the Coroners and Justice Act 2009.

7. Policy background

What is being done and why?

7.1 Whilst this SI ensures that people can rely on retained and enforceable EU obligations, in theory the ability to rely on these is wide and would cover any aspect of EU law. We would expect that an obligation would be used in circumstances around data protection or subject specific areas. For example, the UK Air Accidents Investigation Branch (AAIB) operates under EU Regulations on the investigation and prevention of accidents and incidents in civil aviation. Evidence from the AAIB may be used as part of the coroner's inquest or in a public inquiry. It is not the purpose of this SI to decide whether or not the policy under this EU Regulation, or any other Regulations, should continue post-exit from the EU. Rather the policy is that if the provisions in such Regulations are retained post-exit, then they should continue to be used to not provide evidence etc in accordance with the Acts. Where the UK decides to keep an EU obligation or enforceable EU obligation as retained EU law on exiting the EU, that obligation should still be able to be relied on in the Inquiries Act 2005, the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959.

7.2 However, we believe that the ability to rely on an EU obligation or enforceable EU obligation in relation to the above provisions is not used in practice. Our discussions with operational colleagues have not brought up any circumstances in which either has been used. In practice, we believe inquiries and inquests use the other reasons within the sections for evidence/documents being restricted, public access restricted or material withheld from publication, such as on reasons of national security. These

reasons are unaffected by the changes the SI makes. Inquiries and inquests can still operate as they do currently under these sections. For example, at an inquiry or an inquest restricted evidence can be given and an inquiry can withhold material from publication in the report on grounds of national security.

7.3 If the references to EU obligations and enforceable EU obligations are not amended then the relevant provisions will no longer operate correctly because those terms will no longer have a clear meaning. The terms need to be amended to refer to the new terminology relating to retained EU law to be introduced by the European Union (Withdrawal) Act 2018.

7.4 This instrument applies to functions of the Department of Justice and the Advocate General for Northern Ireland in the Coroners Act (Northern Ireland) 1959 and transferred matters for Northern Ireland under Article 12, Schedule 14 and Article 15(1) Schedule 17 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I No.976/2010). The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 These regulations amend primary legislation and are not being consolidated. In due course changes will appear on the legislation.gov.uk website.

10. Consultation outcome

10.1 A public consultation was not undertaken for these changes which are minimal and technical. This instrument corrects what will be defects in the three Acts to ensure retained EU law continues to apply in these Acts following withdrawal of the United Kingdom from the EU. We discussed the proposed changes with operational colleagues in inquests and inquiries, and those in Government responsible for sponsorship of inquiries, to ask whether an EU obligation or enforceable EU obligation has ever been used in the circumstances set out in the Acts. They were not

aware of examples of these being used. There are no substantive policy changes and we are confident that the Acts can continue to operate effectively once these changes are made. Therefore we consider this SI will not attract the interest of key stakeholders. However, once the SI is laid, we will notify all relevant parties across Government, the Chief Coroner's office and the Chairs of current inquiries under the Inquiries Act 2005. At the same time, Northern Ireland colleagues will engage with stakeholders in Northern Ireland.

11. Guidance

11.1 No guidance will be provided on the amendments made by these regulations. In relation to the Inquiries Act 2005, the Cabinet Office provides guidance on inquiries to government departments and inquiries on setting up and running an inquiry, which includes guidance on taking and hearing evidence and publishing the inquiry report. The Inquiries Act 2005 is also supported by the Inquiry Rules 2006 which provide procedures to follow on, among other things, disclosure of potentially restricted evidence.

11.2 In relation to the changes to the Coroners and Justice Act 2009, the Chief Coroner has provided a Guide to the Coroners and Justice Act 2009 which includes taking and hearing evidence and disclosure. The Act is also supported by the Coroners (Investigations) Regulations 2013 which contain provisions on the disclosure and provision of information.

11.3 No guidance will be provided on the amendments made by these regulations to the Coroners Act (Northern Ireland) 1959. In relation to the Coroners Service in Northern Ireland guidance is provided on https://www.justice-ni.gov.uk/articles/coroners-service-northern-ireland. The Act is supported by the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (S.R. & O. 199/1963).

12. Impact

12.1 A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will not be monitored as the change is technical and minimal.

14.2 As this instrument is made under the European Union Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Michelle English at the Ministry of Justice Telephone: 020 3334 5610 or email: Michelle.English3@justice.gov.uk can be contacted with any queries regarding the elements of the instrument related the Coroners and Justice Act 2009 and the Inquiries Act 2005. For matters related to the Coroners (Northern Ireland) Act 1959 contact Janine McGahan at the Department of Justice: email: janine.mcgahan@justice-ni.x.gsi.gov.uk

15.2 Richard Mason at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 “In my view the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because the SI only makes minor, technical changes in order to ensure that retained EU law continues to apply in the three Acts following withdrawal of the United Kingdom from the EU. In practice, we believe that there have not been any occasions to date in which ‘EU obligations’ or ‘enforceable EU obligations’ have been cited as a reason for acting on the relevant exceptions in any of the Acts, rather the other reasons within the Acts are used for when evidence could be restricted, public access restricted or material withheld from publication, such as on reasons of national security. These reasons are unaffected by the changes the SI makes and so inquiries and inquests can still operate as they do currently.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use the of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because the technical SI corrects deficiencies to ensure retained EU law continues to apply in these Acts following withdrawal of the United Kingdom from the EU. It does not make any policy change.

3. Good reasons

3.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are: they will correct deficiencies to ensure retained EU law continues to apply to these Acts following withdrawal of the United Kingdom from the EU and they bring clarity and accuracy to ensure the Acts operate correctly post exit.

4. Equalities

4.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement(s) “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 "In relation to the draft instrument, I, Parliamentary Under Secretary of State at the Ministry of Justice, Lucy Frazer QC MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4.4 There is no disproportionate impact on any of the protected characteristics from these changes. The changes are intended to make the Inquiries Act 2005, the Coroners and Justice Act 2008 and the Coroners Act (Northern Ireland) 1959 operate correctly after the UK leaves the EU and will apply equally to all inquiries and inquests, and all individuals whether or not there are protected characteristics.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION

INQUIRIES

CORONERS, ENGLAND AND WALES

CORONERS, NORTHERN IRELAND

The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

Sift requirements satisfied	***
Made - - - -	***
Laid before Parliament	***
Coming into force in accordance with regulation 1	

DRAFT

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(**a**) (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 and come into force on exit day.

(2) Any amendment of an enactment made by these Regulations has the same extent as the enactment specified.

Amendment of the Inquiries Act 2005

2. The Inquiries Act 2005(**b**) is amended as follows—

(a) in section 19(3)(a) (restrictions on public access etc.), for "enforceable EU obligation" substitute "retained enforceable EU obligation";

(**a**) 2018 c. 16.
(**b**) 2005 c. 12. The relevant sections have been amended by S.I. 2011/1043. There are other amendments to the Act that are not relevant to this instrument.

(b) in section 22(1)(b) (privileged information etc.), for “an EU obligation” substitute “a retained EU obligation”;

(c) in section 25(4)(a) (publication of reports), for “enforceable EU obligation” substitute “retained enforceable EU obligation”, and

(d) in section 43(1) (interpretation), after the definition of “responsible” insert—

“retained enforceable EU obligation” means an obligation (as modified from time to time) which forms part of retained EU law by virtue of section 3 and 4 of the European Union (Withdrawal) Act 2018;”.

Amendment of the Coroners and Justice Act 2009

3. In paragraph 2(1)(b) of Schedule 5 to the Coroners and Justice Act 2009(**a**) (powers of coroners: power to require evidence to be given or produced), for “an EU obligation” substitute “a retained EU obligation”.

Amendment of the Coroners Act (Northern Ireland) 1959

4. In section 17B(2)(b) of the Coroners Act (Northern Ireland) 1959(**b**) (giving or producing evidence: further provision), for “Community obligation” substitute “retained EU obligation”.

Signed by authority of the Secretary of State for Justice.

Name

Parliamentary Under Secretary of State

Date

Ministry of Justice

DRAFT

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular as described in paragraph (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 amends the Inquiries Act 2005 (c.12) (“the 2005 Act”), regulation 3 amends the Coroners and Justice Act 2009 (c.25) (“the 2009 Act”) and regulation 4 amends the Coroners Act (Northern Ireland) 1959 (c.15) (N.I.) (“the 1959 Act”). Section 19 of the 2005 Act relates to restricting public access to an inquiry’s proceedings or evidence. Under this section a restriction notice order may be made if required by an enforceable EU obligation. Section 25 of the 2005 Act is concerned with the publication of inquiry reports. Under this section material can be withheld from publication if required by an enforceable EU obligation. Both these references are replaced by a new concept (defined in section 43 of the 2005 Act) of retained enforceable EU obligation.

Section 22 of the 2005 Act relates to restrictions on production of evidence to inquiries. Paragraph 2 of Schedule 5 to the 2009 Act is concerned with the powers of a coroner in England and Wales to require the production of evidence or documents. These provisions provide (amongst other things) that a person cannot be required to take action (such as providing a document) if to do so would be incompatible with an EU obligation. Section 17B of the 1959 Act makes provision on

---

(**a**) 2009 c. 25. Paragraph 2 of Schedule 5 has been amended by S.I. 2011/1043.

(**b**) 1959 c. 15 (N.I.). Section 17B(2)(b) was inserted by section 49(2) and paragraph 1 of Schedule 11 to the Coroners and Justice Act 2009.

giving or producing evidence to a coroner in Northern Ireland. Section 17B(2) in particular provides (amongst other things) that a person cannot be required to give or produce any evidence or document if to do so would be incompatible with a Community obligation. Amendments made by these Regulations replaces the references to an "EU obligation" in the 2005 Act and the 2009 Act and the reference to a "Community obligation" in the 1959 Act with references to a "retained EU obligation", which, as a result of amendments made by the European Union (Withdrawal) Act 2018, is defined by the Interpretation Act 1978.

A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

DRAFT

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly**

DATE **30 October 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Ionising Radiation (Basic safety Standards)(Miscellaneous Provisions)(Amendment)(EU Exit) Regulations 2018

The [retained EU] Law which is being amended
The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SIs (where relevant) to Wales are within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to 'inoperabilities' in the Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 (IRR (BSSD) 2018).

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no

divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly**
DATE	**31 October 2018**
BY	**Julie James AM, Leader of the House and Chief Whip**

The Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018

The Law which is being amended

- Local Authorities (Contracting Out of Investment Functions) Order 1996
- Council Tax (Discount Disregards) Order 1992

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence.

The purpose of the amendments
The purpose of this SI (negative procedure) is to correct deficiencies in UK legislation subject to exit from the European Union relating to local government finance.

In summary, this SI will remove the references to EEA-regulated firms not authorised to carry out regulated activities in the UK so that only FCA-authorised firms will be qualified to act as contractors for local authority investment functions.

The SI will also ensure that students studying within educational establishments situated in the UK and EU Member States will continue to be disregarded for the purposes of council tax. This will involve changing the reference to "Member State" to "relevant authority" and defining relevant authority as meaning England, Wales, Scotland or Northern Ireland or a Member State".

The SI and accompanying Explanatory Memorandum, setting out the effect of this

amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-local-government-miscellaneous-amendments-eu-exit-regulations-2018

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction and the original legislation predates devolution. Therefore, making separate SIs would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Agenda Item 6

Document is Restricted

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

Document is Restricted

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural
Affairs

24 September 2018

Dear Lesley

UK Agriculture Bill

At last week's meeting of the Constitutional and Legislative Affairs Committee, members considered your written statement of 12 September 2018 regarding the Introduction of the UK Agriculture Bill. Members also discussed the accompanying joint statement by the UK Government and the Welsh Government regarding the Agricultural Framework Progress Update of September 2018.

We have noted that, through the UK Bill, Welsh Ministers will be provided with substantial delegated powers in a number of significant areas. These areas include new financial powers for future agricultural schemes, the setting of marketing standards, supporting rural communities, and the modification of retained EU law relating to the CAP Basic Payment Scheme.

We have also noted that the UK Bill will give Welsh Ministers broad powers to give financial assistance to the agriculture industry in Wales without the need for primary legislation that may be fully scrutinised by the National Assembly. In highlighting this point, we acknowledge that the Assembly will have scope, albeit limited, to consider the UK Agriculture Bill as part of the legislative consent process.

While a number of these powers will mean that subordinate legislation made by Welsh Ministers under the UK Agriculture Bill will be subject to the affirmative procedure in the National Assembly, we have noted that, as drafted, the UK Bill will enable Welsh Ministers to bring forward subordinate legislation using the

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddMCD@cynulliad.cymru
www.cynulliad.cymru/SeneddMCD
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCLA@assembly.wales
www.assembly.wales/SeneddCLA
0300 200 6565

negative procedure in a number of key areas. These include the modification of legislation that governs the basic payment scheme, and changing the EU Regulation on the financing, management and monitoring of the common agricultural policy. On this point, we would be grateful for your reasoning as to why you have asked the UK Government to include such powers in the Bill.

We further noted that it is not your intention to bring forward regulations (subject to the UK Bill being enacted) until the Welsh Government's policy development process has concluded. In your statement, you have reiterated the commitment in "Brexit and our Land" to bring forward a white paper in spring 2019. As the Committee responsible for scrutinising delegated legislation in the National Assembly, I would be grateful if you would keep us informed of the timetables for bringing forward these regulations.

Both your written statement and the Joint Statement state that the Welsh Government and the UK Government are of the view that the majority of the future agricultural framework will be managed through non-legislative, intergovernmental working. We would be grateful if you could elaborate on why this is the case and provide details of the minority of areas which you believe will require legislative under-pinning.

You may be aware that this Committee is in the process of finalising a written agreement with the Welsh Government (led by the Cabinet Secretary for Finance) that will represent the agreed position of the National Assembly for Wales and the Welsh Government on the information that the Welsh Government will provide to the National Assembly with regard to its participation in inter-governmental meetings, concordats, agreements and memorandums of understanding. Therefore we would also be grateful to receive information about any inter-governmental deals currently being discussed in respect of agriculture.

Finally, we note that you are continuing to work with the UK Government to resolve your outstanding concerns (namely provisions relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy) before bringing forward advice to the Assembly on legislative consent. We look forward to considering any Legislative Consent Memorandum for this UK Bill when such a Memorandum is laid before the Assembly.

This letter is copied to the Chair of the Climate Change, Environment and Rural Affairs Committee.

Yours sincerely,

Mick Antoniw
Chair

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

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw
Committee Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

11 October 2018

Dear Mick

Agriculture Bill

Thank you for your letter of 24 September. I welcome the opportunity to explain the provisions further.

As you note, the nature of the Wales schedule is to confer a series of delegated powers on Welsh Ministers. The powers are broadly similar to those taken by the UK Government in relation to England. The breadth of the provisions reflects the uncertainty of Brexit and the fact Welsh policy remains subject to consultation. I believe it is prudent to take these powers but am clear no policy decisions have been made.

As you note, my intention remains to bring forward an Agriculture (Wales) Bill to the Assembly once the Welsh Government has completed the necessary consultations and impact assessments. "Brexit and our Land" marks the first, high-level consultation and I expect further documents to follow. The next consultation will be a White Paper in Spring 2019.

In relation to delegated authority, the general approach taken in the Bill is to use the affirmative procedure for regulation-making powers to establish new frameworks (for example, financial assistance and information gathering frameworks) and the negative procedure for technical matters relating primarily to the administration of payments under existing legislation. I expect this distinction to be debated in the UK Parliament during the Bill's passage, particularly by the Delegated Powers and Regulatory Reform Committee.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

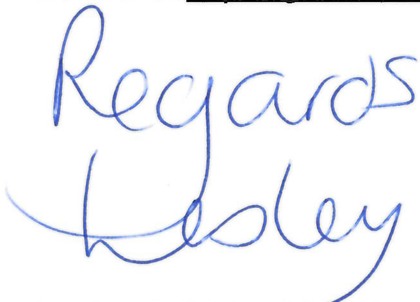
Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

I am committed to ensuring the Assembly has appropriate opportunities to scrutinise these provisions through the Legislative Consent Motion process and I have provided a memorandum. This includes a reference to the two outstanding issues: the World Trade Organisation and Red Meat Levy provisions. I will keep the Assembly and the Committee updated as negotiations progress with UK Government on both these matters.

I will also keep the Assembly updated on my inter-ministerial discussions on cross-UK frameworks. Alongside the publication of the Agriculture Bill, I issued a joint statement with the Secretary of State on these matters which is available on the Welsh Government website at https://gov.wales/about/cabinet/cabinetstatements/2018/introukagribill/?lang=en



Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Procedure Committee
Journal Office, House of Commons London SW1A 0AA
Tel 020 7219 3351/3319 Fax 020 7219 2269 Email proccom@parliament.uk Website www.parliament.uk

From Charles Walker OBE MP, Chair of the Committee

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Annwyl Mr Antoniw

25th/ October 2018

Composite and Joint Statutory Instruments

Thank you for your letter of 15 January. I must first of all apologise for the long time it has taken to reply to you.

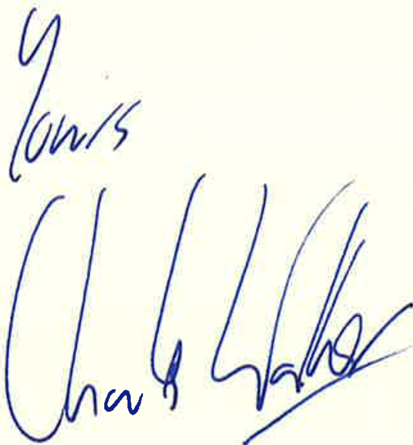
I am not party to the advice which formed the basis of the then First Minister's assertion to your predecessor Committee to the effect that the UK Parliament "will not scrutinise general statutory instruments in languages other than English.". I understand that the Welsh Government maintains this position and has recently reasserted it.

House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form. Where there is a statutory requirement to lay material before the House in both languages, or where the Welsh is required in part of the material, it seems odd to assert, as the Welsh Government seems to, that the House of Commons will not scrutinise such material: the principal purpose of requiring such material to be laid is surely to allow it to be examined by parliamentarians as well as to make it available to the general public.

It would in the first instance be the responsibility of the drafting Department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I cannot of course speak for the current practices of committees of this House which undertake scrutiny of delegated legislation: the degree to which such instruments are examined in detail will depend on the composition of the committees and their staff. You will no doubt be aware of the case where the Joint Committee on Statutory Instruments reported a defect in the Registration of Marriages (Amendment) Regulations 1997 on the grounds of material discrepancies between the English and Welsh forms of the Regulations: the discrepancy was discovered as a result of a close reading of both texts by a Welsh-speaking member of the Committee.

Should the Welsh Government require clarification as to the practices of the House of Commons regarding the laying of papers in languages other than English, and of committees in scrutinising bilingual instruments, I am sure that the officials of the House of Commons Service would be happy to assist.



Charles Walker OBE MP

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Charles Walker MP
Chair of the Procedure Committee
House of Commons

15 January 2018

Dear Charles

Composite and Joint Statutory Instruments

We often scrutinise as part of our formal role, composite and joint statutory instruments that have been laid before the National Assembly, as well as the House of Commons and House of Lords.

Such statutory instruments will impact on communities across Wales and they can relate to important areas such as the environment, health, social care and water supply and road traffic enforcement.

On every statutory instrument laid before the National Assembly, we are obliged by the requirements of our Standing Orders to report if such instruments are not laid in both the English and Welsh languages. Composite and joint instruments are always laid by the Welsh Ministers in English only and therefore we report to the National Assembly on that basis.

In a letter to our predecessor committee in November 2011, the First Minister said that composite instruments are laid only in English because the UK Parliament will not scrutinise general statutory instruments in languages other than English.

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddMCD@cynulliad.cymru
www.cynulliad.cymru/SeneddMCD
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCLA@assembly.wales
www.assembly.wales/SeneddCLA
0300 200 6565

Recent examples of composite statutory instruments that we have scrutinised and that are not made bilingually, include:

- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution (Amendment) Order 2017 (SI 2017 No. 959)

  The Explanatory Memorandum that accompanied the Order stated that, "as a Composite Order, the Instrument will not be bilingual and this position has been confirmed previously by the First Minister, to the Constitutional and Legislative Affairs Committee."

- The Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017 No. 1047)

  The Explanatory Memoranda that accompanied this statutory instrument indicated that as it applies to both England and Wales, and is subject to approval by the National Assembly and by Parliament, it is therefore not considered reasonably practicable for it to be made bilingually.

We are also aware of composite statutory instruments laid before both the National Assembly and the UK Parliament in English only but which nevertheless do include some Welsh language text. For example, The Conservation of Habitats and Species Regulations 2017 (SI 2017 1012) and The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 (not yet made).

In addition, we have become aware of a statutory instrument—the European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No. 1030)—made by the UK Government that uses Henry VIII powers to amend a bilingual Act of the Assembly and as consequence contains many pages of Welsh language text.

Some of these instruments are therefore examples of the UK Parliament scrutinising statutory instruments that contain the Welsh language.

In the circumstances I would be grateful if you could confirm whether there are any barriers to bilingual joint or composite statutory instruments being laid in the House of Commons.

This is of course important in the context of the UK's exit from the EU and the scrutiny of subordinate legislation made by UK Ministers arising from the EU (Withdrawal) Bill, whether acting alone in devolved areas under Clause 7 powers or jointly with the Welsh Ministers in devolved areas under Schedule 2 powers.

I am sending similar letters to the Chairs of the Statutory Instruments Committee (House of Commons), the Secondary Legislation Scrutiny Committee (House of Lords) and the Joint Committee on Statutory Instruments.

I look forward to hearing from you soon.

Yours sincerely

Mick Antoniw
Chair

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

National Autistic Society Cymru
2nd Floor /2il Lawr
Lancaster House / Ty Lancaster
106 Maes-y-Coed Road /
106 Ffordd Maes-y-Coed
Heath / Y Waun
Cardiff / Caerdydd
CF14 4HE

Tel / Ffôn: 029 2062 9300
Email / Ebost: wales@nas.org.uk

23 October 2018

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
CF99 1NA

SeneddCLA@assembly.wales

Annwyl Mick,

I noted with interest the evidence provided to the Committee from the Cabinet Secretary for Health and Social Services, Vaughan Gething AM, on the Autism (Wales) Bill, on 15 October.

On behalf of our members and supporters, I would like to extend our gratitude for the work that the Committee is undertaking to ensure that, if passed, the Autism (Wales) Bill will be as strong and effective as possible and make a significant difference to the lives of autistic people across Wales.

In this spirit, I hope the Committee will allow me to address a number of comments made during the evidence session on the 15 October.

Remedy

It was noted by the Cabinet Secretary that the only remedy option, where it appears duties within the Bill aren't adhered to, is Judicial Review. Similar is ultimately true of a whole range of legislation. Suzy Davies AM pointed out that this could be said of the Social Services and Well Being Act, under which the proposed code of practice will be published. As you will know public services have their own complaint resolution mechanisms that aim to resolve concerns at an early stage.

In this context we would urge the Committee to consider the role that legislation has on behaviour change. We very much view the Bill as a driver that will lead to improvements in service delivery and support. Autistic people and their families will have their rights strengthened and made clearer through this legislation. In our view, this could lead to less cause for remedial action, or remedy at an early stage.

Patron: HRH The Countess of Wessex. Chairman: Dr Carol Homden. President: Jane Asher. Chief Executive: Mark Lever. National Autistic Society is a charity registered in England and Wales (269425) and in Scotland (SC039427) and a company limited by guarantee registered in England (No.1205298), registered office 393 City Road, London, EC1V 1NG

It is worth noting that the main vehicle through which the strategy, as proposed by the Bill, will be monitored is through independent evaluation, with a duty to reflect any recommendations made. The Bill also includes the power for the Welsh Minister to make regulations, if approved by the Assembly.

Diagnosis

In his evidence the Cabinet Secretary said that Bill provided for services and support to be made available only once 'over the gate' in terms of diagnosis, and that this was a fundamental concern about the Bill. This, we feel, is an unfair summation of the Bill. The Bill clearly states in section 2.1(c): "this shall not prevent the provision of other services prior to diagnosis assessment".

We agree with the Cabinet Secretary when he says that services should take into account the needs of the individual and ensure services are put in place to meet those needs. However, this assumes that professionals understand and can accommodate these needs without the benefit of a diagnostic assessment. This is where autistic people are failed by the current system.

A timely diagnosis is of fundamental importance in fully understanding the needs of an autistic person and shapes and informs any subsequent support. As Dai Lloyd AM said, 'on the ground' a diagnosis is key. It is also crucial in enabling autistic people to better understand themselves.

The current Welsh Government waiting time standard for children and adults is 26 weeks from referral to first assessment. The Bill proposes that the wait between a referral and first assessment should be determined by NICE guidelines and quality standards. This is currently 13 weeks. However, it is important to note that this timescale is not on the face of the Bill, and as clinical best practice changes, as determined by NICE, this can be reflected in the requirements of the Bill.

Examples of other UK Autism-specific legislation

The Cabinet Secretary said that he disagreed with the principle of condition-specific legislation and suggested that autism legislation in England and Northern Ireland had not led to 'visible improvements'. There are many examples of where clear and tangible duties included in those Acts have led to clear and tangible outcomes for autistic people. One clear example, to take the England Act, is that, prior to the 2009 Act, only 14 areas of England had an established adult Autism diagnostic pathway. As a result of the Act, only three areas do not have a diagnostic pathway.

There is also no evidence to support the Cabinet Secretary's concern that the Bill will lead to more condition specific legislation. This simply hasn't been the case elsewhere.

BUDDSODDWYR MEWN POBL | INVESTORS IN PEOPLE

Patron: HRH The Countess of Wessex. Chairman: Dr Carol Homden. President: Jane Asher. Chief Executive: Mark Lever. National Autistic Society is a charity registered in England and Wales (269425) and in Scotland (SC039427) and a company limited by guarantee registered in England (No.1205298), registered office 393 City Road, London, EC1V 1NG

CYRRAEDD Y NOD CORPORATE HEALTH STANDARD ARIAN · SILVER Cymru Iach ar Waith Healthy Working Wales

National Autistic Society Cymru

The status of a Bill, Code or Action Plan

The Cabinet Secretary has committed to consulting on a code of practice in November 2018. Our chief concern is the confusion that this may cause to our members and supporters who feel that they have already given their views on the improvements they would like to see and the vehicle through which they think these improvements should occur, through the three consultations already held in relation to the Autism Bill

In our evidence to the Health, Social Care and Sport Committee, we suggested that it may be helpful for the Committee to have sight of the proposed code so that they could assess it alongside the Bill. We would encourage the Constitutional and Legislative Affairs Committee to also consider this course of action. From our initial understanding we feel that the scope, permanence and enforcement of any such code would be limited in comparison to the Bill.

I hope you find this information useful to your consideration of the legislation. I would of course be happy to provide the Committee with any further information as required.

Cofion cynnes,

Meleri Thomas
External Affairs Manager

BUDDSODDWYR MEWN POBL | INVESTORS IN PEOPLE

Patron: HRH The Countess of Wessex. Chairman: Dr Carol Homden. President: Jane Asher. Chief Executive: Mark Lever. National Autistic Society is a charity registered in England and Wales (269425) and in Scotland (SC039427) and a company limited by guarantee registered in England (No.1205298), registered office 393 City Road, London, EC1V 1NG

CYRRAEDD Y NOD CORPORATE HEALTH STANDARD ARIAN · SILVER Cymru Iach ar Waith Healthy Working Wales

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Llywodraeth Cymru
Welsh Government

Llyr Gruffydd
Finance Committee
National Assembly for Wales
Cardiff Bay
CF991NA

SeneddFinance@assembly.wales

24 October 2018

Annwyl Llyr,

Earlier this year I wrote to the Finance Committee to make it aware of my request to the Secretary of State for Wales for the UK Government to bring forward secondary legislation to enable Welsh Ministers to issue bonds for capital investment expenditure.

I am writing to update the committee that the draft order has been laid in the House of Commons. Subject to approval, the order will come into effect from 1 December 2018.

As I have said when I have appeared before the committee on a number of occasions, when it comes to the use of capital to fund infrastructure investment in Wales, we will always use conventional capital first and then those sources of borrowing, which represent the best value of money to the taxpayer to minimise the long-term financial implications on the Welsh Government's budget.

It is my intention to continue to borrow from HM Treasury, through the National Loans Fund, while this remains the cheapest source of funding available to us. However, the ability to issue bonds will provide the Welsh Government with the full suite of borrowing powers for the future.

I will continue to update the Finance Committee about our borrowing plans as part of the usual budget process.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@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 chair of the Constitutional and Legislative Affairs Committee for information.

Yn gywir,

Mark

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid.
Cabinet Secretary for Finance

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

42nd Report of Session 2017–19

Correspondence: Delegated legislation under the European Union (Withdrawal) Act 2018

Ordered to be printed 30 October 2018 and published 1 November 2018

Published by the Authority of the House of Lords

HL Paper 214

Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Rt Hon. Lord Chartres
Rt Hon. Lord Cunningham of Felling
Lord Faulkner of Worcester
Baroness Finn
Lord Goddard of Stockport
Lord Haskel
Rt Hon. Lord Janvrin
Lord Kirkwood of Kirkhope
Baroness O'Loan
Lord Sherbourne of Didsbury
Rt Hon. Lord Trefgarne (Chairman)

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at http://www.parliament.uk/seclegpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Forty Second Report

CORRESPONDENCE

1. In our Report entitled 'Sifting "proposed negative instruments" laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements',[1] we stated that we have "pressed the Government to ensure that the flow of instruments laid under the withdrawal Act should be properly managed, without surges which could place an unacceptable pressure on the Committee's capacity." We therefore asked the Government for clarification about anticipated flow and volume of instruments. We have received correspondence from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union, on the expected flow of instruments, which we are publishing at Appendix 1. We are grateful to the Minister for his reply.

1 37th Report, Session 2017–19 (HL Paper 174) paras 59–62.

APPENDIX 1: DELEGATED LEGISLATION UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Letter from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State for Exiting the European Union

Delegated legislation under the European Union (Withdrawal) Act 2018

Following our recent meetings, and the Leader of the House of Commons' private meeting with the European Statutory Instrument Committee on 17 October, I am writing to provide more detail on the flow of proposed negative statutory instruments (SIs) to be laid under the European Union (Withdrawal) Act 2018. Robin Walker also made a commitment to write to the Procedure Committee during the discussion on the forthcoming EU (Withdrawal Agreement) Bill on 10 October regarding the flow of SIs, and this letter serves that purpose.

As you know, the Government has stated there will be between 800–1,000 EU exit-related SIs laid (not all of which will be under the EU (Withdrawal) Act) ahead of exit day to ensure a functioning statute book, and the Leader of the House of Commons has stated the final volume will be closer towards the lower end of that range.

The Government expects to see a steady increase in the number of EU exit SIs being laid through the autumn, and we are working hard to ensure a manageable flow over each sitting week. As is usual and largely unavoidable for secondary legislation, the precise volume to be laid each month will fluctuate, and we must be careful not to mislead Parliament and stakeholders.

That said, it is possible to give the range of the remaining EU exit SIs we are currently expecting to lay:

- 50–100 SIs, of which 55% are likely to be negative under the EUWA in October;
- 150–200 SIs, of which 55% are likely to be negative under the EUWA in November;
- 100–150 SIs, of which 35% are likely to be negative under the EUWA in December;
- 100–150 SIs, of which 25% are likely to be negative under the EUWA in January;
- 10–50 SIs, of which 20% are likely to be negative under the EUWA in February;
- 10–50 SIs, of which 30% are likely to be negative under the EUWA in March.

As mentioned by the Leader, this programme of secondary legislation is necessarily flexible, enabling individual SIs to be moved around in the general flow to ensure it is manageable. While it is not possible to confirm the volume for each department each month as this is liable to change, I can confirm the majority of SIs will be from Defra [Department for Environment, Food and Rural Affairs], HMRC [HM Revenue and Customs], HMT [HM Treasury], BEIS [Department for Business, Energy and Industrial Strategy] and DfT [Department for Transport], and we are continuing to work collectively to ensure a manageable flow.

More widely, we have been doing a great deal of work to improve our management of SIs, and as part of this we work closely with departments to ensure they prioritise only the essential non-exit secondary legislation to be laid in Parliament. This will ensure that Parliament focuses on the critical SIs we need between now and exit day.

25 October 2018

APPENDIX 2: MEMBERS INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

Document is Restricted

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

Agenda Item 12

Document is Restricted