

# Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 10 February 2020

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

[SeneddLJC@assembly.wales](mailto:SeneddLJC@assembly.wales)

---

**1 Introduction, apologies, substitutions and declarations of interest**  
14.30

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

Negative Resolution Instruments

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

(Pages 1 – 74)

CLA(5)–06–20 – Paper 1 – Report

CLA(5)–06–20 – Paper 2 – Regulations

CLA(5)–06–20 – Paper 3 – Explanatory Memorandum

CLA(5)–06–20 – Paper 4 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 22 January 2020

**2.2 SL(5)493 – The Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2020**

(Pages 75 – 88)

CLA(5)–06–20 – Paper 5 – Report

CLA(5)–06–20 – Paper 6 – Regulations

CLA(5)–06–20 – Paper 7 – Explanatory Memorandum

**2.3 SL(5)499 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020**

(Pages 89 – 99)



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

CLA(5)–06–20 – Paper 8 – Report

CLA(5)–06–20 – Paper 9 – Regulations

CLA(5)–06–20 – Paper 10 – Explanatory Memorandum

CLA(5)–06–20 – Paper 11 – Letter from the Minister for Finance and

Trefnydd, 4 February 2020

Affirmative Resolution Instruments

**2.4 SL(5)492 – The Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020**

(Pages 100 – 119)

CLA(5)–06–20 – Paper 12 – Report

CLA(5)–06–20 – Paper 13 – Regulations

CLA(5)–06–20 – Paper 14 – Explanatory Memorandum

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

14.35–14.40

**3.1 SL(5)496 – The European Union (Withdrawal Agreement) Act 2020 (Disapplication of the Deferral of Subordinate Legislation) (Wales) (EU Exit) Regulations 2020**

(Pages 120 – 126)

CLA(5)–06–20 – Paper 15 – Report

CLA(5)–06–20 – Paper 16 – Regulations

CLA(5)–06–20 – Paper 17 – Letter from the First Minister, 30 January 2020

**4 Paper(s) to note**

14.40–14.45

**4.1 Letter from the Minister for Housing and Local Government: Local Government and Elections (Wales) Bill**

(Pages 127 – 136)

CLA(5)–06–20 – Paper 18 – Letter from the Minister for Housing and Local Government, 6 February 2020

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

14.45

- 6 Wales' Changing Constitution: Key issues**

14.45–14.55

(Pages 137 – 152)

CLA(5)–06–20 – Paper 19 – Key issues paper

- 7 Legislative Consent Memorandum on the Birmingham Commonwealth Games Bill**

14.55–15.00

(Pages 153 – 159)

CLA(5)–06–20 – Paper 20 – Legislative Consent Memorandum

CLA(5)–06–20 – Paper 21 – Report on the Welsh Government's 2019

Legislative Consent Memorandum on the Birmingham Commonwealth Games Bill, September 2019

- 8 Proposals for making changes to the Welsh Tax Acts – briefing from Welsh Government officials**

15.00–15.45

(Pages 160 – 162)

Gareth McMahon, Welsh Government Lawyer

Andrew Hewitt, Welsh Treasury

Laura Fox, Welsh Treasury

CLA(5)–06–20 – Paper 22 – Paper from Welsh Government

**Date of the next meeting – 24 February 2020**

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

## Background and Purpose

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

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

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

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

## Procedure

Negative.

## Technical Scrutiny

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

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

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

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

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



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

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

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

## Merits Scrutiny

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

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

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

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

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

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



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

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

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

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

## Implications arising from exiting the European Union

---

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

## Government Response

---

A government response is required to reporting points 1-7 and 9.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**5 February 2020**



Cynulliad Cenedlaethol Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales **Pack Page 3**  
**Legislation, Justice and Constitution Committee**

**2020 No. (W. )**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

**PLANT HEALTH, WALES**

**The Official Controls (Animals,  
Feed and Food, Plant Health Fees  
etc.) (Wales) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations replace the Official Controls (Animals, Food and Feed) (Wales) Regulations 2007 (S.I. 2007/196 (W.15)) and substantially amend the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379 (W. 252)).

These Regulations implement and enforce Regulation (EU) 2017/625 (OJ No. L 95, 7.4.2017, p. 1) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the EU Regulation”).

Implementation and enforcement of other provisions of the EU Regulation relating to food and feed are the subject of the Official Feed and Food Controls (Wales) Regulations 2009 (S.I. 2009/3376) (W. 298).

Implementation and enforcement of provisions relating to plant health and protective measures against plant pests will be the subject of a separate instrument.

Part 2 provides for audits to be undertaken of official controls and other official activities in accordance with the EU Regulation.

Part 3 provides for assistance and co-operation under Title IV of the EU Regulation and recovery of expenses.

Part 4 provides for enforcement and penalties.

Part 5 deals with consequential amendments as a result of the application of the EU Regulation.

Part 6 contains amendments to secondary legislation relating to plant health fees as a result of the application of the EU Regulation and Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (OJ No. L 317, 23.11.2016, p. 4).

Part 7 revokes the Official Controls (Animals, Feed and Food) (Wales) Regulations 2007 (S.I. 2007/196 (W. 15)).

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.



**2020 No. (W. )**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

**PLANT HEALTH, WALES**

**The Official Controls (Animals,  
Feed and Food, Plant Health Fees  
etc.) (Wales) Regulations 2020**

*Made* 21 January 2020

*Laid before the National Assembly for  
Wales* 22 January 2020

*Coming into force* 31 January 2020

**CONTENTS**

**PART 1**

**General**

1. Title, application and commencement
2. Interpretation
3. Designations for the purposes of Article 4
4. Exchange of information

**PART 2**

**Audits and official controls**

5. Powers of auditors
6. Powers of the Welsh Ministers in relation to audits of designated authorities
7. Powers of the Agency undertaking audits on behalf of the Welsh Ministers

### PART 3

#### Assistance and co-operation under Title IV and recovery of expenses

8. Duties of designated authorities
9. Facilitating assistance and co-operation
10. Recovery of expenses

### PART 4

#### Enforcement and penalties

11. Enforcement and prosecution
12. Powers of enforcement officers
13. Powers of entry
14. Offences and penalties
15. Offences by bodies corporate
16. Time limits for prosecution

### PART 5

#### Consequential amendments to secondary legislation relating to animals, food and trade

17. Amendment to the Foot-and-Mouth Disease (Wales) Order 2006
18. Amendment to the Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006
19. Amendment to the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006
20. Amendment to the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006
21. Amendment to the Welfare of Animals (Transport) (Wales) Order 2006
22. Amendment to the Welfare of Farmed Animals (Wales) Regulations 2007
23. Amendment to the Trade in Animals and Related Products (Wales) Regulations 2011
24. Amendment to the Veterinary Medicines Regulations 2013
25. Amendment to the Welfare of Animals at the Time of Killing (Wales) Regulations 2014

26. Amendment to the Carcase Classification and Price Reporting (Wales) Regulations 2018
27. Amendment to the Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018
28. Amendment to the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018
29. Trade in Animals and Related Products (Wales) (EU Exit) Regulations 2019
30. Amendment to the Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

## PART 6

Amendments to secondary legislation relating to  
plant health fees

31. The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004
32. The Plant Health (Export Certification) (Wales) Order 2006
33. The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006
34. The Plant Health etc. (Fees) (Wales) Regulations 2018
35. The Plant Health (Fees) (Forestry) (Wales) Regulations 2019

## PART 7

Revocation

36. Revocation

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to the common agricultural policy of the European Union<sup>(2)</sup>, and in relation to the veterinary and phytosanitary fields for the protection of public health<sup>(3)</sup>.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, and, with the consent of Treasury, in exercise of powers conferred by section 56(1) of the Finance Act 1973<sup>(4)</sup>.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(5)</sup> there has been open and transparent public consultation during the preparation of these Regulations.

## PART 1

### General

#### **Title, application and commencement**

**1.**—(1) The title of these Regulations is the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales and come into force on 31 January 2020.

#### **Interpretation**

**2.**—(1) In these Regulations—

“the Agency” (“*yr Asiantaeth*”) means the Food Standards Agency;

---

(1) 1972 c. 68. section 2(2) was amended by section 27(1)(a) 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), and prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day (see section 20 of that Act).

(2) S.I. 2010/2690.

(3) S.I. 2008/1792.

(4) 1973 c. 51; section 56(1) was amended by S.I. 2011/1043, and prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal) Act 2018 from a date and time to be appointed.

(5) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).

“audit” (*“archwiliad”*) means an audit of a competent authority carried out for the purposes of Article 6 in relation to relevant legislation;

“auditor” (*“archwilydd”*) means a person carrying out an audit on behalf of a competent authority;

“designated authority” (*“awdurdod dynodedig”*) means an authority designated by the Welsh Ministers under regulation 3;

“the EU Official Controls Regulations” (*“Rheoliadau Rheolaethau Swyddogol yr UE”*) means the EU Regulation and the Implementing Regulations and Delegated Regulations made under it;

“the EU Regulation” (*“Rheoliad yr UE”*) means Regulation (EU) 2017/625 of the European Parliament and of the Council of 15th March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(1)</sup>;

“enforcement officer” (*“swyddog gorfodi”*) means an officer authorised by the Welsh Ministers or a designated authority to enforce the EU Official Controls Regulations and these Regulations;

“the Feed and Food Regulations” (*“y Rheoliadau Bwyd Anifeiliaid a Bwyd”*) means the Official Feed and Food Controls (Wales) Regulations 2009<sup>(2)</sup>;

“food authority” (*“awdurdod bwyd”*) in relation to any relevant legislation has the same meaning as it has in that relevant legislation;

“inspector” (*“arolygydd”*), in relation to any relevant legislation, means an inspector, veterinary inspector, or other officer authorised by the Welsh Ministers or other designated authority to act under that relevant legislation;

“local authority” (*“awdurdod lleol”*) means a county council or county borough council;

“official auxiliary” (*“cynorthwyydd swyddogol”*) means a representative of the Welsh Ministers appropriately trained and acting under the responsibility or supervision of an official veterinarian to perform certain official controls or certain tasks related to other official activities;

“official controls” (*“rheolaethau swyddogol”*) means the activities referred to in Article 2(1) other than those listed in Article 1(4);

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.3.2019, p. 4).

(2) S.I. 2009/3376 (W. 298), amended by S.I. 2011/626 (W. 90), S.I. 2013/479 (W. 55), S.I. 2013/2007 (W. 298), S.I. 2014/2714 (W. 271) and prospectively amended by S.I. 2019/434 (W. 102) and XXXX (W. XX).

“official veterinarian” (“*milfeddyg swydddogol*”) means a veterinarian appointed by the Welsh Ministers and appropriately qualified to carry out official controls and other official activities for verification of compliance with the rules referred to in Article 1(2);

“other official activities” (“*gweithgareddau swydddogol eraill*”) has the meaning given by Article 2(2);

“premises” (“*mangre*”) includes any means of transport;

“relevant legislation” (“*deddfwriaeth berthnasol*”) means European and domestic legislation governing the areas listed in sub-paragraphs (a), (c), (d), (e) and (f) of Article 1(2), with the exception of food and food safety, feed and feed safety legislation in so far as—

- (a) such legislation is defined as “relevant feed law” or “relevant food law” in the Feed and Food Regulations,
- (b) such legislation involves substances the use or presence of which on crops to produce or process food or feed may result in residues of those substances in food or feed, or
- (c) it relates to feed additives or medicated feedingstuffs.

(2) In the definition of “relevant legislation” in paragraph (1)—

- (a) “medicated feedingstuffs” means any mixture of feed with a veterinary medicinal product having properties for treating or preventing disease, restoring, correcting or modifying physiological functions in animals, or products and feed or feeds which are ready-prepared for marketing and intended to be fed to animals without further processing, and
- (b) “zootechnical additives” means feed additives in the categories mentioned in Article 6.1(d) and (e) of Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition<sup>(1)</sup>, with the exception of those belonging to the functional groups listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation.

(3) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in the EU Regulation.

(4) Unless the context otherwise requires, any reference in these Regulations to an “Article” or “Title” is to an Article or Title of the EU Regulation.

---

(1) OJ No. L 268, 18.10.2003, p. 29 as last amended by OJ No. L 156, 13.6.2019, p. 1.

### **Designations for the purposes of Article 4**

**3.—**(1) The Agency is designated as the competent authority for the purposes of Article 4 in relation to welfare requirements of animals, to the extent that it is designated as the competent authority mentioned in regulation 4(1) of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014<sup>(1)</sup>.

(2) In any other case the Welsh Ministers are designated as the competent authority for the purposes of Article 4 in relation to areas governed by the relevant legislation.

(3) Local authorities and local food authorities (including any that are enforcement authorities under any relevant legislation) are designated authorities in relation to functions of enforcement and execution (other than prosecution) which they exercise under relevant legislation.

(4) Any designated authority must draw up written records (on paper or electronic form) of official controls and other official activities that they perform, and such records must contain—

- (a) a description of the purpose of the relevant official controls and other official activities,
- (b) the control methods applied,
- (c) the outcome, and
- (d) where appropriate, any action required by the designated authority.

(5) Where non-compliance has been identified by any designated authority through the application of official controls, it must promptly inform the business operator of the non-compliance.

### **Exchange of information**

**4.** The Welsh Ministers and any other designated authorities may disclose information to each other and to other competent authorities in the United Kingdom and other member States for the purposes of applying these Regulations and the EU Official Controls Regulations.

## **PART 2**

### **Audits and official controls**

#### **Powers of auditors**

**5.—**(1) An auditor may exercise the powers in this regulation and carry out an audit in accordance with

---

(1) S.I. 2014/951 (W. 92), to which there are amendments not relevant to these Regulations.

the EU Official Controls Regulations if so authorised—

- (a) in relation to carrying out an audit of the activities of a designated authority, by the designated authority, or
- (b) in relation to carrying out an audit pursuant to regulation 6(2), by the Welsh Ministers.

(2) For the purposes of carrying out an audit, an auditor may enter premises to which an inspector has a power of entry under relevant legislation (“audit premises”) as if the auditor were an inspector meeting the criteria for gaining such entry under that relevant legislation.

(3) An auditor exercising a power of entry may be accompanied by any person whose assistance is reasonably required by the auditor.

(4) An auditor may request such information from any person at any premises that is subject to an audit as may reasonably be required for purposes of the audit, and may inspect such records as may reasonably be required for those purposes.

(5) An auditor may make or require copies of such records.

(6) When exercising the powers conferred by this regulation, an auditor must, upon request, produce evidence of authorisation under these Regulations.

(7) This regulation does not apply where an auditor undertakes an audit in accordance with regulation 7 on behalf of the Agency.

#### **Powers of the Welsh Ministers in relation to audits of designated authorities**

6.—(1) The Welsh Ministers may make a written request to a designated authority to provide information by a specified date about any audits it has carried out or undergone or which it plans to carry out or undergo.

(2) The Welsh Ministers may require an auditor to carry out an audit of a designated authority.

(3) The designated authority must provide such assistance to that auditor as may reasonably be required in order for the auditor to carry out the audit effectively.

#### **Powers of the Agency undertaking audits on behalf of the Welsh Ministers**

7.—(1) Where the Welsh Ministers arranges for the Agency to undertake an audit, the audit provisions of the Feed and Food Regulations apply as if—

- (a) the undertaking of the audit were a purpose referred to in regulations 8(1) and 9(1) of the Feed and Food Regulations, and



- (b) the competent authority concerned were an enforcement authority to which regulations 8 and 9 of the Feed and Food Regulations applied.

(2) For the purposes of paragraph (1), the audit provisions of the Feed and Food Regulations are—

- (a) regulations 8 and 9(1) to (8) and (10), as read with regulation 10 of those Regulations, and
- (b) regulation 11 of those Regulations.

(3) Where the Agency undertakes an audit, regulations 17(2), (4) and (5)(c), 18(2) to (9), 19 to 21, 45 to 47, 49 and 50 of the Feed and Food Regulations apply as if the audit were undertaken under those Regulations and enforced or undertaken thereunder by the Agency.

## PART 3

### Assistance and co-operation under Title IV and recovery of expenses

#### **Duties of designated authorities**

**8.** A designated authority must notify the Welsh Ministers if it considers that it is unable to undertake action required in any individual case under Title IV (administrative assistance and cooperation) and must provide such information to the Welsh Ministers as may reasonably be requested.

#### **Facilitating assistance and co-operation**

**9.—**(1) For the purposes of assisting a competent authority of another member State as provided for in Article 104, or enabling the Welsh Ministers or a designated authority to do so, an inspector exercising powers under relevant legislation to enter premises or to inspect records may—

- (a) be accompanied by authorised officers of a competent authority of another country,
- (b) show records to such accompanying authorised officers, and
- (c) make copies for them, or require copies to be made for them, of the records.

(2) For the purposes of facilitating a visit by an inspection team as provided for in Article 108, an inspector may be accompanied by representatives of the EU Commission when exercising powers under relevant legislation to enter premises and inspect records.

(3) Any person may be required to provide an enforcement officer with such assistance, information or facilities as the officer may reasonably require for

the purpose of the execution or enforcement of these Regulations or the EU Official Controls Regulations.

### **Recovery of expenses**

**10.**—(1) Any expenses incurred by the Welsh Ministers or a designated authority in carrying out enforcement activities under these Regulations, or measures under Article 66, 67, 69 or 138 may be charged to the relevant business operator and such expenses must be paid on written demand.

(2) Any sum owing under these Regulations and unpaid may be recovered—

- (a) as a civil debt;
- (b) under an order of the court, on such terms as the court may order.

## **PART 4**

### **Enforcement and penalties**

#### **Enforcement and prosecution**

**11.**—(1) Enforcement of these Regulations and the EU Official Controls Regulations is the responsibility of the competent authority or a designated authority.

(2) The Welsh Ministers may direct, in relation to cases of a particular description or to a particular case that these Regulations are to be enforced by the Welsh Ministers instead of a local authority.

#### **Powers of enforcement officers**

**12.**—(1) An enforcement officer may—

- (a) make any enquiries, observe any activity or process, and take photographs;
- (b) inspect any article, container, plant, equipment or records of any class which appear to the enforcement officer to be relevant for the purposes of the investigation, and may make or require copies of such records and remove such records as may reasonably be required;
- (c) mark any item for identification purposes;
- (d) require the production of any label, document or record (in whatever form it is held);
- (e) inspect and take a copy of, or take a copy of an extract from, any label, document or record;
- (f) have access to, and inspect and check the data on, and operation of, any computer;
- (g) if the enforcement officer has reason to believe that a person is in contravention of

these Regulations or the EU Official Controls Regulations, and that the data may be relevant to the contravention, seize and detain any computer equipment for the purpose of copying the data or, if it has not been possible carry out adequate inspection on the premises, of further inspection;

- (h) if the enforcement officer has reason to believe that a person is in contravention of these Regulations or the EU Official Controls Regulations, and that certain records may be relevant to the contravention, seize and detain the records.

(2) An enforcement officer must—

- (a) produce evidence of authorisation when requested to do so;
- (b) as soon as reasonably possible—
  - (i) provide to the person appearing to be responsible for any records removed from any premises a written receipt identifying those records, and
  - (ii) after deciding that they are no longer required, return anything removed, apart from records or other things to be used as evidence in court proceedings.

### **Powers of entry**

**13.**—(1) An enforcement officer may enter any premises (except any premises used wholly or mainly as a private dwelling) during normal working hours without prior notice, if the officer believes that it is necessary for the purpose of official controls or other official activities under these Regulations or the EU Official Controls Regulations.

(2) In circumstances where an enforcement officer is carrying out routine verification checks, notice must be provided before exercising a power of entry to premises during normal working hours.

(3) The requirement to give notice in paragraph (2) does not apply—

- (a) where reasonable efforts to agree an appointment have failed,
- (b) where the enforcement officer reasonably believes that giving notice would defeat the object of the entry, including any situation in which notice is not required under Article 9(4), or
- (c) where the enforcement officer has a reasonable suspicion that any provision of these Regulations or the EU Official Controls Regulations has been contravened.

(4) An enforcement officer must, if requested to do so, produce a duly authenticated authorisation document.

(5) A justice of the peace may sign a warrant to permit an enforcement officer to enter any premises, including a dwelling-house, if necessary by reasonable force, if the justice on sworn information in writing is satisfied—

(a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations or the EU Official Controls Regulations, and

(b) that one or more of the conditions in paragraph (6) are met.

(6) The conditions are—

(a) that entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;

(b) that asking for admission to the premises, or giving such a notice, would defeat the object of the entry;

(c) that entry to the premises is required urgently;

(d) that the premises are unoccupied or the occupier is temporarily absent.

(7) A warrant is valid for 30 days from the date of signature.

(8) An enforcement officer entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

(9) An enforcement officer may—

(a) be accompanied by such other persons, up to a maximum of three, as the enforcement officer considers necessary;

(b) bring onto the premises such equipment as the enforcement officer considers necessary.

### **Offences and penalties**

**14.**—(1) A person is guilty of an offence if without reasonable excuse that person obstructs or causes or permits to be obstructed—

(a) an auditor,

(b) an inspector,

(c) any person who accompanies a relevant auditor or relevant inspector, or

(d) an enforcement officer.

(2) For the purposes of paragraph (1), obstruction includes failure by any person—

- (a) to produce records or provide reasonable facilities for copying records, or
- (b) to provide relevant information when requested.

(3) A person is guilty of an offence if without reasonable excuse that person supplies information which, in any material particular, is false or misleading.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine of any amount.

### **Offences by bodies corporate**

**15.**—(1) If an offence under regulation 14 is committed by a body corporate, and is shown to have been committed with the consent or connivance of an officer, or to be attributable to the neglect of such officer, that officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with functions of management as if that person were a director of the body.

(3) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

### **Time limits for prosecution**

**16.** A prosecution for an offence under this Part may begin no later than the earlier of the expiry of—

- (a) three years from the commission of the offence, or
- (b) one year from its discovery by the prosecuting authority.

## PART 5

Consequential amendments to secondary legislation relating to animals, food and trade

### **Amendment to the Foot-and-Mouth Disease (Wales) Order 2006**

**17.** In article 3(1) of the Foot-and-Mouth Disease (Wales) Order 2006<sup>(1)</sup>, in the definition of “health marked”, for the words “required by” to the end, substitute “as defined in Article 3(51) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(2)</sup>”.

### **Amendment to the Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006**

**18.** In regulation 2(1) of the Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006<sup>(3)</sup>, for the definition of “health marked” substitute—

““health marked” (*“yn dwyn marc iechyd”*) means bearing the health mark as defined in Article 3(51) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(4)</sup>”.

### **Amendment to the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006**

**19.** In article 11(2)(b)(ii) of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006<sup>(5)</sup>, for the words “Chapter VIII” to the end, substitute “Article 18 of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of feed and food law, rules on animal

- 
- (1) S.I. 2006/179 (W. 30), to which there are amendments not relevant to these Regulations.
- (2) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).
- (3) S.I. 2006/180 (W. 31), to which there are amendments not relevant to these Regulations.
- (4) OJ No. L 95, 7.4.2017, p. 1.
- (5) S.I. 2006/3309 (W. 299), to which there are amendments not relevant to these Regulations.

health and welfare, plant health and plant protection products(1)”.

**Amendment to the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006**

**20.** In Schedule 1 to the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006(2), in Part 3, in paragraph 9(2)(a), for the words “Sections I, II and III, and Chapters V” to the end, substitute “Article 18 of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products(3)”.

**Amendment to the Welfare of Animals (Transport) (Wales) Order 2007**

**21.** In article 20(2) of the Welfare of Animals (Transport) (Wales) Order 2007(4), omit subparagraph (j).

**Amendment to the Welfare of Farmed Animals (Wales) Regulations 2007**

**22.—**(1) The Welfare of Farmed Animals (Wales) Regulations 2007(5) are amended as follows.

(2) In Schedule 5A—

(a) in paragraph 1—

(i) in the definition of “official veterinarian”, for “Regulation 854/2004” substitute “Regulation (EU) 2017/625”,

(ii) omit the definition of “Regulation 854/2004”, and

(iii) at the end insert—

““Regulation (EU) 2017/625” (*Rheoliad (EU) 2017/625*) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(2) S.I. 2006/3310 (W. 300), to which there are amendments not relevant to these Regulations.

(3) OJ No. L 95, 7.4.2017, p.1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(4) S.I. 2007/1047 (W. 105); there is a relevant prospective amendment within S.I. 2019/684 (W. 131).

(5) S.I. 2007/3070 (W. 264), the relevant amending instrument is S.I. 2010/2713 (W. 229).

animal health and welfare, plant health and plant protection products<sup>(1)</sup>.”;

- (b) in paragraph 15(1), for “Regulation 854/2004” substitute “Regulation (EU) 2017/625”.

### **Amendment to the Trade in Animals and Related Products (Wales) Regulations 2011**

**23.**—(1) The Trade in Animals and Related Products (Wales) Regulations 2011<sup>(2)</sup> are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) for the definition of “genetic material” substitute—

““genetic material” (*“deunydd genetig”*) means any germinal product that includes semen, oocytes and embryos intended for artificial reproduction and hatching eggs;”

(ii) for the definition of “product” substitute—

““product” (*“cynnyrch”*) means—

(a) any product of animal origin, germinal product, animal by-product, derived product or hay or straw subject to official controls at border control posts, and

(b) any composite product listed in Commission Decision 2007/275<sup>(3)</sup> concerning lists of animals and products to be subject to official controls at border inspection posts;”

(iii) in the appropriate place insert—

““health certificate” (*“tystysgrif iechyd”*) in these Regulations includes the equivalent of a health certificate in electronic form;”

““importer” (*“mewnforiwr”*) means the natural or legal person who presents animals or products for importation from outside the United Kingdom;”

““intensified official controls” (*“rheolaethau swyddogol dwysach”*) means those controls carried out in accordance with Article 65(4) of the EU Regulation;”

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(2) S.I. 2011/2379 (W. 252), amended by S.I. 2014/3158, 2018/1152, 2019/463, 2019/597 2019/737 2019/799 and 2019/526.

(3) OJ No. L 76, 16.3.2007, p. 12.



““official controls” (*“rheolaethau swyddogol”*) means activities performed in accordance with Article 2(1) of the EU Regulation;”;

““premises” (*“mangre”*) includes any place, vehicle, trailer, container, stall, moveable structure, ship or aircraft;”;

(b) after paragraph (2) insert—

“(3) In these Regulations,—

(a) “the EU Regulation” (*“Rheoliad yr UE”*) is a reference to Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(1)</sup>;

(b) “Regulation (EU) No. 2016/1012” (*“Rheoliad (EU) Rhif 2016/1012”*) is a reference to Regulation (EU) No. 2016/1012 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof<sup>(2)</sup>;

(c) any reference to a “border inspection post” (*“arolygfa ffin”*) is to be read as a reference to a “border control post” (*“safle rheoli ar y ffin”*) as defined in regulation 11; and

(d) any reference to a “CVED” (*“DMMG”*) is to be read as a reference to a “CHED” (*“DMIG”*) as defined in regulation 10.”

(3) For regulation 3 substitute—

#### **“Exception for pet animals**

**3.—**(1) These Regulations do not apply in relation to pet animals where—

(a) the movement is a non-commercial movement, and

(b) in the case of cats, dogs and ferrets—

(i) the pet animal is accompanying the owner or authorised person, or

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(2) OJ No. L 171, 29.6.2016, p. 66.

- (ii) where more than five pet animals are accompanying the owner or authorised person, the conditions set out in Article 5(2) of the Pets Regulation are fulfilled.

(2) In this regulation—

“accompanying” (“*mynd gyda*”) has the same meaning as in the Pets Regulation;

“authorised person” (“*person awdurdodedig*”), “non-commercial movement” (“*symud anfasnachol*”) and “owner” (“*perchennog*”) have the meanings given by Article 3 of the Pets Regulation;

“pet animal” (“*anifail anwes*”) has the same meaning as in Article 4(11) of Regulation (EU) 2016/429 on transmissible animal diseases<sup>(1)</sup>;

“the Pets Regulation” (“*y Rheoliad Anifeiliaid Anwes*”) means Regulation (EU) No. 576/2013<sup>(2)</sup> of the European Parliament and of the Council on the non-commercial movement of pet animals and repealing Regulation (EC) No. 998/2003.”

(4) In regulation 4, after “with” insert “the Faroe Islands, Greenland,”.

(5) In regulation 5—

- (a) for the heading substitute—

**“Movement of animals or genetic material to or from member States”;**

- (b) for paragraph (1) substitute—

“(1) No animal or genetic material may be sent to or brought from a member State unless it is accompanied by an original health certificate.

(1A) No animal product may be sent to or brought from a member State unless it is accompanied by a relevant document.”

(6) In regulation 6(1), for “or genetic material to another” substitute “, animal product or genetic material to a”.

(7) In regulation 7—

- (a) for the heading substitute—

**“Notification of movement of animals and genetic material to and from member States”**  
;

- (b) in paragraph (1)—

- (i) for “another” substitute “a”, and

---

(1) OJ No. L 84, 31.3.2016, p. 1.

(2) OJ No. L 17, 28.6.2013, p. 1.

- (ii) for the words “24 hours” to the end, substitute “one working day before the expected arrival of the consignment”;
- (c) in paragraph (2), for “another” substitute “a”.
- (8) In regulation 9, for the words “specified” to the end, substitute “subject to official controls at border control posts”.
- (9) For regulation 10, and the heading to that regulation, substitute—

**“Meaning and use of Common Health Entry Document “CHED”**

**10.**—(1) A “Common Health Entry Document” (“CHED”) (*“Dogfen Mynediad Iechyd Gyffredin”* (“DMIG”)) means a document, or an electronic equivalent, in the format specified in Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components<sup>(1)</sup>.

(2) Where the imported consignment is required to be accompanied by a CHED to the premises of final destination, the operator responsible for the consignment must complete the relevant parts of the document prior to the physical arrival of the consignment.

(3) The cases where and conditions under which the use of a CHED is required are specified in Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination<sup>(2)</sup>.

(4) Where a CHED is required, the operator responsible for the consignment must comply with the provisions of Article 56 of the EU Regulation.

(5) An electronic equivalent refers to a CHED capable of being produced at any time by the person responsible for the consignment.”

- (10) For regulation 11, and the heading to that regulation, substitute—

**“Border control posts**

**11.**—(1) A border control post is a place, together with the facilities contained at that place, that has been designated by the Welsh

---

(1) OJ No. L 261, 14.10.2019, p. 37.

(2) OJ No. L 250, 30.7.2019, p. 6.

Ministers in accordance with Article 59 of the EU Regulation and listed by the European Commission in accordance with Article 60 of the EU Regulation for the performance of the official controls set out in Article 47(1) of the EU Regulation.

(2) If at any time the relevant authority is of the opinion that any part of the inspection facilities at the border control post no longer complies with the requirements for approval, the relevant authority may, in accordance with Articles 61 to 63 of the EU Regulation, serve a notice on the operator—

- (a) specifying the breach;
- (b) providing a time limit within which the conditions must be complied with; and
- (c) prohibiting the use of that part of the facilities until the conditions of the approval are complied with.

(3) If the notice is not complied with, the Welsh Ministers may suspend the approval in relation to that part of the inspection facilities.

(4) If the operator of a border control post is determined by the relevant authority to be in serious breach relating to the performance requirements of official controls for any of the categories of animal or product for which it has been designated, or the conditions of the approval, or if the operation of the border control post creates a risk to human or animal health or animal welfare, the Welsh Ministers must suspend the approval of the border control post and order its activities to cease for all, or specified, categories of animal or product, and must inform the Commission of the suspension and the reason.

(5) In paragraph (2), “the relevant authority” (“*yr awdurdod perthnasol*”) means—

- (a) in relation to animals, the Welsh Ministers; or
- (b) in relation to products, the local authority.”

(11) In regulation 12, for paragraph (4) substitute—

“(4) If the approval for the border control post permits the importation of any fishery products, aquatic invertebrates, live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods intended for human consumption, the local authority may appoint suitably trained environmental health officers or other persons who are appropriately trained to perform official controls or certain tasks related to other official activities, to be official fish inspectors for that post in relation to such products, and any such

official fish inspector has all the powers of an official veterinary surgeon in relation to those products.”

(12) Regulation 14 is amended as follows—

(a) for paragraph (1) substitute—

“(1) The person responsible for a consignment of animals or products must notify the border control post of destination of the expected date of its arrival at the border control post at least one working day before it is due to arrive; but where the person can provide evidence of a logistical constraint preventing such notification, that requirement may be satisfied by notification of its expected time of arrival at least four hours in advance.”;

(b) omit paragraph (2);

(c) for paragraph (4) substitute—

“(4) In the case of a transshipment of products from one border control post to another, the person responsible for the consignment must notify the official veterinary surgeon at the border control post of destination of—

- (a) the estimated time of arrival;
- (b) the border control post at which the transshipment will be checked;
- (c) the identification and location of the consignment; and
- (d) the estimated time of departure.”

(13) For regulation 15 substitute—

“**15.**—(1) When the consignment has been unloaded, the person responsible for the consignment must with reasonable expedition arrange for it, together with the documentation specified for that consignment in the relevant legislation listed in Schedule 1, to be presented at the border control post inspection facilities to enable official controls in accordance with—

- (a) Chapter 5 of the EU Regulation, together with relevant implementing and delegated acts; and
- (b) the checks required by Article 37(1) of Regulation (EU) 2016/1012.

(2) Any operator responsible for the consignment must ensure that the consignment is presented for official controls at the border control post at a reasonable time during the working day.

(3) The competent authority must carry out all necessary official controls specified in paragraph (1) and may only issue a CHED permitting entry if—

- (a) the consignment complies with the requirements relating to it in the relevant instrument listed in Schedule 1;
  - (b) the importation is not prohibited under paragraph (4); and
  - (c) the correct fee for the checks has been or will be paid.
- (4) In the case of live animals, the official veterinary surgeon must not issue a CHED permitting entry if—
- (a) the animals are from a territory or part of a territory of a third country not included in the lists drawn up in accordance with legislation of the European Union for the species concerned, or from which imports are prohibited under that legislation;
  - (b) the animals are suffering from or are suspected to be suffering from or infected by a contagious disease or a disease presenting a risk to human or animal health;
  - (c) the exporting third country has not complied with the requirements provided for in legislation of the European Union;
  - (d) the animals are not in a fit state to continue their journey; or
  - (e) the veterinary certificate or document accompanying the animals does not meet the requirements of legislation of the European Union relating to importation.
- (5) If there are no legislative requirements relating to the consignment, the official veterinary surgeon must not issue a CHED unless the importation has been authorised in writing under this paragraph by—
- (a) the Food Standards Agency for any product for which only public health requirements apply; or
  - (b) the Welsh Ministers for any other product.
- (6) An authorisation under paragraph (5)(a) may only be granted if the Agency is satisfied that the consignment does not pose a risk to human health.
- (7) An authorisation under paragraph (5)(b) may only be granted if the Welsh Ministers are satisfied that the consignment does not pose a risk to the animal health status of the United Kingdom.

(8) The official veterinary surgeon must retain evidence of authorisation or refusal of a consignment for a period of three years from the date of the importation.”

(14) For regulation 16, and the heading to that regulation, substitute—

**“Removal from the border control post**

**16.**—(1) No person may remove a consignment from the border control post unless it is accompanied by a CHED issued by the official veterinary surgeon, or the official fish inspector (as appropriate) in the case of a consignment of fish, and the movement is in accordance with that document.

(2) The person transporting it from the border control post must ensure that the document accompanies the consignment and must transport it directly to the destination specified therein.

(3) These requirements do not apply if the consignment is removed from the border control post under the authority of the relevant official veterinary surgeon or fish inspector (as appropriate).

(4) In the case of live animals, the person responsible for the transport to the final destination must be in possession of the appropriate transport authorisation in accordance with Article 4 of Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations<sup>(1)</sup> inside the vehicle.

(5) In this regulation, requirements for a consignment to be “accompanied by a CHED”, in relation to a CHED in electronic form, refer to the CHED being capable of being produced at any time by the person responsible for the consignment.”

(15) For regulation 17, and the heading to that regulation, substitute—

**“Supervision and monitoring consignments**

**17.** Where a consignment is required to be taken under supervision from a border control post to a specific destination in the United Kingdom or a member State —

- (a) the movement must be under customs supervision if this is specified in the CHED; and

---

(1) OJ No. L 3, 5.1.2005, p.1.

- (b) on arrival, the occupier of the destination premises must immediately notify the Welsh Ministers of its arrival.”

(16) In regulation 18—

- (a) for paragraph (3) substitute—

“(3) Products that arrive at a border control post for an ultimate destination outside the United Kingdom, and which are subject to animal health check requirements in the relevant legislation listed in Schedule 1, may be taken directly from the border control post to the destination outside the United Kingdom without a CHED, so long as the products do not remain for more than three days at an airport border control post or 30 days at a sea port border control post.”;

- (b) after paragraph (3) insert—

“(3A) Products that are not subject to import check requirements, and which arrive at a border control post for an ultimate destination outside the United Kingdom, may be taken directly from the border control post to their destination without a CHED, so long as the products do not remain at the border control post for more than 90 days.”

(17) In regulation 19, for paragraphs (b) and (c) substitute—

“(b) removed from a border control post without a CHED or the authority of the official veterinary surgeon or official fish inspector (as the case may be) at the post; or

(c) transported from the border control post to a destination other than that specified in the entry document.”

(18) For regulation 20 substitute—

“**20.**—(1) This regulation applies in relation to any consignment of a product if the checks at a border control post show that the consignment does not comply with the rules referred to in Article 1(2) of the EU Regulation.

(2) The official veterinary surgeon or the official fish inspector (as appropriate) must, after consultation with the importer or the importer’s representative, place the consignment under detention and refuse its entry to the United Kingdom.

(3) The official veterinary surgeon or the official fish inspector (as appropriate) may order the person responsible for the consignment—

- (a) subject the consignment to special treatment in accordance with Article



71(1) and (2) of the EU Regulation or to any other measure necessary to ensure compliance with the rules referred to in Article 1(2) of the EU Regulation, and, where appropriate and provided there is no risk to human or animal health, allocate the consignment for purposes other than those for which it was originally intended;

- (b) where health conditions permit, to require the person in charge of the consignment to re-dispatch the product in accordance with Article 72 of the EU Regulation from the same border control post to a destination outside the European Union agreed with the person responsible for the consignment, using the same means of transport, within a maximum time limit of 60 days from arrival at the border control post; or
- (c) if the person responsible for the consignment gives immediate agreement, re-dispatch is impossible or the 60-day time limit has elapsed, to destroy the products.

(4) The official veterinary surgeon or official fish inspector (as appropriate) may exceptionally authorise destruction, re-dispatch, special treatment, or any other measure that may be taken in respect of a consignment to be taken in respect of a part of the consignment only, provided that the action taken—

- (a) is such as to ensure compliance;
- (b) does not pose a risk to human or animal health; and
- (c) does not disrupt official control operations.

(5) Pending re-dispatch or confirmation of the reasons for rejection, the person responsible for the consignment must, at that person's own expense, store the consignment under the supervision of the enforcement authority.

(6) If a consignment of products is seized outside a border control post under regulation 19, the enforcement authority must order that such consignment be retained or recalled, and placed under official detention without delay, and paragraphs (2) and (3) of this regulation apply.

(7) The importer or the importer's representative is liable for the costs incurred in any measures taken under paragraphs (2) to (6) but is entitled to payment of a sum equal to the

value of the product after deduction of these costs.

(8) The importer or the importer's representative may immediately, and within one working day after notification of the non-compliance, make written representations to the Welsh Ministers regarding any decision taken under this regulation, and any such representations must be considered and a written response must be given by the Welsh Ministers within one working day of receiving such representations."

(19) For regulation 21 substitute—

**"21.** If the official controls at the border control post indicate that the consignment is likely to constitute a danger to animal or human health, the official veterinary surgeon or the official fish inspector (as the case may be) must immediately place the consignment under official detention and order that the person responsible for the consignment destroy it or arrange special treatment in accordance with Article 71 of the EU Regulation at that person's expense."

(20) For regulation 22 substitute—

**"22.—**(1) If the official veterinary surgeon or official fish inspector (as appropriate) suspects that products entering the United Kingdom from a particular third country, part of a third country or establishment in a third country have been the subject of serious contraventions of any import requirement, or contraventions that form part of a series, or where those checks reveal that maximum residue levels have been exceeded, this regulation applies to the next ten consignments, or a net weight of 300 tonnes, whichever is the lowest, imported from that third country, or as the case may be a particular part of a third country or establishment to which the suspicion relates.

(2) If the official veterinary surgeon or official fish inspector (as appropriate) has reason to suspect fraudulent or deceptive practices by an operator responsible for a consignment, the Welsh Ministers may apply intensified official controls.

(3) The official veterinary surgeon or official fish inspector (as appropriate) must carry out a physical check on the suspected non-compliant consignment and take appropriate measures in accordance with Section 3 of Chapter 5 of Title 2.

(4) The person responsible for the consignment must lodge with the official

veterinary surgeon a deposit or guarantee sufficient to assure payment of all charges, including the taking of samples, and tests or analysis.”

(21) For regulation 23 substitute—

“**23.**—(1) If the checks at a border control post show that an animal does not comply with the rules referred to in Article 1(2) of the EU Regulation relating to that animal, or where such checks reveal an irregularity, the official veterinary surgeon must initially place the animal under detention, isolation or quarantine, as appropriate, where it must be kept, cared for or treated under appropriate conditions pending further official decision on the fate of the animal.

(2) Unless immediate action is necessary in order to respond to a risk to human or animal health or animal welfare or to the environment, the official veterinary surgeon may, after consultation with the importer or the importer’s representative, order the person responsible for the consignment—

- (a) to shelter, feed and water and, if necessary, treat the animal;
- (b) if necessary, to place it in quarantine or isolate it for so long as is necessary to ensure that there is no risk to human or animal health; or
- (c) to re-dispatch the animal in accordance with Article 72 of the EU Regulation without delay.

(3) If re-dispatch is impossible, in particular for welfare reasons, the official veterinary surgeon may order the importer or the importer’s representative to arrange for the slaughter of the animal to spare any avoidable pain, distress or suffering.

(4) If an animal is seized under regulation 19 at a place other than a border control post, the enforcement authority must order the consignment to be retained or recalled, and placed under official detention without delay, and paragraphs (1) and (2) apply.

(5) The official veterinary surgeon may exceptionally authorise partial destruction, re-dispatch, special treatment, or any other measure that may be taken in respect of a consignment of animals to be taken in respect of a part of any such consignment, provided that such action—

- (a) is such as to ensure compliance with the import check requirements the EU Regulation and any relevant

Implementing Regulations and Delegated Regulations made under it;

(b) does not pose a risk to human or animal health; and

(c) does not disrupt official control operations.

(6) The importer or the importer's representative is liable for the costs incurred in these measures but is entitled to payment of a sum equal to the slaughter value of the animal after deduction of these costs.”

(22) In regulation 27—

(a) in the heading, after “of” insert “animals and”;

(b) for paragraph (1) substitute—

“(1) An official veterinary surgeon at a border control post must authorise the re-importation of consignments of the categories of animals and products referred to in points (a) and (b) of Article 47(1) of the EU Regulation originating from, and returning to, the Union following a refusal of entry by a third country, provided that—

(a) animals and germinal products that have been authorised in advance by the competent authority comply with the relevant animal health and animal welfare requirements;

(b) products of animal origin and composite products comply with animal and public health requirements relating to consignments of products for human consumption originating in and returning to the Union following a refusal of entry by a third country; and

(c) animal by-products comply with the animal health requirements laid down in Annex XIV to Commission Regulation (EU) 142/2011 on the requirements for the entry of consignments of animal by-products and derived products originating from, and returning to, the Union following refusal of entry by a third country<sup>(1)</sup>.”;

(c) after paragraph (1) insert—

“(1A) In paragraph (1), “Commission Regulation (EU) 142/2011” means Commission Regulation (EU) 142/2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down

---

(1) OJ No. L 54, 26.2.2011, p. 1, last amended by OJ L 185, 11.7.2019, p. 26.

health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive.”

(23) For regulation 29 substitute—

“**29.**—(1) Where the Welsh Ministers or the Food Standards Agency—

- (a) has reasonable grounds for suspecting the existence of a disease, zoonosis, phenomenon or circumstance in a country outside the United Kingdom such that animals or products originating from the whole or part of the country concerned are liable to pose risk to human or animal health, or
- (b) is of the opinion that there is serious non-compliance with official control rules under the EU Regulation in relation to imports from the European Union, or equivalent official control rules in countries other than a member State,

the Welsh Ministers or the Agency may publish a written declaration of the special measures necessary in order to contain the risk to human or animal health or the risk of non-compliant animals or products entering into the United Kingdom.

(2) The special measures that the Welsh Ministers or the Food Standards Agency may require include—

- (a) suspension of entry of any animal or product originating in or dispatched from the whole or part of the country concerned;
- (b) imposition of conditions requiring that any animals or products—
  - (i) prior to dispatch, or on arrival, are made the subject of specific treatment or controls;
  - (ii) be accompanied by an official certificate, an official attestation, or any other evidence (in any format that may be specified) that any import from the European Union complies with established official control rules under the EU Regulation and any relevant Implementing Regulations and Delegated Regulations made under

it or equivalent rules in other countries;

- (c) such other measures as the Welsh Ministers or the Agency considers necessary to contain the risk.

(3) The declaration must be published in such manner as the Welsh Ministers or the Food Standards Agency (as the case may be) thinks fit and may be amended or revoked by further declaration at any time.

(4) No person may import into the United Kingdom anything in breach of any measures mentioned in any declaration.”

(24) In regulation 32—

- (a) in paragraph (2), for “inspection post, in relation to animals” substitute “control post, in relation to animals (other than in relation to aquatic animals)”, and

- (b) after paragraph (2) insert—

“(2A) Outside a border control post, official controls in relation to aquatic animals are enforced by the Welsh Ministers.”;

- (c) in paragraph (4), for “Articles 135 to 137” substitute “Article 134”;

- (d) for paragraph (6) substitute—

“(6) Where a customs officer exercising a statutory function at any place under customs supervision discovers any animal or product suspected of being non-compliant, that officer must detain it and notify such detention to an authorised officer of the relevant enforcement authority.”

(25) For regulation 33 substitute—

“**33.**—(1) An authorised officer of the Welsh Ministers or an enforcement agency may at any reasonable hour during normal working hours without prior notice enter any premises (except any premises used wholly or mainly as a private dwelling) if the officer believes that it is necessary to enter for the purpose of enforcing these Regulations.

(2) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

(3) A justice of the peace may sign a warrant to permit an enforcement officer to enter any premises, including a dwelling-house, if the justice on sworn information in writing is satisfied—

- (a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations; and

- (b) that one or more of the conditions in paragraph (4) are met.
- (4) The conditions are—
  - (a) that entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) that asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) that entry is required urgently;
  - (d) that the premises are unoccupied or the occupier is temporarily absent.
- (5) A warrant is valid for 30 days from the date of signature by the justice of the peace.
- (6) An authorised officer entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.
- (7) An authorised officer may—
  - (a) be accompanied by such other persons (up to a maximum of three) as the officer considers necessary;
  - (b) bring onto the premises such equipment as the officer considers necessary.”
- (26) In regulation 34, after paragraph (g) insert—
  - “(h) require the slaughter of any imported animal which is non-compliant with import or animal welfare requirements in these Regulations or the EU Regulation and any Implementing Regulations and Delegated Regulations made under it, or suspected by the Welsh Ministers of posing a risk to animal or human health;
  - (i) require the quarantine of any imported animal that is suspected by the Welsh Ministers of posing a risk to animal or human health.”
- (27) For regulation 35, and the heading to that regulation, substitute—

**“Importation of animals or products constituting a risk to animal or public health**

**35.—**(1) If imported animals or products are suspected by the Welsh Ministers of constituting a serious risk to human or animal health or animal welfare, or, in a case of suspected non-compliance, the animals or products come from a region contaminated by

an epizootic disease, an authorised officer of the Welsh Ministers may require—

- (a) an investigation in order to confirm or eliminate that suspicion;
- (b) an investigation into the extent of any suspected non-compliance and to establish the import operator's responsibilities;
- (c) intensified official controls on consignments of animals or products from a particular region until such imports are no longer regarded by the officer of constituting such health risk;
- (d) the official detention of any of the animals or products;
- (e) appropriate measures to ensure that the person responsible for the animals or products remedies the non-compliance and prevents further occurrences of such non-compliance.

(2) In a case within paragraph (1)(a), the importer must assist the officer with establishing the region of origin.

(3) Where the Welsh Ministers are satisfied that imported animals or products constitute a risk to animal or public health, an authorised officer of the Welsh Ministers may, following written notice, take any reasonable action to ensure compliance with any rules laid down in accordance with Article 1(2) of the EU Regulation, including—

- (a) taking samples for testing and ordering or performing veterinary treatments on animals;
- (b) ordering the unloading of animals and their transfer via another means of transport to a specified holding for a specified quarantine period (whether or not involving the postponement of the slaughter of animals);
- (c) the slaughter or killing of animals, provided that this is the most appropriate measure to safeguard human health as well as animal health and welfare;
- (d) restricting or prohibiting the placing on the market, the movement or the export of the animal or product, or requiring its return to the country of dispatch;
- (e) ordering the importer to increase the frequency and thoroughness of systematic checks and controls before



importing further animals or goods from the same region;

- (f) ordering the isolation or closure, for an appropriate period of time, of all or part of a business operation (including any related internet and on-line sales of products that may constitute a risk to animal or human health) affected by the importation of an animal or product that constitutes a risk to animal or human health;
- (g) the recall, withdrawal, removal or destruction of products;
- (h) the treatment of products for human consumption, the alteration of labels or corrective information to be provided to consumers;
- (i) the temporary suspension or withdrawal of the registration or approval of an affected establishment, plant, holding or means of transport concerned, or of an authorisation of a transporter;
- (j) the use of the products for purposes other than those for which they were originally intended.

(4) An authorised officer of the Welsh Ministers must provide an affected business operator, or its representative, with—

- (a) written notification of the decision concerning the action or measure to be taken in accordance with this regulation, together with the reasons for that decision; and
- (b) information on any right of review against such decision in accordance with regulation 35A.

(5) All expenditure incurred as a result of actions taken by or on behalf of the Welsh Ministers under this regulation is to be borne by the responsible operator.

(6) In the case of the issue of false or misleading official certificates in Wales, or where there is evidence of abuse of official certificates, an authorised officer of the Welsh Ministers may take appropriate measures, including—

- (a) the temporary suspension of the certifying officer from certifying any certificates related to any relevant trade;
- (b) the withdrawal of the authorisation of a person to sign official certificates;

- (c) any other measure believed by the officer to be necessary to prevent a reoccurrence of any non-compliance or abuse.”

(28) After regulation 35 insert—

**“Review of decisions by an appointed person**

**35A.**—(1) Any person aggrieved by a decision made under these Regulations, other than any decision referred to in regulation 20 or 23, may request a review of that decision by a person appointed by the Welsh Ministers (“the appointed person”).

(2) Within 21 days of the appointment of the appointed person written representations may be made by the aggrieved person to the appointed person.

(3) The appointed person must consider any written representations made when reviewing the disputed decision and must report in writing to the Welsh Ministers 21 days from the expiry of the period in paragraph (2) with a recommended course of action resulting from the review.

(4) The Welsh Ministers must consider the report of the appointed person and promptly notify the owner of the outcome of the review and provide a copy of the report of the appointed person.

(5) A review, or right of review, does not affect the obligation on the designated authority to take prompt action to eliminate or contain the risks to human or animal health.”

(29) In regulation 36, after the words “these Regulations”, in each place where they occur, insert “or the EU Regulation”.

(30) For regulation 38 substitute—

**“38.** The Welsh Ministers must charge a reasonable fee in relation to any official control activity in accordance with the charging provisions contained in Chapter 6, Title 2 of the EU Regulation, and such fee is payable by the operator responsible for the consignment or its representative.”

(31) In regulation 39, in the first entry of the table—

- (a) for “regulation 5(1)” substitute “regulation 5(1) and (1A)”, and
- (b) in the second column, for the description of the offence substitute—

“Movements without correct accompanying document”.

(32) For regulation 42 substitute—

“42. A person guilty of any offence under these Regulations is liable on summary conviction to a fine.”

(33) In Schedule 1—

(a) omit the entries in both columns relating to—

(i) Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC,

(ii) Commission Regulation (EC) No 136/2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries,

(iii) Regulation (EC) No 854/2004 of the European Parliament and the Council laying down specific hygiene rules for the organisation of official controls on products of animal origin intended for human consumption,

(iv) Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with food and feed law, animal health and animal welfare rules, and

(v) Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed;

(b) after the item ‘Council Regulation (EC) No. 1069/2009’, in the first column insert—

“[Regulation \(EU\) 2016/1012](#) of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof

Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(1)</sup> and

---

(1) OJ No. L 95, 7.04.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

the Implementing Regulations and Delegated Regulations made under it”;

- (c) in the second column, in relation to the entry for “Regulation (EU) 2016/1012” inserted by sub-paragraph (b) insert—

“Purebred breeding animals, hybrid breeding pigs and the germinal products thereof”;

- (d) in the second column, in relation to the entry for “Regulation (EU) 2017/625” inserted by sub-paragraph (b) insert—

“Official controls and other official activities”.

(34) In Schedule 2—

- (a) in the heading to Part 1, for “between” substitute “with”;

- (b) in paragraph 2—

- (i) omit sub-paragraph (1);

- (ii) for sub-paragraph (2) substitute—

- “(2) No person may transport cattle, pigs, sheep or goats to a member State unless authorised by the Welsh Ministers in accordance with Article 11 of the Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations<sup>(1)</sup>.”;

- (c) in paragraph 3—

- (i) for “between” substitute “to or from”;

- (ii) at the end insert “and are exempt from the requirement in regulation 7(2) to provide one working day’s notice to the Welsh Ministers in advance of the intended arrival of the consignment”;

- (d) in paragraphs 4 and 5(4), for “between” substitute “with”;

- (e) in paragraph 7, for “another member State, or brought into Wales from another” substitute “a member State, or brought into Wales from a”;

- (f) in paragraph 9(1), after “authority for” insert “the import of certain birds and quarantine conditions for the purposes”;

- (g) for paragraph 10 substitute—

- “**10.** When a horse is imported from a third country under Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of semen, ova and embryos of equidae<sup>(2)</sup> the

---

(1) OJ No. L 3, 5.1.2005, p. 1.

(2) OJ No. L 110, 30.4.2018, p. 1.

official veterinary surgeon must return the health certificate to the person accompanying the horse, and make a record of the certificate”;

- (h) for paragraph 11 and the heading to that paragraph, substitute—

**“Ship supply**

**11.**—(1) A product that does not comply with import requirements and is sent from a border control post to a ship must be accompanied by the relevant health certificate relating to that product, and the master of the vessel must confirm delivery of the product by signing a certificate which must accompany the consignment to its place of destination.

(2) Within 15 days of completion of delivery of products on board the vessel, the operator responsible for the delivery, or the representative of the master of the vessel, must send the official certificate signed by the master of the vessel (or send by electronic means and systems) to the competent authorities of the border control post of entry or the approved customs warehouse.”;

- (i) omit paragraph 12.

**(35) In Schedule 3—**

- (a) for paragraph 2 (Case 1: Personal imports and small consignments) substitute—

**“2.** Products referred to in Article 7 and Article 10 of the Commission Delegated Regulation adopted in accordance with Article 48(d) and (e) of the EU Regulation<sup>(1)</sup>.”;

- (b) for paragraph 4 (Case 3: Trade samples and samples for particular study or analysis) and the heading to that paragraph, substitute—

**“Case 3: Research and diagnostic samples**

**4.**—(1) Research and diagnostic samples as defined in point (38) of Annex 1 to Regulation (EU) No 142/2011<sup>(2)</sup> are exempt from veterinary checks at the border control post, provided that they have been authorised in advance by the Welsh Ministers and the consignment is sent directly from the point of entry to the authorised user.

---

(1) The Commission Delegated Regulation was adopted in Brussels on 10.10.2019 under reference C(2019) 7007 final, but the instrument has not published in the Official Journal.

(2) OJ No. L 54, 26.2.2011, p. 1, as last amended by OJ L. 185, 11.7.2019, p. 26.

(2) In relation to such samples arriving in the United Kingdom and destined for a member State—

- (a) the importer or importer's representative must present research and diagnostic samples at a border control post of entry; and
- (b) the competent authority of the border control post must inform the competent authority of the member State of destination of the arrival of the samples.”;
- (c) in the heading to paragraph 5, for “another” substitute “a”;
- (d) in paragraph 5, for “another”, in the first place where it occurs, substitute “a”;
- (e) after paragraph 7 insert—

**“Case 7: Invertebrate animals intended for scientific purposes**

**8.**—(1) Invertebrate animals intended for scientific purposes such as research, educational activities or research related to product development activities are exempt from official controls at border control posts, other than controls carried out in accordance with Article 15(2) of Regulation (EU) No 1143/2014(1), provided that—

- (a) they comply with all requisite animal health requirements;
- (b) they have been authorized by the Welsh Ministers ;
- (c) when the activities relating to the scientific purposes have been carried out, they and any products derived from them, with the exception of any portions used for the scientific purposes, must be disposed of or re-dispatched to the third country of origin.

(2) Sub-paragraph (1) does not apply to honey bees (*Apis mellifera*), bumble bees (*Bombus* spp), molluscs belonging to the phylum Mollusca or crustaceans belonging to the subphylum Crustacea.”

---

(1) OJ No. L 317, 4.11.2014, p. 35.

## **Amendment to the Veterinary Medicines Regulations 2013**

**24.**—(1) The Veterinary Medicines Regulations 2013<sup>(1)</sup> are amended as follows—

- (a) in regulation 2(2)—
  - (i) omit the definition of “Regulation (EC) No 882/2004”, and
  - (ii) after the definition of “Regulation (EC) No 1831/2003” insert—

““Regulation (EU) 2017/625” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(2)</sup>”;
- (b) in regulation 45(3)(c), for “Regulation (EC) No 882/2004” substitute “Regulation (EU) 2017/625”;
- (c) for regulation 46(3)(f) substitute—

“(f) “Regulation (EU) 2017/625” of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products”;
- (d) in Schedule 5—
  - (i) in the Contents, in item 4, for “Regulation (EC) No 882/2004” substitute “Regulation (EU) 2017/625”, and
  - (ii) in paragraph 4 and the heading to that paragraph, for “Regulation (EC) No 882/2004” substitute “Regulation (EU) 2017/625”.

## **Amendment to the Welfare of Animals at the Time of Killing (Wales) Regulations 2014**

**25.** In regulation 4(1)(c)(iii) of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014<sup>(3)</sup>, for “Article 22(1)” substitute “Article 138 (actions in the event of established non-compliance) of

- 
- (1) S.I. 2013/2033, to which there are amendments not relevant to these Regulations.
  - (2) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).
  - (3) S.I. 2014/951 (W. 92), to which there are amendments not relevant to these Regulations.

Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products(1)”.

#### **Amendment to the Carcase Classification and Price Reporting (Wales) Regulations 2018**

**26.** In regulation 2(1) of the Carcase Classification and Price Reporting (Wales) Regulations 2018(2), in the definition of “bovine carcase”, for the words “provided for in Article 5(2)” to the end substitute “as defined in Article 3(51) of Regulation EU 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products(3)”.

#### **Amendment to the Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018**

**27.** In the Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018(4), omit regulation 11.

#### **Amendment to the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018**

**28.**—(1) The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018(5) are amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “cutting plant”, for “under Article 31(2) of Regulation (EC) No 882/2004” substitute “under Article 148(3) of Regulation (EU) 2017/625”,
- (b) in the definition of “slaughterhouse”, for “under Article 31(2) of Regulation (EC) No 882/2004” substitute “under Article 148(3) of Regulation (EU) 2017/625”,
- (c) omit the definition of “Regulation (EC) No 882/2004”, and
- (d) after the definition of “Regulation (EC) No 1069/2009” insert—

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(2) S.I. 2018/1215 (W. 248); to which there are amendments not relevant to these Regulations.

(3) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(4) S.I. 2018/806 (W. 162).

(5) S.I. 2018/968 (W.248), amended by S.I. 2018/942 and 2018/1120.



““Regulation (EU) 2017/625” (“*Rheoliad (EU) 2017/625*”) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products(1);”.

**Amendment to the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019**

**29.** In the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019(2)—

- (a) omit regulation 2(1), and
- (b) omit regulation 3(7)(i), (20) and (22).

**Amendment to the Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

**30.** In the Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(3), omit regulation 3.

## PART 6

Amendments to secondary legislation relating to plant health fees

**The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004**

**31.** In the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004(4)—

- (a) in article 3(2)(a), for “of the services listed in the first column of Schedule 3” substitute “services”;
- (b) omit article 4;
- (c) omit Schedule 3.

---

(1) OJ No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.5.2019, p. 4).

(2) S.I. 2019/597 (W. 126).

(3) S.I. 2019/434 (W. 102).

(4) S.I. 2004/1684, amended by S.I. 2013/755, 2019/734.

### **The Plant Health (Export Certification) (Wales) Order 2006**

**32.** In the Plant Health (Export Certification) (Wales) Order 2006<sup>(1)</sup>—

- (a) in article 3(2)(a), for “of the services listed in the first column of Schedule 3” substitute “services”;
- (b) omit article 5;
- (c) omit Schedule 3.

### **The Plant Health (Wood Packaging Material Marking) (Forestry) (Order) 2006**

**33.** In the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006<sup>(2)</sup>—

- (a) omit article 7;
- (b) omit Schedule 1.

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

**34.**—(1) The Plant Health etc. (Fees) (Wales) Regulations 2018<sup>(3)</sup> are amended as follows.

(2) For regulation 2 substitute—

“**2.**—(1) In these Regulations, “the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants<sup>(4)</sup>.”

(2) Words and expressions which are not defined in these Regulations and appear in the EU Plant Health Regulation or in Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(5)</sup> have the same meaning in these Regulations as they have in the EU instrument in question.”

(3) In regulation 3—

---

(1) S.I. 2006/1701 (W. 163), amended by S.I. 2013/1658 (W. 156), S.I. 2014/1759 (W. 174), S.I. 2016/1084 (W. 259) and S.I. 2018/772 (W. 156).

(2) S.I. 2006/2695, amended by S.I. 2013/755, 2019/734.

(3) S.I. 2018/1179 (W. 238), amended by S.I. 2019/1378 (W. 244).

(4) OJ No. L 317, 23.11.2016, p. 4, amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ No. L 95, 7.4.2017, p. 1).

(5) OJ No. L 95, 7.4.2017, amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.3.2019, p. 4).

- (a) in paragraph (1), for “listed in Schedule 5 to the 2018 Order” substitute “described in the lists of the Phytosanitary Conditions Regulation that apply for the purposes of Articles 72(1) and 74(1) of the EU Plant Health Regulation”;
- (b) in paragraph (3)—
  - (i) for sub-paragraphs (a) and (aa) substitute—
    - “(a) “controlled plant pest” means—
      - (i) a plant pest of a description specified in the lists of the Phytosanitary Conditions Regulation that apply for the purposes of Articles 5(2), 32(3) and 37(2) of the EU Plant Health Regulation;
      - (ii) any other plant pest of a description specified in a decision adopted before 14 December 2019 by the European Commission pursuant to Article 16(3) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>(1)</sup>;
    - (aa) “Europe” includes Belarus, the Canary Islands, Georgia, Kazakhstan (except the area east of the Ural river), Russia (except the regions of Tyumen, Chelyabinsk, Irkutsk, Kemerovo, Kurgan, Novossibirsk, Omsk, Sverdlovsk, Tomsk, Chita, Kamchatka, Magadan, Amur and Skhelin, the territories of Krasnoyarsk, Altay, Khabarovsk and Primarie, and the republics of Sakha, Tuva and Buryatia), Ukraine and Turkey (except the area east of the Bosphorus Strait known as Anatolia);”;
  - (ii) after sub-paragraph (ab) insert—
    - “(aba)“the Phytosanitary Conditions Regulation” means the implementing act adopted by the European Commission pursuant to Articles 5(2), 32(2), 37(2), 37(4), 40(2), 41(2), 53(2), 54(2), 72(1), 73, 74(2), 79(2) and 80(2) of the EU Plant Health Regulation;”;

---

(1) OJ No. L 169, 10.7.2000, p. 1, as last amended by Commission Implementing Directive (EU) 2019/523 OJ No. L 86, 28.3.2019, p. 41).

(iii) omit sub-paragraph (c).

(4) In regulation 4—

- (a) in paragraph (2), in the words before sub-paragraph (a), after “out” insert “by, or on behalf of, the Welsh Ministers”;
- (b) in paragraph (6)(a), omit “conferred under article 29 of the 2018 Order”.

(5) In regulation 5—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a), at the end insert “made to the Welsh Ministers”;
  - (ii) in sub-paragraph (b), at the end insert “granted by the Welsh Ministers”;
- (b) for paragraph (5), for “a licence described in article 40 or 41 of the 2018 Order” substitute “an authorisation for the purposes of any derogation described in Article 8(1) or 48(1) of the EU Plant Health Regulation”.

(6) After regulation 5 insert—

**“Export certification services and pre-export services: fees**

**5A.**—(1) The fees specified in the table in Schedule 4A are payable in respect of the services described in column 1 of the table by a person who applies to the Welsh Ministers for a certificate or a pre-export service.

(2) The amount of the fee in respect of any service described in column 1 of the table in Schedule 4A is—

- (a) in the case of a small exporter who, at the date of the application, has only been liable during the financial year in which the application is made to pay fees of £750 or less in respect of the services described in column 1 of the table, the amount specified in the corresponding entry in column 2 of that table;
- (b) in any other case, the amount specified in the corresponding entry in column 3 of that table.

(3) The fees specified in columns 2 and 3 of the table in Schedule 4A in respect of an inspection of a consignment or an audit of a grain inspection are payable for each 15 minutes (or part thereof) spent in carrying out the inspection or audit and any associated activities, subject to the minimum fees specified in those entries.

(4) Where a person submits an application for a certificate or a pre-export service or a request to amend a certificate in paper form (and not online), the following additional fee is payable in respect of the application or the request—

- (a) in the case of a small exporter who, at the date of the application or request, has only been liable during the financial year in which the application or request is made to pay fees of £750 or less in respect of the services described in column 1 of the table in Schedule 4A, £7.88;
- (b) in any other case, £15.76.

(5) In this regulation—

“certificate” (*“tystysgrif”*) means either a phytosanitary certificate for export or a phytosanitary certificate for re-export;

“pre-export service” (*“gwasanaeth cyn-allforio”*) means any plant health inspection or examination, including by the taking of samples, which is required to be carried out in relation to a plant, plant product or other object which is to be exported to a third country in order to satisfy the phytosanitary requirements of the third country, other than any such inspection or examination required for the issue of a certificate;

“small exporter” (*“allforiwr bach”*), means a person who—

- (a) in the financial year in which the application or request is made—
  - (i) is not a taxable person for the purposes of the Value Added Tax Act 1994<sup>(1)</sup>, or
  - (ii) does not make a taxable supply of plants, plant products, seeds, soil or agricultural machinery for the purposes of the Value Added Tax Act 1994, or
- (b) in the financial year preceding the year in which the application or request is made, exported goods which were accompanied by a certificate the total value of which was less than £5,000.”

(7) In regulation 6(1), for “inspector” substitute “official plant health inspector”.

(8) Omit regulation 7.

(9) In regulation 11—

- (a) in paragraph (1)—

---

(1) 1994 c. 23.

- (i) in the words before sub-paragraph (a), for “registered plant trader” substitute “registered professional operator”;
  - (ii) in sub-paragraph (b), for “trader’s” substitute “operator’s”;
  - (b) omit paragraph (2).
- (10) After Schedule 4 insert—

**“SCHEDULE 4A Regulation 5A**  
**Fees for export certification**  
**services and pre-export services**

<i>(1)</i> <i>Service</i>	<i>(2)</i> <i>Fee - small exporter (£)</i>	<i>(3)</i> <i>Fee - other exporter (£)</i>
Inspection of consignment	31.90 for each 15 minutes (or part thereof), subject to a minimum fee of 63.80	63.80 for each 15 minutes (or part thereof), subject to a minimum fee of 127.60
Audit of a grain inspection	13.20 for each 15 minutes (or part thereof), subject to a minimum fee of 26.40	26.40 for each 15 minutes (or part thereof), subject to a minimum fee of 52.80
Laboratory examination (including laboratory testing)	16.78 per sample tested	33.56 per sample tested
Issue of certificate	12.76 per certificate	25.52 per certificate
Amendment of a certificate at the request of the exporter	7.88 per certificate	15.76 per certificate”.

## The Plant Health (Fees) (Forestry) (Wales) Regulations 2019

**35.**—(1) The Plant Health (Fees) (Forestry) (Wales) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) For regulation 2 substitute—

### “Interpretation

**2.**—(1) In these Regulations—

“approved place of inspection” (*“man arolygu a gymeradwywyd”*) has the meaning given in article 3 of the Order;

“controlled consignment” (*“llwyth a reolir”*) means a consignment which —

(a) is introduced into Wales from a third country, and

(b) consists of, or includes—

(i) isolated bark of a type that is described in the lists of the Phytosanitary Conditions Regulation that apply for the purposes of Articles 72(1) and 74(1) of the EU Plant Health Regulation, or in a decision adopted before 14 December 2019 by the European Commission pursuant to Article 16(3) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread in the Community<sup>(2)</sup>;

(ii) wood of a type that is described in the lists or a decision mentioned in sub-paragraph (i) other than wood packaging material which is actually in use in the transport of objects of all kinds;

“the EU Plant Health Regulation” (*“Rheoliad Iechyd Planhigion yr UE”*) means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants<sup>(3)</sup>;

---

(1) S.I. 2019/497 (W. 114); there is a relevant prospective amendment within S.I. 2019/735 (W. 138).

(2) OJ No L 169, 10.7.2000, p. 1 as last amended by Commission Implementing Directive (EU) 2019/523 (OJ No L 86, 28.3.2019, p. 41).

(3) OJ No. L 317, 23.11.2016, p. 4, as amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ No L 95, 7.4.2017, p. 1).

“licence” (*“trwydded”*) means an authorisation for the purposes of any derogation described in Article 8(1) or 48(1) of the EU Plant Health Regulation;

“the Order” (*“y Gorchymyn”*) means the Plant Health (Forestry) Order 2005(1);

“plant passport authority” (*“awdurdodiad pasbort planhigion”*) means an authorisation described in Article 89(1) of the EU Plant Health Regulation;

“remedial notice” (*“hysbysiad adfer”*) means a notice served under article 31(1) or (4) of the Order;

“remedial work” (*“gwaith adfer”*) means any steps taken by a person for the purposes of complying with a remedial notice, or by an inspector under article 32(1) of the Order;

“WPM authorisation” (*“awdurdodiad DPP”*) means an authorisation described in Article 98(1) of the EU Plant Health Regulation.

(2) Words and expressions which are not defined in these Regulations and which appear in the EU Plant Health Regulation or in Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure that application of food and feed law, rules on animal health and welfare, plant health and plant protection products(2) have the same meaning in these Regulations as they have in the EU instrument in question.”

(3) In regulation 3, after paragraph (5) insert—

“(5A) The fee payable in connection with an application to the Welsh Ministers for a phytosanitary certificate for export or phytosanitary certificate for re-export is the fee specified in Schedule 4A.

(5B) The fee payable in connection with an application to the Welsh Ministers for a WPM authorisation is the fee specified in Schedule 4B.”

(4) After Schedule 4 insert—

---

(1) S.I. 2005/2517, relevant amending instruments are: S.I. 2013/755 (W. 90), S.I. 2014/2420, S.I. 2019/734.

(2) OJ No. L 317, 23.11.2016, p. 4, as amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ No. L 95, 7.4.2017, p. 1).



“SCHEDULE 4A Regulation 3(5A)

Fees in connection with an  
application for a phytosanitary  
certificate for export or  
phytosanitary certificate for re-  
export

(1) <i>Service</i>	(2) <i>Fee</i>
The consideration of an application, including the issue, where appropriate, of a phytosanitary certificate or a phytosanitary certificate for re-export	£15.00
The examination or testing of plants, plant products or other objects and associated activities (including travelling and office time):	
(a) up to and including the first hour;	£27.00
(b) thereafter, for each additional 15 minutes or part thereof	£7.50.

SCHEDULE 4B Regulation 3(5B)

Fees in connection with an  
application for a WPM  
authorisation

(1) <i>Type of application</i>	(2) <i>Fee</i>
Application for a WPM authorisation, other than a renewal of an existing WPM authorisation	£400.00
Application for a renewal of an existing WPM authorisation	£120.00
Application for a re-assessment for	£120.00”.

---

the purposes a WPM authorisation

---

## PART 7

### Revocation

**36.** The Official Controls (Animals, Feed and Food) (Wales) Regulations 2007<sup>(1)</sup> are revoked.

*Lesley Griffiths*

Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
21 January 2020

---

<sup>(1)</sup> S.I. 2007/196 (W. 15).

## **Explanatory Memorandum to the Official Controls (Animals, Feed and Food, Plant Health Fees, etc) Regulations (Wales) Regulations 2020**

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer 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 Official Controls (Animals, Feed and Food, Plant Health Fees, etc) Regulations (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

**Lesley Griffiths**  
**Minister for Energy, Planning and Rural Affairs**  
**22 January 2020**

## **1. Description**

The Official Controls (Animals, Feed and Food, Plant Health Fees, etc.) Regulations (Wales) Regulations 2020 (“the Regulations”) enforce Regulation (EU) 2017/625 on official controls and other official activities in relation to Wales (“the Council Regulation”). The Council Regulation replaces Regulation (EC) No 882/2004, which was enforced in Wales by the Official Controls (Animals, Feed and Food) (Wales) Regulations 2007. The 2020 Regulations revoke and replace the 2007 Regulations in relation to Wales.

Official controls and other official activities are checks performed to ensure compliance with rules on food, feed, animal health, animal welfare, plant health and other aspects of the agri-food chain. The 2017 EU Regulation aims to create a more comprehensive and consistent risk-based approach to official controls by simplifying and extending the scope of the system of official controls introduced by the 2004 Council Regulation to the entire agri-food chain.

EU delegated legislation made under the Council Regulation comprises 17 implementing regulations and 16 delegated regulations. (Delegated acts are defined as non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. Implementing acts are to be used where uniform conditions for implementing legally binding Union acts are required.)

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

These Regulations will be made under the powers contained in section (2) of the European Communities Act 1972. Section (2) permits a choice of procedure under which regulations may be approved. These Regulations will proceed under the negative resolution procedure as they enforce a directly applicable EU Council Regulation and therefore the Welsh Minister’s discretion in relation to these Regulations is limited.

The Council Regulation came into force on 14<sup>th</sup> December 2019. The drafting of this SI has been delayed because important parts of it depended on the status of the United Kingdom, in so far as to whether it was a member State of the EU on the coming into force of the Council Regulation. In addition, the last item of delegated legislation made under the Council Regulation was not finalised until 12 December 2019.

These matters have inevitably adversely affected the drafting timetable and whilst the Regulations have been prepared as soon as possible after the above matters were settled it has resulted in a short delay between the coming into force of the Council Regulation and the making of these Regulations. For these reasons the final instrument does not to adhere to the 21 day convention.

### **3. Legislative background**

The Regulations will be made pursuant to powers in section 2(2) of the European Communities Act 1972. Section 2(2) provides that any designated Minister may make regulations to implement any EU obligation of the UK.

The Welsh Ministers are designed by Order to exercise those powers, in relation to Wales, to implement the Common Agricultural Policy of the EU by the European Communities (Designation) (No. 5) Order 2010 and in relation to the measures in the veterinary and phytosanitary fields for the protection of public health by the European Communities (Designation) (No. 2) Order 2008.

### **4. Purpose & intended effect of the legislation**

The policy objective and rationale for this SI is to ensure that the bodies responsible for enforcing the requirements of the Official Control Regulation have the enforcement powers, such as power of inspection that they require.

This SI provision does not introduce any significant change compared to the Official Controls (Animals, Feed and Food) Regulations (Wales) Regulations SI 2007/196) (W.15). It will mainly repeal and replace existing enforcement measures implementing Regulation (EU) 882/2004). There are provisions in the EU Regulation which necessitate consequential amendments and we also used the opportunity to make a correction to the regulations being amended. These amendments ensure these items of legislation correctly reference the Council Regulation and will enable competent authorities to continue to effectively enforce the replacement EU Regulation.

The main provisions of the SI (which mainly replacing (Official Controls (Animals, Feed and Food) (Wales) Regulations 2007) relate to:

- Designation of the Welsh Minister as competent authorities in Wales responsible for undertaking official controls;
- Provisions for the exchange of information among competent authorities;
- Powers for auditors to enter premises and examine any information and records relevant to the audit;
- Obligations on designated competent authorities to provide information about their audits when requested by the Welsh Ministers;
- Powers for the Welsh Ministers to require auditors to carry out audits of enforcement authorities, and if necessary to require the enforcement authority to assist the auditor;
- Enforcement powers for enforcement officers, including powers of entry;
- Provisions for competent authorities to recover the cost of official controls;
- Offences and penalties as regards obstruction of relevant auditors or inspectors;
- Fraudulent and deceptive practices will be subject to prosecution under the Fraud Act 2006.

- Part 6 of these Regulations introduces amendments to plant health related fee instruments, including the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. The effect is to revise and update references to EU legislation that will be repealed or amended as a result of the application of the Council Regulation and Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants. Existing fees are not being changed by the amendments.

### **Rationale for intervention**

Failing to provide for the execution of powers and enforcement in Wales for the Official Controls Regulation would present significant gaps to the legislative framework for the delivery of official controls.

UK enforcement authorities (such as the FSA, the Animal and Plant Health Agency and local authorities) carry out official controls at all stages of production, distribution, use, storage, transport, import and export of food and feed. The controls ensure that businesses are meeting their obligations to comply with animal health animal welfare requirements, in particular those relating to trade of animals and animal products. Official controls are integral to protecting our biosecurity maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade.

When the main provisions of the Official Controls Regulation took effect on 14 December 2019, the Official Controls Regulation repealed the European regulations that currently provide the legislative framework for UK official controls in relation to EU animal health and welfare law. To maintain our legislative framework for EU animal health and welfare law, official controls the UK must provide for the execution of powers and enforcement of the Official Controls Regulation in domestic legislation. Failure to do so will undermine the effectiveness of official controls and therefore undermine the protection of our biosecurity as well as confidence in the UK agri-food chain.

It is estimated that the average incurred cost of outbreaks to be in the region of £50 million p.a. for dealing with relatively small/ low impact disease events e.g. AI, Bluetongue and Equine Infectious Anaemia. Such disease events have been more frequent in England than in Wales with the last confirmed exotic disease in Wales being a low pathogenic AI in Powys in June 2014.

On the other hand, severe outbreaks can have very wide ranging implications, not only for animals and/or people affected, but to the wider society with trade and tourism disruption for example. The outbreak of foot and mouth disease in 2001 was estimated to have cost £102 million relating to Wales; BSE in the 90s was estimated to cost just under £1 billion for the UK economy, spent in surveillance and control activities, beef markets dropping and bans on UK exports. Over 4 million cattle were slaughtered and up to 177 people died in the UK as a result of BSE.

## Policy objective

These Regulations provide for enforcement mechanisms for the Official Controls Regulation and associated tertiary legislation. Implementation of legislation in Wales will maintain a strong legal basis for future official control activity in relation to animal health and welfare. It will also ensure that our biosecurity is protected and that confidence in the UK agri-food chain is maintained through the demonstration of the effectiveness of our regulatory control system including the legal basis for the execution of necessary powers and enforcement of official controls and other official activities.

The intention of the European Commission is to simplify and further harmonise control systems across the EU agri-food chain through the implementation of the Official Controls Regulation. The organisation of such controls is harmonised at an EU level to ensure a consistent high-level of protection from threats to our biosecurity, provide confidence that animal health and welfare standards are upheld in the EU or imported from third countries and provide for effective functioning of the internal market.

The new legislation builds upon and clarifies the existing risk-based approach towards the performance of official controls. The main intended effects identified by the Commission are summarised below:

- A harmonised and coherent regulatory approach to official controls and enforcement actions along the agri-food chain;
- Increased transparency and greater accountability required by Member States competent authorities through the publication of information about the organisation and performance of official controls;
- More stringent rules on fraud will provide greater consumer protection and benefit compliant businesses;
- A common set of rules for controls at EU borders that overcomes the current fragmentation and makes the control system less burdensome for enforcers and businesses;
- An integrated computerised system to improve the exchange of information between Member States on official controls;
- Greater flexibility in relation to the accreditation of official laboratories (i.e. formal recognition of competence in their field);
- Businesses and authorities will benefit from reduced administrative burdens, more efficient processes and strengthened controls.

For the most part, the legislative changes required in Wales are technical, such as the changing of references to previous EU legislation to refer to Regulation (EU) 2017/625 and associated tertiary legislation.

## **General Changes to the Delivery of Official Controls**

The Official Controls Regulation will introduce changes across a number of policy areas. However, for the most part it is expected that these changes will result in relatively few impacts, as they relate to the overarching principles of conducting official controls to which the UK is already aligned. The key changes identified by the Welsh Government in relation to the main provisions of the Official Controls Regulation that apply from 14 December 2019 are set out below.

Further impacts, associated with provisions laid down in the tertiary European legislation, which sets out in further detail how official controls should be carried out, are also identified and assessed.

### *Other official activities*

1. Article 2 of the Official Controls Regulation introduces a new definition of 'other official activities', which includes activities performed by competent authorities (CAs) or delegated bodies other than official controls. For example, enforcement measures and/or remedial actions following non-compliance; management of lists of registered/approved business operators or the issuance of official certificates. The Official Controls Regulation sets out rules necessary to ensure that such activities are properly and effectively performed.

### *Risk-based controls*

The general risk-based approach of existing legislation and current practice, detailed in Article 9 of the Official Controls Regulation, is maintained. However, a new provision in Article 9 paragraph 2 strengthens the fight against fraud along the agri-food chain by clarifying that CAs are required to carry out regular, risk-based official controls, directed at identifying fraudulent and deceptive practices. Our controls are already risk-based and include checks on fraudulent activity therefore we do not expect any change to the frequency or number official controls as a result of this provision.

### *Transparency requirements*

2. Transparency requirements for competent authorities are clarified in Article 11 of the Official Controls Regulation by identifying the minimum level of information which must be made public and at what frequency. Our assessment is that the current practice in Wales already meets these requirements. We therefore do not expect any incremental impact from this change.

### *Sampling*

3. Articles 35 and 36 of the Official Controls Regulation relating to 'second expert opinion' and 'sampling of animals and goods offered for sale by means of distance communication' provide greater clarity to enforcers that a sample ordered on-line by the CA without identifying themselves can be validly used for the purposes of an official control. While also making provision that they need to inform the operator that such a sample has been taken and, where appropriate, is being analysed in the context of an official control.



4. Our assessment is that this provision of notification already exists in UK law. We therefore do not expect any incremental impact from this change.

#### *Import controls*

5. Articles 43 – 77, 90, 126 -128 and Article 134 of the Official Controls Regulation are revised rules regarding import controls and import conditions on animals and goods arriving in the European Union from third countries. These changes are intended to create a common framework for all goods covered by the Official Controls Regulation across the agri-food chain. Central to this project is the re-designation of all existing specialised border facilities, such as Designated Points of Entry (DPEs) and Border Inspection Posts (BIPs) as Border Control Posts (BCPs). Furthermore, existing entry documents, such as the Common Entry Document (CED) for high-risk food not of animal origin and the Common Veterinary Entry Document (CVED) for products of animal origin, will be amalgamated as Common Health Entry Documents (CHEDs). These systemic changes will be underpinned by a new Information Management System for Official Controls (IMSOC). This platform will link existing systems, such as RASFF and TRACES, rather than replacing any elements of the Commission's computational architecture.

6. Although the groundwork for this new common framework for imports is established in the Official Controls Regulation, the legislation itself provides the power to make detailed implementing tertiary legislation. Since 2017 these rules have been negotiated between European Union Member States and the European Commission. The UK has participated fully in this process. As these detailed rules establish, to a much greater extent, the shape of the new regime, their impact is examined below in greater, individual detail.

#### *National Reference Laboratories (NRLs) & Official Control Laboratories (OCLs)*

7. National Reference Laboratories (NRLs) and official control laboratories (OCLs) will see minor changes to the responsibilities placed upon them (Articles 34, 38, 40, 42, 92, 94, 100 & 101). The changes for NRLs have in fact applied since April 2018. Changes to the responsibilities of OCLs (applicable from December 2019) will mean that competent authorities are required to have closer contact with the laboratories and greater oversight of delegated laboratories. The main issue in this area is a legislative change which means that a laboratory can only send a sample to a laboratory in another member state if the second laboratory has been designated an official laboratory in the receiving member state. The impact of this change has been assessed in further detail in the appraisal section.

#### *Cross-border incidents*

8. Articles 102 – 108 of the Official Controls Regulation subjects CAs to tighter rules and more formalised processes for interacting with authorities in other Member States when responding to cross-border incidents. For example,

CAs must set out within ten days their intentions regarding notifications from other Member States.

9. Our assessment is that the UK already consistently complies with these requirements. We therefore do not expect any incremental impact.

#### *Financing of Official Controls*

10. The Official Controls Regulation also expands upon the European Union's existing legal basis for the financing of official controls. This includes, in particular at Article 85, a greater emphasis on transparency.

The Welsh Government does not anticipate introducing any changes. Further stakeholder engagement will take place as appropriate.

#### *Offences and Penalties*

A decision has been made to maintain the single existing criminal penalty provision for obstruction in this replacement SI to ensure that there remains sufficient element of deterrence to ensure compliance from operators. The Official Control Regulation's new requirement to ensure that penalties on conviction for fraud or deceptive practices reflect the economic turnover for the operator or, as appropriate a percentage of the operator's turnover are already provided for under the Fraud Act 2006 and the Court's own sentencing guidelines for imposing a sufficiently appropriate financial penalty following such conviction.

## **5. Consultation**

### **EU**

There has already been significant engagement and consultation with Member States. The Commission has organised various events and workshops, and provided training materials on some of the new documentation required. (Information Management System on Official Controls etc). There has also been opportunities for Member States to discuss and contribute to draft legislation at the various Commission working groups.

### **UK**

Following approval of UK Government to lay legislation during pre-election period, Defra has now made available detailed information on the new requirements in relation to animal health and welfare, by products, veterinary medicines and residues and plants. This information will also be available to Welsh businesses.

### **Wales**

There have been discussions with Defra and other devolved administrations about consultation options. Defra have concluded that this is not necessary due

to limited impacts and the requirement to enforce directly applicable EU law. Following the EU engagement and consultation, we decided to pursue a limited stakeholder engagement exercise. This included specific questions sent to those on the OCVO stakeholder database. Specifically:

- What are the Official Controls Regulation impact, if any, on the Welsh language, and, if relevant, on ways of increasing the policy's positive effects on the Welsh language?
- If you have any comments relating to the Official Controls Regulations, please use this space to report them. Please keep each comment separate.

This exercise was run over 4 weeks from 29 October 2019 to 25 November 2019. During this time no responses were received.

## **6. Regulatory Impact Assessment**

### **Policy Options Considered**

There are no other viable policy options as the EU Regulations are directly applicable, meaning we are obliged to make domestic legislation to have sufficient enforcement powers if treated as a Member State in a deal implementation period. Whilst the Official Controls Regulation provisions are directly applicable, certain measures are required in domestic legislation for those provisions to be fully and effectively applied in Wales, specifically in relation to enforcement powers (separate and parallel legislation will apply in England, Scotland, Wales and Northern Ireland). Failure to give effect to the Official Controls Regulation in contravention of any Member State or withdrawal agreement obligations could affect government ambitions for frictionless trade with the EU and will put the UK at risk of Commission infraction proceedings.

In addition, there would be an enforcement gap domestically and if an operator failed to cooperate with inspectors attempting to verify compliance then there would be, for example, inability to prosecute the perpetrator on grounds of obstruction. This is especially important for post-import controls, where animals or animal products from outside the UK could carry biosecurity risks and need to be made safe or tested in some way. These risks to animal and public health could lead to economic, political and social risks, and undermines one of the core aims of the government's Well Being and Future Generations Act.

### **Assessment of Impacts on Business**

These impacts are being assessed against a baseline scenario where the UK does not implement the requirements of Regulation (EU) 2017/625 on official controls and other official activities (Official Controls Regulation) from the application date.

### Summary of impacts

This SI only enables enforcement of the new Regulation, which was already adopted in 2017. There are no new fees for businesses, nor any policy changes affecting what businesses can or cannot do specifically as result of this SI, meaning there are likely to be no changes to how businesses operate. If we assume that businesses comply with the existing regulations and are not affected by these criminal sanctions, the only monetised costs in this impact assessment, are the costs of familiarisation with the regulations. There could be benefits to some business as Official Controls Regulation maintains a risk-based approach to official controls but includes a new provision that clarifies official controls must be performed in a manner that minimises the burden on businesses. This could mean that low risk businesses and/or those with good compliance history could be subject to fewer official controls, and vice versa. The balance of overall cost and benefit would depend on the levels of risk and compliance identified by the authorities.

The offences in question are unlikely to be of significant interest to the majority of businesses covered by the legislation, as the criminal penalties covered in this SI have not been activated since the introduction of the previous legislation of Official Controls (Animals, Feed and Food) Regulations (Wales Regulations S.I. 196 2007).

A Justice Impact Assessment has been completed which assessed no impact on the justice system in England and Wales will arise given the nature of the SI. This has been forward to Ministry of Justice for consideration. A link to the JIA will be will added in due course after the Ministry of Justice have provided their response / clearance.

### Affected groups

In addition to the businesses affected by the SI, the central competent authorities and designated enforcement authorities that perform the official controls to verify compliance with the legislation will need to familiarise themselves with the changes to the offences involved in the SI.

### Agri-food businesses

The scope of the Official Control Regulation covers all of the agri-food chain sectors, and the regulations apply to businesses at all stages of production, processing, distribution and use. The Impact Assessment for the Official Controls Regulation proposal stated that the businesses affected are those subject to official controls performed for verification of compliance in the following areas:

- Food and feed standards and safety;
- Contained use and release of genetically modified organisms;
- Animal health requirements;
- Animal by-products requirements;
- Animal welfare requirements;
- Protective measures against plant pests;

- The manufacture and/or use of plant protective products (such as pesticides);
- Organic production and labelling; and
- Use and labelling of protected designations of origin, geographical indications and traditional specialities.

We estimate, based on ONS data, that there are 23,470 businesses in Wales covered by Official Controls Regulations<sup>1</sup> This estimate excludes businesses which are solely plant health related, as their familiarisation costs will be addressed alongside enforcement of the Plant Health Regulation (EU) 2016/2031. Of these businesses, approximately 3,123 engage in international trade<sup>2</sup>.

#### Enforcement authorities

In addition to the affected businesses, enforcement authorities in Wales will also need to familiarise themselves with the changes in the SI. These include the Animal and Plant Health Agency, the Food Standards Agency and the Local Authorities, who are the Competent Authorities responsible for delivering regulatory controls. Official Controls Laboratories, which analyse samples taken during official controls and for food and feed enforcement are also included. There are, in total, 29 authorities in Wales assumed to be affected by this SI.

#### Regulatory overlap and double counting

There is a risk of an overlap of familiarisation costs between this SI, and the Official Controls Regulation SIs for plant health and the FSA. While we have excluded businesses solely plant health related, there are some that may be covered by both SIs, for instance mixed farms. For these businesses, there may be some instances of double counting of familiarisation costs. There may also be some overlap and double counting of the impacts included in the FSA Impact Assessment on Official Control Regulations, which includes familiarisation costs for FSA Approved Establishments, UK-based importers of high-risk foods not of animal origin or products of animal origin, and for enforcement authorities. However, this only includes around 3,123 businesses in Wales, in addition to the 29 enforcement authorities, in comparison to the 23,470 affected businesses in this impact assessment.

#### Familiarisation costs

We estimate that familiarisation costs for affected groups are £17.31 per hour. This is consistent with the approach taken in the assessment for the Plant Health enforcement SI and is an average of two occupation categories from Table 15.5a, (gross hourly pay) from the Annual Survey of Hours and Earnings, 2016. These are the average of median wages for “Managers and directors in

<sup>1</sup> Based on ONS data from: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation>

<sup>2</sup> ONS data from the Annual Business Survey: <https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/annualbusinesssurveyimportersandexportersindustrybreakdown>

retail and wholesale” (£11.48 per hour) and “Administrative occupations: Office managers and supervisors” (£15.15 per hour), ASHE 2019. A 30% uplift to account for non-wage labour costs is then applied to the average.)

For the majority of businesses, who do not trade internationally, we assume that they will only familiarise themselves on a general basis with the regulations. Given there will be guidance on gov.uk and engagement with stakeholders to disseminate and simplify the regulations, we have assumed half an hour per company. For the 3,123 businesses involved in international trade, and for the enforcement authorities, we assume that familiarisation will take longer, and have estimated an average familiarisation time of 2 hours. Multiplying the familiarisation cost per hour by the number of affected bodies and the estimated familiarisation time gives a total cost of approximately £285,200, as set out in Table 1 below. This is a one-off transition cost which will only apply in the first year the Regulations come into force, and will not recur on an annual basis.

	No. of bodies	Familiarisation time (hours)	Cost per hour	Total cost
Enforcement authorities	29	2.00	£17.31	£1,004
International firms	3,123	2.00	£17.31	£108,103
Domestic firms	20,347	0.50	£17.31	£176,107
<b>Total</b>				<b>£285,214</b>

**Table 1: Summary of familiarisation costs**

#### Summary of monetised costs and benefits

The only monetised impacts which have been assessed in this impact assessment are the one-off transition costs of familiarisation, which are estimated at approximately £285, 200. There have been no ongoing costs or benefits identified to businesses or public bodies.

#### Non-monetised costs and benefits

There are no non-monetised impacts to business which have been identified in this impact assessment. In comparison to the baseline where the UK does not implement the Regulations, there are some non-monetised benefits to the UK Government. Failure to give effect to the Official Controls Regulation in contravention of any Member State or withdrawal agreement obligations could affect government ambitions for frictionless trade with the EU and will put the UK at risk of Commission infraction proceedings. Additionally, there would be an enforcement gap domestically and if an operator failed to cooperate with inspectors attempting to verify compliance then there would be inability to prosecute. This reduces the incentive for compliance with the Official Controls Regulation, which could generate risks to the UK’s biosecurity.

Due to the unpredictable nature of disease spread, we do not have sufficient evidence to assess how an enforcement gap could increase the risk of an animal disease outbreak, nor the potential costs of such an outbreak. However,

it is possible to use evidence from previous animal disease outbreaks to provide a potential scale of the impacts, if an outbreak were to occur. It is impossible to predict how much an outbreak would cost but past outbreaks have cost, for example, £50 million (avian influenza 2014) and £100 million (foot and mouth disease, 2001). BSE was estimated to have cost just under £1 billion for the UK economy, with over 4 million cattle destroyed, with the domestic beef market dropping and a ban of exports of beef. In addition, 177 people died. Therefore the non-monetised benefits from implementation of this SI are the avoided costs of potential infraction proceedings and the avoided risks to UK biosecurity and its consequential impacts for society.

As explained above, with a risk based approach to official controls some businesses could be subject to fewer controls – which have a cost to the business associated with it - and others could be subject to more, however this would be relative to the businesses' risk and compliance identified by the authorities, and the net monetary result could be the same – it is not possible to predict, but we have been applying this approach under the previous Official Controls Regulation.

#### *Brief Assessment of Distributional Impacts*

There are unlikely to be any significant distributional impacts arising from this Statutory Instrument. As the only impacts are familiarisation costs, which, at a firm level, are assumed to be relatively low (up to £34 for an individual firm), we believe that there is nothing in this SI that will lead to transfers between different interest groups, businesses or sectors.

#### **Wider impacts on Competent Authorities**

There are several wider impacts of the Official Controls Regulation itself which the SI enables enforcement for.

Competent Authorities would benefit from the implementation of the Official Controls Regulation as an improved legal framework that sets out all official controls rules in one place. National administrations tasked with official controls and other official duties (public health, veterinary and phytosanitary monitoring and action) will also benefit from improved and more effective enforcement tools.

The measures provided for in the enacting SI do not introduce any new significant impacts on competent authorities as it reflects current national legislation that it will replace. The main provisions introduced by the SI still concern the designation the competent authorities for the purposes of the Regulations and provide enforcement powers for officers authorised by a competent authority to enforce the provisions of the regulations.

#### **Wider impacts on Operators**

The majority of rules introduced by the Regulation are directed at national enforcement authorities tasked with official controls. However, operators,

ranging from food and feed businesses, primary producers, retailers, plant/animal breeders, etc. will be affected by official controls rules.

Operators (food and feed businesses, from primary producers to retailers and caterers, but also plant/animal breeders, growers and traders) will benefit from the increased efficiency of national competent authorities resulting from streamlining and simplification of the legislative framework and from a greater risk based approach to official controls. In particular, Official Control Regulation provisions specify that competent authorities minimise admin burden and operational disruption for operators when performing controls and as compliance controls are to be carried out increasingly on a risk basis, there would be the possibility to reduce their frequency in some cases, thereby reducing any costs associated with such controls. The Official Controls Regulation maintains the status quo as regards the mandatory fees system for official controls. In other words the scope of the mandatory fees has not been expanded by the Official Controls Regulation. Furthermore, operators will benefit from a higher level of transparency about the method and data used to establish fees and the amount applied to each category of operators.

The SI therefore does not introduce any change to the current fees and charges regime. It simply makes provisions for the payment of fees or charges which is made to recover the cost of certain official controls.

#### **Wider national impacts (UK)**

This SI will allow for the successful implementation of the Official Controls Regulation which aims to ensure a high level of health and safety standards along the agri-food chain by providing a consistent approach to official controls. The Official Controls Regulation will contribute to more consistent and effective enforcement of feed and food, and animal health and welfare law. In doing so there will be increased standards of food safety, consumer protection and of animal health and of animal welfare. The official controls that the SI enacts will also strengthen the risk based approach to protection of biosecurity which is a key UK interest and we have favoured during the negotiations of the Official Controls Regulation.



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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/L/LG/05532-19 OCR SI

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

22 January 2020

Dear Elin,

**The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020**

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

The Official Controls (Regulation (EU) 2017/625) ("Council Regulation") on official controls and other official activities came into force across the EU on 14 December 2019. The Regulation is part of the EU Smarter Rules for Safer Food (SRSF) package and is directly applicable. The detailed legal requirements of official controls are therefore set out in the Council Regulation and the Welsh Ministers' Regulations provide for domestic enforcement measures such as appointing enforcement bodies and competent authorities, and for

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

recovery of expenses, exchange of information, and for audits under the Council Regulation. They also make consequential amendments to a number of other statutory instruments.

The drafting of the Statutory Instrument has been delayed because important parts of it depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October. In addition the Council Regulation is very complex and supplemented by 28 items of tertiary legislation which set out important detailed aspects of official controls and other official activities. Drafting of the Welsh Ministers' Regulation has been completed as quickly as possible, the final item of tertiary legislation made under the Council Regulation was finalised on 12 December 2019.

As a result, there has been a delay between the date upon which the Council Regulation applied across the European Union, and the coming into force of these Regulations.

The potential impact of this delay is upon how breaches of legislation covered by official controls would be enforced. These Regulations provide an important practical enforcement tool in relation to the directly applicable requirements of the Council Regulation and the various EU and domestic legal instruments applicable across the policy areas under the control of official controls. Reducing the period of this enforcement gap will ensure consistency for operators and enforcement bodies across the UK. It is therefore essential that these Regulations are brought into force as soon as practicable, providing enforcement bodies with additional enforcement options and bringing Wales into line with the rest of the UK, as the other UK Administrations have already introduced their equivalent enforcement legislation.

For this reason, this Statutory Instrument is not able to be submitted for scrutiny in time to allow the period of 21 days.

Consultation has been carried out on the SI in accordance with Welsh Government guidelines and as required by European law, no responses were received which is not unexpected as the Regulations apply mostly to competent authorities. As detailed above similar Regulations have already been made in all other Administrations of the UK. A Regulatory Impact Assessment is attached.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

I am copying this letter to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,



**Rebecca Evans AC/AM**

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

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

# SL(5)493 – The Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2020

## Background and Purpose

These Regulations amend the Plant Health etc. (Fees) (Wales) Regulations 2018, which specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material.

These Regulations are made in exercise of powers in section 56(1) and (2) of the Finance Act 1973 – those powers are conferred on the Welsh Ministers by virtue of section 59(5) of the Government of Wales Act 2006. The powers permit the Welsh Ministers to make regulations which require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any EU obligation. This instrument requires and has received Treasury consent.

In relation to EU withdrawal the Explanatory Memorandum states, “In the event of the withdrawal of the UK from the EU on 31 January 2020, it is anticipated an Implementation Period would apply until the end of 2020. During this period the UK would continue to apply EU requirements including those on imports and the system of reduced frequency import inspections described above. Therefore, although these Regulations are related to EU arrangements, and the UK is not expected to be member of the EU when they take effect, the system of import inspections, including scope for reduced frequency checks, will not change immediately on exit. Hence, it is important to make these changes.”

## Procedure

Negative.

## Technical Scrutiny

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

## Merits Scrutiny

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

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

These Regulations amend the fees payable to the Welsh Ministers in the circumstances described above.

## Implications arising from exiting the European Union

These Regulations amend the 2018 Regulations which implement, in Wales, various EU obligations in relation to plant health. The amended 2018 Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).



## Government Response

---

A government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**4 February 2020**



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales

**Legislation, Justice and Constitution Committee**

**2020 No. (W. )**

**PLANT HEALTH, WALES**

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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”) which specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material.

Regulation 2(2) inserts regulation 6A into the 2018 Regulations to provide for the fee payable by an importer of potatoes originating in Lebanon where an inspector samples a potato lot for the purposes of Commission Implementing Decision (EU) 2019/1614 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon (OJ No L 250, 30.9.2019, p. 85).

Regulation 2(3) substitutes Schedule 2 to the 2018 Regulations, which sets out reduced rate fees payable by the importer of a third country consignment for plant health checks in respect of certain plant and plant products which are subject to reduced levels of checks agreed under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No L 169, 10.7.2000, p. 1). This regulation gives effect to the latest notification published by the European Commission of the reduced plant health checks which are applicable to certain plants and plant products (published on 19 November 2019).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was

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

**2020 No. (W. )**

**PLANT HEALTH, WALES**

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

*Made* 28 January 2020

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

*Coming into force* 24 February 2020

The Welsh Ministers make these Regulations, with the consent of the Treasury, in exercise of the powers conferred by section 56(1) and (2) of the Finance Act 1973<sup>(1)</sup> now vested in them<sup>(2)</sup>.

**Title and commencement**

**1.** The title of these Regulations is the Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2020 and they come into force on 24 February 2020.

**Amendment of the Plant Health etc. (Fees) (Wales) Regulations 2018**

**2.—**(1) The Plant Health etc. (Fees) (Wales) Regulations 2018<sup>(3)</sup> are amended as follows.

(2) After regulation 6 insert—

**“Potatoes originating in Lebanon: fee**

**6A.—**(1) Where an inspector takes a sample of potatoes originating in Lebanon in order to ascertain whether, for the purposes of Article 4 of the Decision, those potatoes are infected with

- 
- (1) 1973 c. 51; section 56(1) was amended by S.I. 2011/1043, and is prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) from a date and time to be appointed.
- (2) By virtue of section 59(5) of the Government of Wales Act 2006 (c. 32).
- (3) S.I. 2018/1179 (W. 238), amended by S.I. 2019/1378 (W. 244).



*Clavibacter michiganensis* subspecies (Spieckermann and Kotthoff) Davis et al., the importer must pay a fee of £70.83 in respect of each lot sampled.

(2) In paragraph (1), “the Decision” means Commission Implementing Decision (EU) 2019/1614 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon<sup>(1)</sup>.”

(3) For Schedule 2 substitute—

## “SCHEDULE 2 Regulation 3(2) and (3)

### Import inspection fees: reduced rates

<i>Genus</i>	<i>Country of Origin</i>	<i>Fee (£)</i>
<b>Cut flowers</b>		
<i>Aster</i>	Zimbabwe	32.06
<i>Dianthus</i>	Colombia	1.28
	Ecuador	6.41
	Kenya	2.14
	Turkey	6.41
<i>Rosa</i>	Colombia	1.28
	Ecuador	0.43
	Ethiopia	2.14
	Kenya	4.28
	Tanzania	21.38
	Zambia	4.28
<b>Branches with foliage</b>		
<i>Phoenix</i>	Costa Rica	17.00
<b>Fruit</b>		
<i>Actinidia</i>	Any third country	2.66
<i>Carica papaya</i>	Any third country	2.66
<i>Citrus</i>	Egypt	39.83
	Mexico	26.55
	Morocco	1.59
	Peru	5.31
	Turkey	1.59
	USA	13.28
<i>Cydonia</i>	Any third country in Europe <sup>(1)</sup>	2.66
<i>Fragaria</i>	Any third country	2.66
<i>Malus</i>	Argentina	18.59
	Brazil	26.55
	Chile	2.66
	Any third country	2.66

(1) OJ No. L 250, 30.9.2019, p. 85.

	in Europe <sup>(1)</sup>	
	New Zealand	5.31
	South Africa	2.66
<i>Mangifera</i>	Brazil	26.55
<i>Passiflora</i>	Colombia	3.72
	Kenya	13.28
	South Africa	26.55
	Vietnam	13.28
	Zimbabwe	39.83
<i>Persea americana</i>	Any third country	2.66
<i>Prunus</i>	Argentina	39.83
	Chile	5.31
	Any third country	2.66
	in Europe <sup>(1)</sup>	
	Morocco	26.55
	Turkey	18.59
<i>Prunus other than prunus persica</i>	South Africa	5.31
<i>Pyrus</i>	Argentina	7.97
	Chile	7.97
	China	26.55
	Any third country	2.66
	in Europe <sup>(1)</sup>	
	South Africa	5.31
<i>Ribes</i>	Any third country	2.66
	in Europe <sup>(1)</sup>	
<i>Rubus</i>	Any third country	2.66
<i>Vaccinium</i>	Argentina	13.28
	Chile	5.31
	Peru	5.31
	Any third country	2.66
	in Europe <sup>(1)</sup>	
<i>Vitis</i>	Any third country	2.66
<b>Vegetables</b>		
<i>Solanum lycopersicon</i>	Canary Islands	2.66
	Morocco	2.66
<i>Solanum melongena</i>	Turkey	7.97

<sup>(1)</sup> "Third country in Europe" includes Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canary Islands, Faeroe Islands, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, North Macedonia, Norway, Russia (only the following parts: Central Federal District (Tsentralny federalny okrug), Northwestern Federal District (Severo-Zapadny federalny okrug), Southern Federal District (Yuzhny federalny okrug), North Caucasian Federal District (Severo-Kavkazsky federalny okrug) and Volga Federal District (Privolzhsky federalny okrug), San Marino, Serbia, Turkey and Ukraine."

*Lesley Griffiths*  
Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
28 January 2020

**Explanatory Memorandum to the Plant Health etc. (Fees) (Wales)  
(Amendment) Regulations 2020**

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department 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/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2020.

Lesley Griffiths

**Minister for Environment, Energy and Rural Affairs**

29 January 2020

## **PART 1**

### **1. Description**

These Regulations amend the Plant Health etc. (Fees) (Wales) Regulations 2018 ('the principal Regulations') which specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

### **3. Legislative background**

These Regulations are made in exercise of powers in section 56(1) and (2) of the Finance Act 1973 – those powers are conferred on the Welsh Ministers by virtue of section 59(5) of the Government of Wales Act 2006. The powers permit the Welsh Ministers to make regulations which require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any EU obligation. This instrument requires and has received Treasury consent.

This instrument is subject to the negative resolution procedure.

### **4. Purpose and intended effect of the legislation**

Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ('the Plant Health Directive') establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in Wales, for non-forestry matters, by the Plant Health (Wales) Order 2018. Similar but separate legislation operates in England, Scotland and Northern Ireland.

The Plant Health Directive has been amended, among other amendments, by Council Directive 2002/89/EC (OJ No. L 355, 30.12.2002, p. 45). Among the changes introduced by this Directive was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and physical inspection) of certain plants and plant produce and obligations to charge fees for these inspections. The Plant Health Directive (Article 13a(2)), contains a procedure for reducing the rate of inspections of certain plant material imports and for charging a correspondingly reduced fee for inspections (Article 13d(2)).

The Plant Health Directive was replaced on 14 December 2019 by Regulation (EU) 2016/2031 (OJ No. L 317, 23.11.2016, p. 4) (the 'Plant Health

Regulation”) on protective measures against pests of plants and Regulation (EU) 2017/625 (OJ No. L 95, 7.4.2017, p. 1) (the “Official Controls Regulation”) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Article 165, paragraph 2 of the Official Controls Regulation allows the relevant articles of Directive 2000/29/EC as regards the procedure for reducing the rate of inspections of certain plant material imports to continue to apply until 14 December 2022, or earlier if a delegated act is adopted.

The authority to charge fees for inspections is contained in the principal Regulations. The purpose of these Regulations is to reflect changes in certain import inspection fees.

### **Import inspection services**

The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of plants for planting, potatoes, certain major fruits, cut flowers and some leafy vegetables imported from countries outside the EU.

Under the Plant Health Directive, the required level for inspections is specified at 100%. However, there is provision for the level of physical inspection to be reduced for consignments of plant produce (e.g. cut flowers, fruit and vegetables) from specific countries if there is evidence that material from that source has been found to be free from pests and diseases during trade over a three-year period. In plant health terms, plant produce poses a significantly lower risk than planting/propagating material as it is not planted or propagated and is generally either consumed or disposed of away from agricultural and horticultural production sites. Planting material and potatoes are excluded from risk-targeted checks arrangements and are subject to the mandatory 100% inspection level.

A European Commission working group meets annually to consider applications from Member States for reductions in inspection levels and reviews agreed levels using trade and interception data from Member States over the previous year. The working group makes recommendations for future inspection levels for consideration by the Standing Committee on Plants, Animals, Food and Feed (SCOPAFF). Levels of inspection can be increased or eligibility for any reduction removed if Member States report any pest or disease problems identified with a trade approved for reduced checks. If more than 1% of consignments imported into the EU have been found to contain pests or diseases in any year then that trade is not eligible for reduced inspection levels. Since the risk-targeted checks regime was introduced in 2006, several trades, which had been approved for reduced inspections, have had the approval removed in response to interceptions of pests or diseases by Member States. None of those cases resulted in a pest or disease outbreak within the EU.

Implementation of the risk-targeted check provisions is discretionary. Member

States can choose not to apply reduced inspection levels and continue to inspect all imported plants and plant produce. However, the reduced checks system reflects the established principle of risk-targeting. Adopting these provisions saves on inspections of low risk produce entering Wales and allows resources to be focussed on targeting trade in planting/propagating material which presents the highest risks. It also means that inspections of material which are currently unregulated under the Plant Health Directive can be carried out, looking for evidence of emerging threats, which can then be considered for incorporating in the EU plant health regime. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include audits or new import requirements (for instance, fresh peppers and tomatoes, which were previously unregulated under the EU plant health regime, now require a phytosanitary certificate to be imported, in response to pest findings). SCOPAFF monitors interception levels on a monthly basis and agrees actions in response to problematic trades.

In the event of the withdrawal of the UK from the EU on 31 January 2020, it is anticipated an Implementation Period would apply until the end of 2020. During this period the UK would continue to apply EU requirements including those on imports and the system of reduced frequency import inspections described above. Therefore, although these Regulations are related to EU arrangements, and the UK is not expected to be member of the EU when they take effect, the system of import inspections, including scope for reduced frequency checks, will not change immediately on exit. Hence, it is important to make these changes.

Article 79 of the Official Controls Regulation requires charges to be raised to cover the costs of import checks. In accordance with Article 82(1) fees are charged at a flat rate based on the overall cost of the import inspections and applied to all importers irrespective of whether consignments are inspected or not.

Under the principal Regulations, reduced checks apply to 44 trades. These Regulations implement the latest changes recommended by the European Commission's Reduced Checks Working Group held in June 2019, which were agreed by SCOPAFF in November 2019. The outcome of this year's meeting saw increases in levels of inspection on five trades, including to 100% in the case of *Citrus Limon* and *C Aurantifolia* fruit from Israel and stone fruit from USA, with matching increases in fees, as follows:

- Lemon and lime fruit from Israel (from 25% to 100%);
- Passion fruit from South Africa (from 35% to 50%);
- Passion fruit from Zimbabwe (50% to 75%);
- Stone fruit (other than peaches) from South Africa (from 5% to 10%);
- Stone fruit from USA (50% to 100%).

Further evidence of compliance was available for one trade resulting in levels of inspection decreasing, with matching decreases in fees, as follows:

- Aubergines from Turkey (25% to 15%).

Three additional trades were shown to pose minimal plant health risks and were accepted for reduced inspection levels. The inspection rate for consignments of the following has therefore decreased, with a matching decrease in fees:

- Citrus fruit from Mexico (from 100% to 50%)
- Vaccinium fruit from Chile (from 100% to 10%)
- Vaccinium fruit from Peru (from 100% to 10%).

Details of all the trades subject to reduced levels of physical inspection and the relevant fees are included within the revised Schedule 2 inserted by Regulation 2(3) of these Regulations.

### **Import of potatoes from Lebanon**

Under the Plant Health Regulation the import of potatoes is prohibited from most third countries because of the risk of introduction of harmful organisms. Commission Implementing Decision 2019/1614 of 26 September 2019 provides for the import of potatoes, other than those intended for planting (ware potatoes), originating in the regions of Akkar and Bekaa of Lebanon, where evidence has been provided that potatoes are grown under adequate phytosanitary conditions to ensure freedom from harmful organisms, particularly *Clavibacter michiganensis*. Commission Implementing Decision 2019/1614 permits the import of such potatoes subject to official sampling on arrival in the EU to ensure freedom from *Clavibacter michiganensis*. Regulation 2(2) of these Regulations prescribes a fee for each lot sampled.

## **5. Consultation**

No consultation was conducted in the preparation of these Regulations. These Regulations implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

## **6. Regulatory Impact Assessment (RIA)**

The impact on business, charities or voluntary bodies is minimal.

There is no, or no significant, impact on the public sector.

An Impact Assessment has not been prepared for this instrument as it implements annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.



## **7. Monitoring and review**

The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

# SL(5)499 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020

## Agenda Item 2.3

### Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) ("the Principal Regulations").

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the UK for certain categories of healthcare provided to them in Wales, unless the overseas visitors, or the service they receive falls within an exemption.

The amendments made by these Regulations to the Principal Regulations ensure that NHS services for any overseas visitor who require diagnosis or treatment for Wuhan novel coronavirus (2019-nCoV) is provided without charge to that overseas visitor.

### Procedure

Negative.

### Technical Scrutiny

One point is 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 note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd in a letter dated 4 February 2020.

In particular, we note what the letter says about these Regulations coming into force on the day it is laid,

"Amending the Principal Regulations to include Wuhan novel coronavirus (2019-nCoV) to Schedule 1 of the Principal Regulations, exempts LHBs for charging for services provided for the diagnosis and treatment of this disease and reduces the risk of people not seeking treatment, thereby more widely protecting and lowering the public health risk.

The 2020 Regulations were made and laid as soon as practicable on public health grounds in order to remove the financial barrier for overseas visitors to seek and continue treatment from the NHS for this disease and ensure the LHBs are prepared if cases do arise.

As a result, they have come into force less than 21 days after they were made. Not adhering to the 21 day convention allows the Regulations to come into force on 4 February 2020 and in view of the circumstances surrounding this disease the reduced period is therefore thought necessary and justifiable 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

---

A government response is not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**5 February 2020**



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

National Assembly for Wales

**Legislation, Justice and Constitution Committee**

---

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

---

**2020 No. 113 (W. 20)**

**NATIONAL HEALTH  
SERVICE, WALES**

**The National Health Service  
(Charges to Overseas Visitors)  
(Amendment) (Wales) Regulations  
2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 1 contains commencement and application provisions.

Regulation 2 inserts “Wuhan novel coronavirus (2019-nCoV)” into Schedule 1 to the Principal Regulations for the purpose of creating a new exemption from National Health Service charges for any overseas visitor who requires treatment for Wuhan novel coronavirus (2019-nCoV).

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 cost and benefit of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

---

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

---

**2020 No. 113 (W. 20)**

**NATIONAL HEALTH  
SERVICE, WALES**

**The National Health Service  
(Charges to Overseas Visitors)  
(Amendment) (Wales) Regulations  
2020**

*Made* 3 February 2020

*Laid before the National Assembly for  
Wales* at 2:00 p.m. 4 February 2020

*Coming into force  
at* 6:00 p.m. 4 February 2020

The Welsh Ministers make these Regulations in the exercise of the powers conferred by sections 124 and 203(9) of the National Health Service (Wales) Act 2006(1).

**Title, commencement and application**

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020.

(2) These Regulations come into force at 6:00 p.m. 4 February 2020.

(3) These Regulations apply in relation to Wales.

**Amendment to Schedule 1 to the National Health Service (Charges to Overseas Visitors) Regulations 1989**

2. In Schedule 1 to the National Health Service (Charges to Overseas Visitors) Regulations 1989(2), in Part 4 (other diseases), after “Pandemic influenza

---

(1) 2006 c. 42. See section 206 of the National Health Service (Wales) Act 2006 for the meaning of “prescribed” and “regulations”.

(2) S.I. 1989/306. Part 4 of Schedule 1 was inserted by S.I. 2004/1433 (W. 146) and amended in relation to Wales by S.I. 2009/1175 (W. 102).

(influenza caused by a new virus subtype that has an increased and sustained transmission during a global outbreak of influenza)” insert the following entry—

“Wuhan novel coronavirus (2019-nCoV).”

*Vaughan Gething*

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

3 February 2020

## **Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM

**Minister for Health and Social Services**

4 February 2020

## **PART 1**

### **1. Description**

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made to address the public health risk of Wuhan novel coronavirus (2019-nCoV).

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

The SI is being laid under the 'Negative Procedure' and comes into force the day it is laid and does not follow the 21 day convention, so that in advance of cases of the Wuhan novel coronavirus (2019-nCoV) being confirmed in the UK, the NHS can take steps in preparation to reduce the public health risk and in the knowledge that they are not breaking the law, should the need arise to diagnosis and treat an overseas visitor. In these circumstances the shortened period is considered necessary and justifiable.

### **3. Legislative background**

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in Great Britain for NHS services.

The instrument is also being made under section 203(9) and (1) of the 2006 Act.

### **4. Purpose and intended effect of the legislation**

Amendments to the Principal Regulations ensure that NHS services for any overseas visitor who requires diagnosis or treatment for Wuhan novel coronavirus (2019-nCoV) is provided without charge to that overseas visitor.

### **5. Consultation**

No public consultation was undertaken due to the urgency required to introduce this change of policy. The purpose of the instrument is to address the public health risk of Wuhan novel coronavirus (2019-nCoV) and allow the NHS to take steps in preparation and to treat overseas visitors without charge in the knowledge that they are not breaking the law.



## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

Two options have been considered:

Option 1: -Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

#### **Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force**

In the event that an overseas visitor who is not eligible for NHS-funded care (i.e. those not ordinarily resident, who have not paid the immigration health surcharge or do not have other charging exemption) presents themselves for diagnosis or treatment of Wuhan novel coronavirus (2019-nCoV) at an NHS hospital they would be chargeable for those NHS services.

Cardiff Airport does not have a direct flight to China unlike other airports in the UK, however, it does have links to two key Hub airports, in Amsterdam and Doha. The volume of visitors from China travelling to Wales who will have not paid the immigration health surcharge as part of their visa requirement is low, as most Chinese visitors in Wales are here to study and will have paid the surcharge, which allows visitors to access the NHS the same as an ordinary resident in Wales, at no charge.

#### **Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989**

The objective of the amendment is to not discourage overseas visitors who may arrive in Wales with symptoms of the Coronavirus attending NHS services for diagnosis and treatment.

To protect and reduce the public health risk to Welsh citizens, the principle regulations have to be amended to exempt Wuhan novel coronavirus (2019-nCoV) from being chargeable.

In reducing the risk to the wider public it makes an effort to minimise the potential pressure on the NHS thus ensuring beds and staff are available for planned elective treatment and not diverted.

The number of visitors who could be chargeable without this exemption to the principle regulations is expected to be very low. What treatment would be necessary for a patient diagnosed with Wuhan novel coronavirus (2019-nCoV) is unknown at this stage. There is the potential for an additional burden on the existing baseline allocation for the cost of treating Wuhan novel coronavirus

(2019-nCoV), which are unquantifiable as numbers and treatment necessary is unknown. However, any such costs need to be balanced against the cost to the NHS if such chargeable patients did not come forward for treatment because of concern over ability to pay and potentially creating a wider public health risk.

LHBs will continue to receive the current annual allocation of £822,000 (subject to inflationary increase) from Welsh Government for the treatment of overseas visitors who are not chargeable. The cost of universally exempt services, such as A&E attendance, to all patients has been deemed to be met by from the LHBs baseline allocations.

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



**Llywodraeth Cymru**  
**Welsh Government**

Our ref MA VG 0364 20

Elin Jones AM  
Presiding Officer

4 February 2020

Dear Llywydd,

**The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020**

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

The 2020 Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the Principal Regulations"). The Principal Regulations set the framework for charging persons who are not ordinarily resident in the UK for emergency and non-emergency hospital treatment which is provided in Wales.

Under the existing regulations should any overseas visitor who is not eligible for NHS-funded care (i.e. those not ordinarily resident, who have not paid the immigration health surcharge or do not have other charging exemption) present at an NHS hospital with symptoms of Wuhan novel coronavirus (2019-nCoV) they would be chargeable for NHS services they receive for the diagnosis or treatment of this disease.

. Canolfan Cyswllt Cyntaf / First Point of Contact Centre:

Bae Caerdydd • Cardiff Bay

0300 0604400

Caerdydd • Cardiff

[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

CF99 1NA

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@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.

Amending the Principal Regulations to include Wuhan novel coronavirus (2019-nCoV) to Schedule 1 of the Principal Regulations, exempts LHBs for charging for services provided for the diagnosis and treatment of this disease and reduces the risk of people not seeking treatment, thereby more widely protecting and lowering the public health risk.

The 2020 Regulations were made and laid as soon as practicable on public health grounds in order to remove the financial barrier for overseas visitors to seek and continue treatment from the NHS for this disease and ensure the LHBs are prepared if cases do arise. As a result, they have come into force less than 21 days after they were made.

Not adhering to the 21 day convention allows the Regulations to come into force on 4 February 2020 and in view of the circumstances surrounding this disease the reduced period is therefore thought necessary and justifiable in this case.

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

A copy of this letter goes to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,



**Rebecca Evans AC/AM**

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswilt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)  
[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@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 2.4

## SL(5)492 – The Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020

### Background and Purpose

---

These Regulations specify limits (prescribed limits) for certain types of payments required in the event of a default by a contract-holder of a standard occupation contract.

Part 2 of the Renting Homes (Fees etc.) (Wales) Act 2019 ("the Act") makes it an offence for a landlord or letting agent to require any payment of money in consideration of granting, renewing or continuing a standard occupation contract, or pursuant to a term of a standard occupation contract, unless it falls within one of two categories. Any such payment which does not fall within those two categories is a 'prohibited payment'. The first category covers payments by a landlord to a letting agent in respect of lettings work or property management work. The second category comprises 'permitted payments', which are those payments listed in Schedule 1 to the Act.

Default payments are included as permitted payments in Schedule 1 to the Act (paragraph 6). Default payments are payments required under a standard occupation contract, as a result of a contract-holder's default. The Welsh Ministers may specify limits for those default payments. If those prescribed limits are exceeded, the excess is a prohibited payment.

Regulation 2 sets out the method of determining the prescribed limit which applies in the case of a failure by the contract-holder to make a payment of rent to the landlord by the due date.

Regulation 3 specifies two descriptions of default payment in respect of which a prescribed limit is specified. The first description comprises default payments in respect of the cost of changing, adding or removing a lock, where this has been necessary as a result of a breach by the contract-holder of a term of the contract. The second description comprises default payments in respect of the cost of replacing a key or other security device used to access the dwelling, where the replacement has been necessary as a result of a breach by the contract-holder of a term of the contract.

In respect of both those descriptions, the prescribed limit is specified in regulation 4 as being the actual cost of the replacement, change, addition or removal.

These Regulations apply to assured shorthold tenancies until such time those tenancies convert to standard occupation contracts under section 240 of the Renting Homes (Wales) Act 2016 when they will apply to standard occupation contracts.

### Procedure

---

Affirmative.

### Technical Scrutiny

---

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

### Merits Scrutiny

---

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



Cynulliad Cenedlaethol Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales  
**Legislation, Justice and Constitution Committee**

## **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.**

These Regulations are the fourth set of regulations to be laid by the Welsh Ministers under the Renting Homes (Fees etc.) (Wales) Act 2019.

These Regulations prescribe default payments which may be required as a result of a contract-holder's default and set limits in respect of those payments. The types of default payments that a landlord would be permitted to charge were considered during the passage of the Act. The types of default payments contained in these Regulations reflect what was anticipated during the scrutiny stages.

### **Implications arising from exiting the European Union**

---

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

### **Government Response**

---

A government response is not required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**4 February 2020**



*Draft Regulations laid before the National Assembly for Wales under section 27(3) of the Renting Homes (Fees etc.) (Wales) Act 2019, for approval by resolution of the National Assembly for Wales.*

---

DRAFT WELSH STATUTORY  
INSTRUMENTS

---

**2020 No. (W. )**

**HOUSING, WALES**

**The Renting Homes (Fees etc.)  
(Prescribed Limits of Default  
Payments) (Wales) Regulations  
2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations specify limits (prescribed limits) for certain types of payments required in the event of a default by a contract-holder of a standard occupation contract.

Part 2 of the Renting Homes (Fees etc.) (Wales) Act 2019 (“the Act”) makes it an offence for a landlord or letting agent to require any payment of money in consideration of granting, renewing or continuing a standard occupation contract, or pursuant to a term of a standard occupation contract, unless it falls within one of two categories. Any such payment which does not fall within those two categories is a ‘prohibited payment’. The first category covers payments by a landlord to a letting agent in respect of lettings work or property management work. The second category comprises ‘permitted payments’, which are those payments listed in Schedule 1 to the Act.

Default payments are included as permitted payments in Schedule 1 to the Act (paragraph 6). Default payments are payments required under a standard occupation contract, as a result of a contract-holder’s default. The Welsh Ministers may specify limits for those default payments. If those prescribed limits are exceeded, the excess is a prohibited payment.

Regulation 2 sets out the method of determining the prescribed limit which applies in the case of a failure

by the contract-holder to make a payment of rent to the landlord by the due date.

Regulation 3 specifies two descriptions of default payment in respect of which a prescribed limit is specified. The first description comprises default payments in respect of the cost of changing, adding or removing a lock, where this has been necessary as a result of a breach by the contract-holder of a term of the contract. The second description comprises default payments in respect of the cost of replacing a key or other security device used to access the dwelling, where the replacement has been necessary as a result of a breach by the contract-holder of a term of the contract.

In respect of both those descriptions, the prescribed limit is specified in regulation 4 as being the actual cost of the replacement, change, addition or removal.

By virtue of regulation 3 of the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019, the references in Parts 1 to 5 and 7 of the Act to a standard occupation contract are to be read as references to an assured shorthold tenancy under Part 1 of the Housing Act 1988 and the references in the Act to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy. These Regulations therefore apply to assured shorthold tenancies until such time those tenancies convert to standard occupation contracts under section 240 of the Renting Homes (Wales) Act 2016 when they will apply to standard occupation contracts.

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 Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.



*Draft Regulations laid before the National Assembly for Wales under section 27(3) of the Renting Homes (Fees etc.) (Wales) Act 2019, for approval by resolution of the National Assembly for Wales.*

---

DRAFT WELSH STATUTORY  
INSTRUMENTS

---

**2020 No. (W. )**

**HOUSING, WALES**

**The Renting Homes (Fees etc.)  
(Prescribed Limits of Default  
Payments) (Wales) Regulations  
2020**

*Made*

\*\*\*

*Coming into force*

*28 April 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 27(2)(a) of, and paragraph 6 of Schedule 1 to, the Renting Homes (Fees etc.) (Wales) Act 2019<sup>(1)</sup>.

In accordance with section 27(3) of that Act, a draft of these Regulations has been laid before and approved by a resolution of the National Assembly for Wales.

**Title, commencement and interpretation**

**1.**—(1) The title of these Regulations is the Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020 and they come into force on 28 April 2020.

(2) In these Regulations, a “contract-holder” has the same meaning as in the Renting Homes (Wales) Act 2016<sup>(2)</sup>.

---

(1) 2019 anaw 2. Schedule 1 is introduced by section 4 of the Act. *See* section 28 for the definition of “regulations”.  
(2) 2016 anaw 1; *see* section 7(5) for the definition of “contract-holder”.

### **Prescribed limits for failure to pay rent**

2.—(1) The prescribed limit in the case of a failure by a contract-holder<sup>(1)</sup> to make a payment of rent to a landlord by the due date is to be determined as follows.

(2) In the case of a failure to make a payment of rent before the end of the period of seven days beginning with the due date, the prescribed limit is zero.

(3) In the case of a failure to make a payment of rent after the end of the period of seven days beginning with the due date, the prescribed limit is the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of three per cent above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day.

(4) In this regulation, the “Bank of England base rate” means the percentage rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets.

(5) But where an order under section 19 of the Bank of England Act 1998<sup>(2)</sup> is in force, any equivalent percentage rate determined by the Treasury under that section applies.

### **Additional descriptions of default payment**

3. The additional descriptions of default in respect of which a prescribed limit is specified are—

- (a) a breach by a contract-holder of a term of the contract which leads to the requirement for a lock giving access to the dwelling to which the contract-holder’s contract relates to be changed, added to or removed, and
- (b) a breach by a contract-holder of a term of the contract which leads to the requirement for a key or other security device which gives access to the dwelling to which the contract relates to be replaced.

---

(1) By virtue of regulation 3 of the Renting Homes (Fees etc.) (Wales) Act (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019 (S.I. 2019/1151) (W. 201), the references in the Renting Homes (Fees etc.) (Wales) Act 2019 to a standard occupation contract are to be read as references to an assured shorthold tenancy and the references in the Act to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy. When commenced on the appointed day, section 240 of, and Schedule 12 to, the Renting Homes (Wales) Act 2016 (anaw 1) means existing assured shorthold tenancies will convert in accordance with these provisions.

(2) 1998 c. 11.

**Prescribed limit for additional descriptions of default payment**

4.—(1) The prescribed limit in respect of the descriptions of default payments specified in regulation 3 is the amount equal to the actual cost of the replacement, change, addition or removal.

(2) In this regulation, the “actual cost” means the cost of the key, security device or lock, as evidenced by an invoice or receipt.

(3) Where a third party contractor undertakes the replacement of a key or other security device or the change, addition or removal of a lock, as referred to in regulation 3 on behalf of the landlord, the “actual cost” includes the cost of that contractor’s labour, as evidenced by an invoice or a receipt.

*Name*

[Title of Minister], one of the Welsh Ministers

Date

**Explanatory Memorandum to The Renting Homes (Fees Etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

Julie James

**Minister for Housing and Local Government**

28 January 2020

## **PART 1**

### **1. Description**

- 1.1. Default payments are permitted payments under paragraph 6 of Schedule 1 to the Renting Homes (Fees etc.) (Wales) Act 2019. These Regulations specify limits (prescribed limits) for certain types of payments required in the event of a default by a contract-holder of a standard occupation contract. If the prescribed limits are exceeded, the excess is a prohibited payment.
- 1.2. The Regulations set out the method of determining the prescribed limit applicable where a contract-holder does not make a payment of rent to the landlord by the due date. The Regulations also specify two descriptions of default payment and prescribe a limit in respect of them. The first is a default payment in respect of the cost of changing, adding or removing a lock, where necessary as a result of a breach by the contract-holder of a term of the contract. The second is a default payment for the replacement of a key or other security device giving access to the dwelling where this is necessary as a result of a breach by the contract-holder of a term of the contract.

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

- 2.1. None.

### **3. Legislative background**

- 3.1. The Regulations are made under section 27(2)(a) of, and paragraph 6 of Schedule 1 to, the Renting Homes (Fees etc.) (Wales) Act 2019. Part 2 of the 2019 Act makes it an offence for a landlord or letting agent to require any payment of money in consideration of granting, renewing or continuing a standard occupation contract, or pursuant to a term of a contract, unless it falls within one of two categories. Any such payment which does not is a “prohibited payment” The first category are payments by a landlord to letting agent in respect of lettings work or property management work. The second category are “permitted payments” listed in Schedule 1 to the Act.
- 3.2. Paragraph 6 of Schedule 1 (payment in the event of default) provides that a payment that is required under a standard occupation contract, to be made in the event of a default (as defined in paragraph 6(2)) by the contract-holder is a permitted payment, but this is subject to sub-paragraph (3). That states that in the case of a default to which sub-paragraph (4) applies, if the amount of a payment required in the event of the default exceeds the prescribed limit, the amount of the excess is a prohibited payment. Sub-paragraph (4) applies to (a) a failure by the contract-holder to make a payment of rent by the due date to the landlord; (b) any additional description of default which is specified by regulations.

Paragraph 27(2)(a) provides power to make different provision for different purposes.

- 3.3. A statutory instrument containing regulations under paragraph 6 of Schedule 1 may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Senedd (“the affirmative procedure”) (section 27(3)).
- 3.4. Until the Renting Homes (Wales) Act 2016 comes into force, then by virtue of the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019, these Regulations apply to assured shorthold tenants until such time those tenancies convert to standard occupation contracts under section 240 of the 2016 Act when the Regulations apply to standard occupation contracts.
- 3.5. These Regulations precede prescribed Model Contracts under section 29 of the Renting Homes (Wales) Act 2016 (“the 2016 Act”) and it should be noted that for default payments to be permitted under these Regulations a contract must contain a term so that if there is a default, a payment may be required to be made (eg for the late payment of rent, for a lock giving access to the dwelling or for a replacement key/security device).

#### **4. Purpose and intended effect**

- 4.1. Where a contract-holder is at fault, and breaches the term of the contract, costs may be incurred by the landlord for which the contract-holder should be liable. Permitting payments for these costs reflects a contractual commitment on the part of the contract-holder to agree to pay such sums.
- 4.2. The Explanatory Memorandum for the Act noted that charging of payments in default is a longstanding practice and there is little evidence to show tenants within the PRS are being overcharged to a significant or consistent degree.
- 4.3. The purpose of these Regulations is therefore to prescribe limits for certain types of payments required in the event of a default by a contract-holder of a standard occupation contract.
- 4.4. The Regulations prescribe default payments which may be required as a result of a contract-holder’s default and set limits in respect of those payments. There is a prescribed limit which applies in the case of a failure by the contract-holder to make a payment of rent by the due date. Two descriptions of default payments set a prescribed limit in respect of those payments. These are in relation to the cost of changing, adding or removing a lock and replacement of a key or other security device used to gain access to the dwelling where the contract-holder is at fault.

- 4.5. The Regulations prescribe the method of determining the prescribed limit applicable to late rent as the overall amount owing plus the Bank of England base interest rate + 3% as an annual percentage rate (APR). For example, a 30-day late payment of rent of £600, at a Bank of England base rate of 0.75%, plus 3%, would result in a charge of £1.85. A payment for late rent is only permitted once seven days has elapsed from the date the rent is due.
- 4.6. Where a prohibited payment has been made by or on behalf of the contract-holder (claimant), they may apply to the county court for the recovery of the amount of that payment under section 22 of the Act. If the court is satisfied beyond reasonable doubt that a prohibited payment has been made and all or part of that payment has yet to be repaid, the court may order repayment in respect of the amount of that payment or the outstanding amount (if part has been repaid).
- 4.7. In addition, Guidance under section 41(2A) of the Housing (Wales) Act may include provision about matters to be considered by a licensing authority in deciding whether a failure to repay the amount of any prohibited payment affects a person's fitness to be licensed under Part 1 of the 2014 Act.

## **5. Consultation**

- 5.1. A full public consultation was held between 17 July and 27 September 2017, prior to the introduction of the Renting Homes (Fees etc) Wales Bill, on the proposals to address fees charged to tenants in the private rented sector.
- 5.2. 683 responses were received with 59% of responses from landlords or letting agents and 33% of responses from tenants.
- 5.3. Results found that 90% of respondents believed that fees charged as a result of a default on the part of a tenant, or for services provided at the request of a tenant, should continue to be allowed.  
<https://gov.wales/sites/default/files/consultations/2018-02/180226-fees-charged-to-tenants-responses.pdf>
- 5.4. A further eight week consultation was undertaken between 24 May 2019 and 19 July 2019 with regards to making these Regulations. In total 303 responses were received to the consultation. The majority of respondents were either landlords (77%) or letting agents (13%). Responses were also received from all major stakeholders.
- 5.5. The responses indicated that while landlords did not as a matter of course charge default payments, they did feel that there was a need to be able to charge where tenants had been at fault and breached a term of their tenancy agreement.

- 5.6. Of the 303 responses to the consultation, 250 respondents (83%) noted that they either charged, or had been charged with default payments as below:
- 5.7. 157 lost / replacement keys (52%)  
107 late rent (35%)  
57 emergency out of hours calls (19%)  
207 damage caused by the tenant (68%)  
33 missed appointments (11%)  
67 for bounced cheques (22%)  
94 for other (31%)
- 5.8. Tenants commented that the amount that had been charged varied. Most tenants had been charged a fixed fee which varied from £15 plus VAT as the lowest and £60 as the highest single charge.
- 5.9. Similarly there was a wide range of amounts charged by landlords / agents, some referred to different ways of requiring payment for different defaults e.g. rent at amount plus percentage; repairs at cost; keys at a fixed rate. There were a number of respondents that cited they would charge a fixed rate which would include some added amount to take account of the landlord's (or other's) time. An almost equal amount of landlord / agents did not specify an amount other than the total cost of the loss.
- 5.10. There was some consensus on the basis on which late rent payment should be calculated with reference to the Bank of England base rate, either with or without an additional administration fee or penalty charge. The majority felt that they would charge the tenant as soon as the rent became due and not paid. A smaller number would allow a grace period before then instigating a fixed fee or percentage and this ranged from seven to fourteen days after the rent's due date. .
- 5.11. The majority of respondents felt that they would charge the tenant as soon as the rent became due and not paid. A smaller number would allow a grace period before then instigating a fixed fee or percentage and this ranged from seven to fourteen days after the rent's due date. The Minister herself did when recommending that the Committee reject Leanne Wood's amendment to make it 14 days at Stage 2 scrutiny. The Committee agreed with the Minister, therefore 7 days was chosen for this purpose.
- 5.12. A detailed analysis of the responses to the consultation is available on the Welsh Government's website. <https://gov.wales/renting-homes-fees-etc-wales-act-2019-default-fees-and-prescribed-information>



## **6. Additional research**

- 6.1. Research commissioned by the Welsh Government prior to introduction of the 2019 Act found 62% of agencies charged for lost keys, 40% for out of hours call outs and 34% for other maintenance call outs.
- 6.2. The average charge for lost keys was £20, for out of hours call outs £36 and for other maintenance call outs £30.
- 6.3. The research also found agents generally claimed that they would charge only the costs incurred for events such as replacing keys or unnecessary call outs. In many cases, they would simply ask the tenant to pay the contractor or key cutter directly. All of those interviewed said that tenants would not normally be charged for a callout unless they were in some way at fault. [https://gov.wales/sites/default/files/statistics-and-research/2019-07/170817-research-letting-agent-fees-tenants-en\\_0.pdf](https://gov.wales/sites/default/files/statistics-and-research/2019-07/170817-research-letting-agent-fees-tenants-en_0.pdf)

## **7. Stakeholder engagement**

- 7.1. Regular engagement, including meetings and email contact took place during the passage of the Renting Homes (Fees etc.) Bill. Discussions on permitted payments were held with key stakeholders, including the RLA, ARLA and Shelter Cymru, and their views through these mediums, as well as their responses to the public consultations helped to advise the policy intentions for these regulations.

## PART 2

### REGULATORY IMPACT ASSESSMENT

#### 8. Options

- 8.1. For the purpose of the Regulatory Impact Assessment two options have been modelled:

**Option One: Not make regulations under Schedule 1 Paragraph 6**

**Option Two: Make regulations prescribing and limiting default payments.**

- 8.2. The policy and approach around default payments were fully considered during the scrutiny of the Act. As such, alternative forms of legislation and non-legislative interventions have not been considered in this appraisal.

#### 9. Costs and Benefits

- 9.1. The costs and benefits associated with the two options have been produced using the best available information at the time of drafting the Regulations. This information has been prepared taking into consideration:

- The consultation on the making of the regulations  
<https://gov.wales/renting-homes-fees-etc-wales-act-2019-default-fees-and-prescribed-information>
- The consultation on the proposed legislation to ban fees  
<https://gov.wales/fees-charged-tenants-private-rented-sector>
- Costs previously identified in the Regulatory Impact Assessment for The Renting Homes (Fees etc.) (Wales) Act 2019  
<http://www.assembly.wales/laid%20documents/pri-ld11586-em-r/pri-ld11586-em-r-e.pdf>
- Research commissioned by the Welsh Government prior to introduction of the Renting Homes (Fees etc.) (Wales) Act  
[https://gov.wales/sites/default/files/statistics-and-research/2019-07/170817-research-letting-agent-fees-tenants-en\\_0.pdf](https://gov.wales/sites/default/files/statistics-and-research/2019-07/170817-research-letting-agent-fees-tenants-en_0.pdf)
- Information publically available from the private rented sector industry

#### 10. Option One: Not make regulations under Schedule 1 Paragraph 6

- 10.1. Paragraph 6 of Schedule 1 to the Renting Homes (Fees etc.) (Wales) Act 2019 permits a payment in the event of a default that is required under a standard occupation contract to be made in the event of a default by the contract-holder (subject to paragraph 6(3)) of Schedule 1).

- 10.2. If the regulations are not made there would be no prescribed limit in the case of rent not made by the due date and no limit placed on the additional description of default payments in respect of changing, adding or removing a lock giving access to a dwelling to which the contract relates and for a replacement key or other security device giving access to a dwelling..
- 10.3. From the consultation analysis 83% of respondents stated that fees were currently charged for defaults. The highest percentage charged for defaults were for damage (68%) and replacement keys (52%). Where the amount of fees were given they ranged from £30 - £80 for replacement keys or key cards; £15 - £100 for late rent; £30 - £40 for repairs arising from damages; emergency call outs £30 - £60; missed appointments £20 - £50; bounced cheques £20 - £50.
- 10.4. In addition research commissioned by the Welsh Government prior to introduction of the Renting Homes (Fees etc.) Act found the average charge for lost keys was £20, for out of hours call outs £36 and for other maintenance call outs £30.
- 10.5. Evidence suggests that the range of default payments currently being applied across the sector is not excessive and therefore we consider there is only a need to make Regulations in respect of two additional descriptions of default payments and to set a prescribed limit for late rent similar to that limit contained in paragraph 4 of the Tenant Fees Act 2019 (except in Wales, the default payment will accrue if rent is not paid before the end of seven days from the due date whereas in England the period is the end of 14 days from the due date).
- 10.6. Not making the Regulations in respect of a failure to make a payment of rent by the due date to the landlord could mean that contract-holders are pushed into financial difficulties as a result of excessive default payments most specifically for late rent. The Regulations will place a prescribed limit on these default payments to ensure landlords do not seek to recover income lost as a result of the prohibition on landlords and letting agents under sections 2 and 3 of the Act.
- 10.7. We will continue to monitor default payments and if there is evidence in the future of landlords and / or agents requiring disproportionate amounts, we will consider amending the Regulations or adding limits to additional default payments.

Option One Costs / Benefits	
Cost to landlord / agent	Cost to tenants
No additional cost as this option maintains the status quo.	Landlords /agents could increase payments where there is a breach of contract for replacement locks and / or late rent to offset losses incurred as a result of the 2019 Act.
Benefit to landlord / agent	Benefit to tenant
Landlords / agents could increase default fees for replacement locks / late rent to offset losses incurred as a result of the 2019 Act.	No benefit as this option maintains the status quo.

**11. Option Two: Make Regulations to specify descriptions and limits of default payments in relation to replacing keys, changing, adding or removing locks and in relation to late rent.** Option two limits the amount chargeable for a default in relation to:

- Replacing keys, changing, adding or removing a lock - actual costs
- Late rent - Bank of England base rate plus 3% on an APR basis

**11.2. Replacement Keys, changing, adding or removing locks**

11.3. Option two seeks to limit the payment in respect of replacing keys, changing, adding or removing a lock to the actual costs incurred by the landlord / agent.

11.4. Option two also makes provision for replacing keys and / or the changing of locks where this arises as a result of the fault of the contract holder. The restriction of this to actual costs is considered sufficient to prevent landlords seeking to use this as a way of maximising income from default payments.

**11.5. Late Rent**

11.6. Option two seeks to limit charges for late rent to the Bank of England base interest rate plus 3% as an annual percentage rate (APR). A late rent payment would only be permitted seven days after the rent due date.

Example:

Assuming that the Bank of England's (BoE) base rate is 0.75%. As any interest charged must not exceed the BoE's base rate +3%, the total interest that could be charged would be: (BoE base rate at 0.75%) +3% = 3.75%.

If a contract holder owed the landlord or agent £600:

1. The annual interest would be £22.50 ( $600 \times 0.0375 = 22.5$ )
2. £22.5 divided by 365 leaves the daily interest: approximately 6p a day ( $22.5 / 365 = 0.0616$ )
3. after 30 days this would be £1.85 ( $30 \times 0.0616 = 1.85$ )

- 11.7. Option two does not specify nor set a limits in respect of any other additional description of default payments. Although it should be noted that a payment in default cannot be charged unless there has been a breach of a term of the contract.

<b>Option Two Costs / Benefits</b>	
<b>Cost to landlord / agent</b>	<b>Cost to tenants</b>
<p><b>Replacing, changing, adding or removing locks</b> - Landlords / agents would be able to charge for the cost of replacing, changing, adding or removing locks and therefore would not incur any additional cost for the replacement. Landlords would not be able to recover the cost of their time to replace locks/keys where a contractor/locksmith is not being used.</p> <p><b>Late Rent</b> – Default payments for late rent would be calculated using the formula outlined above.</p> <p>It should be noted that payments in default are ad hoc payments that currently incur only a small charge it is therefore, unlikely to have any significant financial impact on the landlord / agent.</p> <p>Default payments for other breaches of contract is still permissible under the Act and therefore no additional cost will be incurred by the landlord / agent for other breaches.</p>	<p><b>Replacing, changing, adding or removing locks</b> - Costs to the tenant would be the actual costs incurred by the landlord / agent for replacement of locks. There is a risk that landlords would use a locksmith routinely, instead of replacing locks/keys themselves as they are not able to charge the cost of their time, and this may result in slightly higher costs for tenants where a locksmith would previously not have been used.</p> <p><b>Late Rent</b> – Cost to the tenant would be limited to the formula outlined above.</p>
<b>Benefit to landlord / agent</b>	<b>Benefit to tenant</b>

<p><b>Replacing, changing, adding or removing locks</b> - Landlords / agents would have clearly defined limits for which they would be able to charge i.e. only for the actual cost of the replacement lock or if a locksmith has replaced the lock labour costs are able to be passed to the contract holder.</p> <p><b>Late rent</b> - In the case of late rent a cap for payments for late rent would provide clarity.</p>	<p><b>Replacing, changing, adding or removing locks</b> - Charges for replacing, changing, adding or removing locks would be prescribed and therefore remove uncertainty for the tenant.</p> <p><b>Late rent</b> - Limiting the amount of late rent payments would also help to prevent tenants falling into further financial difficulty due to additional charges being imposed.</p>
<p>Where the landlord currently charges an amount for replacing locks/keys which is above the actual cost, these Regulations will result in a transfer<sup>1</sup> from the landlord to the tenant which is equal to the difference between the amount currently charged and the actual cost. Similarly, where a landlord charges an amount for the late payment of rent which is above the amount which will be permitted under these Regulations, there will be transfer from the landlord to the tenant which is equal to the amount currently charged less the permitted amount. No data is available on the frequency with which these charges are applied and so it is not possible to calculate the aggregate impact on landlords or tenants. However, the net economic impact of these transfers will be zero.</p>	

**Option two is the preferred option.**

---

<sup>1</sup> In this case, a cost to the landlord and an equivalent benefit to the tenant relative to the baseline scenario.

## **Specific impact tests**

### **Welsh Language**

These Regulations are not considered to have any direct positive or adverse impact on the Welsh Language.

### **Equalities Impact Assessment**

The equalities impact assessment undertaken for the Act indicated that the legislation would not have any negative implications for people with protected characteristics. These regulations do not make any additional impact on equalities.

### **Children's Rights**

The children's rights impact assessment undertaken for the Act indicated that the legislation would not produce any negative impacts on children and young people and there was no conflict with UNCRC identified.

### **Privacy**

The privacy impact assessment undertaken for the Act indicated that the legislation would not produce any new requirements relating to privacy or the sharing of information. These regulations do not make any additional impact on privacy.

### **Justice Impact Assessment**

The justice impact assessment undertaken for the Act indicated that the legislation was likely to have little or no impact on the justice system. These regulations do not make any additional impact on the justice system.

## Competition Assessment

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

## Post implementation review

The effects of these regulations will be reviewed alongside the implementation of Act in general. Rent Officers will be collecting information about rent levels so we can gauge whether there has been a marked increase in rent as a result of the ban on fees as some stakeholders suggested. Policy officials will be monitoring the effects of the legislation more widely through regular meetings with stakeholders, including Rent Smart Wales and local authorities.



# Agenda Item 3.1

## SL(5)496 – The European Union (Withdrawal Agreement) Act 2020 (Disapplication of the Deferral of Subordinate Legislation) (Wales) (EU Exit) Regulations 2020

### Background and Purpose

---

Part 4 of the withdrawal agreement provides for the implementation period (or transition period).

Paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (the 2020 Act) gives legal effect to the implementation period by non-textually amending the coming into force dates of subordinate legislation which come into force immediately before exit day, on exit day or at any time after exit day. This subordinate legislation will instead come into force immediately before the end of the implementation period (IP completion day), on IP completion day or (as the case may be) at the time concerned after IP completion day.

Regulation 2 provides that paragraph 1(1) of Schedule 5 will not apply to the Elections (Wales) (Amendment) (EU Exit) Regulations 2019 so they will continue to come into force on exit day.

### Procedure

---

None.

### Scrutiny under Standing Order 21.7

---

One point is identified for reporting under Standing Order 21.7 in respect of these Regulations (see below).

### Implications arising from exiting the European Union

---

**One point is identified for reporting under Standing Order 21.7 in respect of these Regulations.**

1. We note that deferring the commencement of exit-related subordinate legislation adds further complexity to the already over-complex statute book. Further, the fact that the deferral is being done by non-textual amendment (i.e. the text of the commencement provisions of the exit-related subordinate legislation are not actually being changed, rather an interpretive gloss is applied to them, by virtue of paragraph 1 of Schedule 5 to the 2020 Act) does not help accessibility to the law.

While we accept that changing the text of the commencement provisions of all exit-related subordinate legislation might well be a disproportionate approach in the circumstances, we believe that readers of the legislation should at least be signposted to the interpretive gloss that is applied by paragraph 1 of Schedule 5 to the 2020 Act.

### Government Response

---

No government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**  
**5 February 2020**



Cynulliad Cenedlaethol Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales  
**Legislation, Justice and Constitution Committee**

---

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

---

**2020 No. 93 (W. 15)**

**EXITING THE EUROPEAN  
UNION, WALES**

The European Union (Withdrawal  
Agreement) Act 2020  
(Disapplication of the Deferral of  
Subordinate Legislation) (Wales)  
(EU Exit) Regulations 2020

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 4 of the withdrawal agreement provides for the implementation period (or transition period).

Paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) gives legal effect to the implementation period by non-textually amending the coming into force dates of subordinate legislation which come into force immediately before exit day, on exit day or at any time after exit day. This subordinate legislation will instead come into force immediately before the end of the implementation period (IP completion day), on IP completion day or (as the case may be) at the time concerned after IP completion day.

Regulation 2 provides that paragraph 1(1) of Schedule 5 will not apply to the Elections (Wales) (Amendment) (EU Exit) Regulations 2019 so they will continue to come into force on exit day.

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

---

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

---

**2020 No. 93 (W. 15)**

**EXITING THE EUROPEAN  
UNION, WALES**

**The European Union (Withdrawal  
Agreement) Act 2020  
(Disapplication of the Deferral of  
Subordinate Legislation) (Wales)  
(EU Exit) Regulations 2020**

*Made*

*30 January 2020*

*Coming into force in accordance with  
regulation 1*

The Welsh Ministers, in exercise of the power conferred by paragraph 1(3)(a) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020(1), makes the following Regulations.

As required by paragraph 2(4) of Schedule 5 to that Act, a Minister of the Crown(2) has been consulted before the making of these Regulations.

**Title and commencement**

**1.** The title of these Regulations is the European Union (Withdrawal Agreement) Act 2020 (Disapplication of the Deferral of Subordinate Legislation) (Wales) (EU Exit) Regulations 2020 and they come into force on the day after the day on which they are made.

**Disapplication of the deferral of subordinate legislation**

**2.** Paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 does not

- 
- (1) 2020 (c. 1). See paragraph 1(6) of Schedule 5 to that Act for the definition of “appropriate authority” and section 39(1) for the definition of “devolved authority”.  
(2) See section 39(1) of that Act for the definition of a “Minister of the Crown”.

apply to the Elections (Wales) (Amendment) (EU Exit) Regulations 2019<sup>(1)</sup>.

*Mark Drakeford*

First Minister, one of the Welsh Ministers

30 January 2020

---

<sup>(1)</sup> S.I. 2019/115 (W. 29).



Ein cyf/Our ref: MA/FM/0135/20

Mick Antoniw AM  
Chair of Constitutional Affairs and Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

30 January 2020

Dear Mick

I am writing to keep you informed of developments in the EU Exit SI programme, now that the European Union (Withdrawal Agreement) Act 2020 (the 2020 Act) has become law.

In preparation for a no deal exit, the UK government and the devolved administrations made a large number of correcting SIs to ensure that the UK statute book would be operable once the UK ceased to be a member of the EU and EU law ceased to apply to, and within, the UK. These SIs were mainly made under the EU (Withdrawal) Act 2018 powers, though a handful were made under other powers where the EU (Withdrawal) Act powers would not achieve the outcome sought. These SIs are due to come into force on exit day.

The 2020 Act, among other things, provides that most EU law will continue to apply in the UK until the end of the transition period. Therefore the EU exit SIs will need to be deferred until the end of the transition period, to avoid a situation where the UK's statute books would be out of step with the requirements of EU law as applied by virtue of the Withdrawal Agreement.

This deferral will be achieved by paragraph 1 of Schedule 5 to the 2020 Act. It has the effect of non-textually amending the coming into force date for these SIs from immediately before exit day, on exit day, or any time after exit day to immediately before the end of the implementation period, the end of the implementation period, or any time after, as the case may be. The coming into force of all EU Exit SIs, regardless of the powers under which they are made, will be deferred unless they are exempt in regulations.

The Withdrawal Agreement provides that most, but not all, EU law will continue to apply in the UK until the end of transition. The UK will no longer be represented politically at the EU level and this means that some EU Exit SIs will, for example, need to come into force on exit day because there will no longer be MEPs representing the UK.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

[YP.PrifWeinidog@llyw.cymru](mailto:YP.PrifWeinidog@llyw.cymru) • [ps.firstminister@gov.wales](mailto: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.

This will be achieved, for Wales, by regulations specifying which provisions of EU Exit SIs will be exempt from the deferral and will come into force on exit day. Therefore, using powers under the 2020 Act, I have made the European Union (Withdrawal Agreement) Act 2020 (Disapplication of the Deferral of Subordinate Legislation) (Wales) (EU Exit) Regulations 2020. This SI exempts the Elections (Wales) (Amendment) (EU Exit) Regulations 2019 from the mass deferral provided for by paragraph 1 of Schedule 5 to the 2020 Act.

The 2020 Act makes provision so that EU law will be retained as it stands at the end of the transition period. The EU Exit SIs are drafted to reflect EU law at exit day. It is likely that there will be developments in EU law between now and the end of transition. In which case, there will be further SIs made during the transition to ensure that the UK's statute book accurately reflects retained EU law on 31 December 2020. We are not anticipating a significant number of SIs to achieve this, and we will continue to keep you informed of progress in this area.

The UK Government has announced a number of Bills for the transition period, which would establish new approaches for the UK outside of the EU on matters such as immigration. These Bills, and the outcome of the negotiations for a future relationship between the UK and the EU could have the effect of superseding EU Exit SIs in these areas, and therefore the relevant SIs would be revoked or amended before they came into force.

Best Wishes

A handwritten signature in dark ink, appearing to read 'Mark', with a stylized, cursive script.

**MARK DRAKEFOD**



Llywodraeth Cymru  
Welsh Government

Julie James AC/AM  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

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

6 February 2020

Dear Mick,

**Local Government and Elections (Wales) Bill - Further information following the meeting held on 3 February 2020**

Further to my appearance at Committee on 3 February, I enclose drafts of the proposed stage 2 amendments relating to the extension of the franchise for local government elections to certain prisoners and young people in custody from Wales.

The drafts are substantially developed and address the key issues about the proposed enfranchisement, residence and registration; we shall share the drafts with other interested persons also. We shall have the opportunity to refine the drafts in light of comments received from the Committee and others, before tabling the amendments at stage 2.

I look forward to receiving any views or comment the Committee may have on these draft provisions.

Yours sincerely,

**Julie James AC/AM**  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto: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.

## RHESTR O WELLIANNAU DRAFFT LIST OF DRAFT AMENDMENTS

### Bil Llywodraeth Leol ac Etholiadau (Cymru) Local Government and Elections (Wales) Bill Gwelliannau drafft estyn y bleidlais i garcharorion Draft prisoner voting amendments 27 Ionawr 2020 27 January 2020

---

<b>Julie James</b>	<b>1</b>
Section 2, page 2, line 11, leave out subsection (2).	
Adran 2, tudalen 2, llinell 11, hepgorer is-adran (2).	
<b>Julie James</b>	<b>2</b>
Section 2, page 2, after line 15, insert—	
‘(3) In section 3 of the 1983 Act (disenfranchisement offenders in prison etc.)—	
(a) in subsection (1), after “election” insert “, unless subsection (1A) applies to that person”;	
(b) after subsection (1) insert—	
“(1A) A convicted person is not legally incapable of voting at a local government election in Wales by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term of less than 4 years.	
(1B) But subsection (1A) does not apply if the convicted person is incapable of voting in a local government election by virtue of section 173 (persons convicted of corrupt or illegal practice).	
(1C) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on the person—	
(a) on the same occasion, or	



- (b) on different occasions but the person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”
- (c) In subsection (2), for “this purpose” substitute “the purposes of this section”.’.

Adran 2, tudalen 2, ar ôl llinell 15, mewnosoder –

‘(3) Yn adran 3 o Ddeddf 1983 (difreinio troseddwyd sydd yn y carchar etc.) –

- (a) yn is-adran (1), ar ôl “election” mewnosoder “, unless subsection (1A) applies to that person”;
- (b) ar ôl is-adran (1) mewnosoder –
  - “(1A) A convicted person is not legally incapable of voting at a local government election in Wales by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term of less than 4 years.
  - (1B) But subsection (1A) does not apply if the convicted person is incapable of voting in a local government election by virtue of section 173 (persons convicted of corrupt or illegal practice).
  - (1C) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on the person –
    - (a) on the same occasion, or
    - (b) on different occasions but the person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”
- (c) Yn is-adran (2), yn lle “this purpose” rhodder “the purposes of this section”.’.

**Julie James**

**3**

Page 2, after line 24, insert a new section –

**‘3 Consequential amendments to retain existing franchise for Senedd Cymru elections**

In section 12 of the Government of Wales Act 2006 (c. 32) (entitlement to vote in Senedd elections) –

- (a) in subsection (1)(a), for “or fall within the extended franchise for Senedd elections as described in this section” substitute “, except those entitled to vote in such an election by virtue of section 3(1A) of the Representation of the People Act 1983 (c. 2)”;
- (b) omit subsection (1A);
- (c) omit subsection (1B).’.

Tudalen 2, ar ôl llinell 25, mewnosoder adran newydd –

**‘3 Diwygiadau canlyniadol i barhau’r etholfraint bresennol yn etholiadau Senedd Cymru**

Yn adran 12 o Ddeddf Llywodraeth Cymru 2006 (p. 32) (hawlogaeth i bleidleisio yn etholiadau’r Senedd) –

- (a) yn is-adran (1)(a), yn lle “or fall within the extended franchise for Senedd elections as described in this section” rhodder “, except those entitled to vote in such an election by virtue of section 3(1A) of the Representation of the People Act 1983 (c. 2)”;
- (b) hepgorer is-adran 1A);
- (c) hepgorer is-adran (1B).’.

**Julie James**

**4**

Section 3, page 2, after line 33, insert –

- ‘(3) Despite the coming into force of the amendments made by the provisions mentioned in subsection (4) by virtue of section 171(3), they only have effect for the purposes of an election for membership of Senedd Cymru at which the poll is held on or after 5 April 2021.
- (4) The provisions are –
  - (a) section 2, so far as it has consequential effects on section 12 of the Government of Wales Act 2006 (c. 32);
  - (b) section [*inserted by amendment 3*];
  - (c) paragraph 8(3)(b) of Schedule 2.’.

Adran 3, tudalen 2, ar ôl llinell 36, mewnosoder –

- ‘(3) Er gwaethaf y ffaith bod y diwygiadau a wneir gan y darpariaethau a grybwyllir yn is-adran (4) yn dod i rym yn rhinwedd adran 171(3), nid ydynt ond yn cael effaith at ddibenion etholiad ar gyfer aelodaeth o Senedd Cymru pan gynhelir y bleidlais ar 5 Ebrill 2021 neu ar ôl hynny.
- (4) Y darpariaethau yw –
  - (a) adran 2, i’r graddau y mae ganddi effeithiau canlyniadol ar adran 12 o Ddeddf Llywodraeth Cymru 2006 (p. 32);
  - (b) adran [*a fewnosodir gan welliant 3*];
  - (c) paragraff 8(3)(b) o Atodlen 2.’.

**Julie James**

**5**

Section 171, page 108, line 18, after ‘2’, insert ‘and [*section inserted by amendment 3*]’.

Adran 171, tudalen 108, llinell 18, ar ôl ‘2’, mewnosoder ‘a [*adran a fewnosodir gan welliant 3*]’.

**Julie James**

**6**

Schedule 2, page 119, after line 10, insert –

‘(2) In section 7A (residence: persons remanded in custody etc.) –

(a) after subsection (1) insert –

“(1A) But this section does not apply to the registration of local government electors in Wales.”;

(b) in subsection (6), after “In this section” insert “and section 7AA”.

(3) After section 7A insert –

**“7AA Residence of persons in custody for registration of local government electors in Wales**

(1) This section applies to the registration of local government electors in Wales.

(2) Subsection (3) applies to –

(a) a person to whom section 3(1A) applies (convicted person detained and sentenced to a term of less than 4 years), and

(b) a person who is detained at any place pursuant to a relevant order or direction and is so detained otherwise than after –

(i) being convicted of any offence, or

(ii) a finding in criminal proceedings that the person did the act or made the omission charged.

(3) In determining whether the person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by reason of the person’s detention if –

(a) the person –

(i) intends to resume actual residence there when released from detention (other than on temporary release), and

(ii) will not be prevented from doing so by an order of any court, or

(b) the dwelling serves as a permanent place of residence (whether for the person alone or with other persons) and the person would be in actual residence there but for the convicted person’s detention.

(4) In determining whether the person is resident in a place on the relevant date for the purposes of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by the person’s detention if –

(a) a declaration of local connection is in force in respect of the person, and

- (b) the declaration was made by virtue of the person falling within section 7B(2)(c)."
- (4) In section 7B (notional residence: declarations of local connection) –
  - (a) in subsection (2A) –
    - (i) omit paragraph (a);
    - (ii) in paragraph (b), for “paragraphs (a) to (c)” substitute “paragraphs (a) or (c)”;
    - (iii) in paragraph (c), after “(2B)” insert “or (2E)”;
  - (b) for subsection (2B) substitute –
    - “(2B) The requirements are that the person –
      - (a) is under 18 years of age and is, or has been, a child who is looked after by a local authority, or
      - (b) is being kept in secure accommodation.”;
  - (c) omit subsection (2C);
  - (d) after subsection (2D) insert –
    - “(2E) In relation to the registration of local government electors in Wales, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1), is a person –
      - (a) to whom section 7AA applies (persons in custody), and
      - (b) who would not be entitled to be registered as resident at the place in which the person is in legal custody by virtue of section 5(6) or any other place by virtue of section 7AA.”;
  - (e) in subsection (4), after paragraph (c) insert –
    - “(d) in the case of a person falling within subsection (2E) –
      - (i) the address in Wales where the person would be residing but for the person’s detention,
      - (ii) if the person cannot give an address under subparagraph (i), the address in Wales at which the person was resident immediately before the person’s detention (but not the address of a penal institution), or if the person was homeless at that time, the address of, or which is nearest to, a place in Wales where the person commonly spent a substantial part of the person’s time (whether during the day or night), or
      - (iii) if the person can only give an address under paragraph (i) or (ii) at which the person would be prevented from residing because of an order of any court (“the prohibited address”), an address used by a council of a county or county borough in Wales in whose area the prohibited address is located.”;
  - (f) in subsection (7B)(a), after “(2A)” insert “or (2E)”;

(g) after subsection (7C), insert –

“(7D) In a relevant declaration, a person may not give an address under subsection (3)(a)(i) or subsection (4)(d)(i) or (ii) at which the person would be prevented from residing because of an order of a court.”.

Atodlen 2, tudalen 119, ar ôl llinell 11, mewnosoder –

‘(2) Yn adran 7A (preswylfa: personau sydd wedi eu remandio yn y ddalfa etc.) –

(a) ar ôl is-adran (1) mewnosoder –

“(1A) But this section does not apply to the registration of local government electors in Wales.”;

(b) yn is-adran (6), ar ôl “In this section” mewnosoder “and section 7AA”.

(3) Ar ôl is-adran 7A mewnosoder –

**“7AA Residence of persons in custody for registration of local government electors in Wales**

(1) This section applies to the registration of local government electors in Wales.

(2) Subsection (3) applies to –

(a) a person to whom section 3(1A) applies (convicted person detained and sentenced to a term of less than 4 years), and

(b) a person who is detained at any place pursuant to a relevant order or direction and is so detained otherwise than after –

(i) being convicted of any offence, or

(ii) a finding in criminal proceedings that the person did the act or made the omission charged.

(3) In determining whether the person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by reason of the person’s detention if –

(a) the person –

(i) intends to resume actual residence there when released from detention (other than on temporary release), and

(ii) will not be prevented from doing so by an order of any court, or

(b) the dwelling serves as a permanent place of residence (whether for the person alone or with other persons) and the person would be in actual residence there but for the convicted person’s detention.

- (4) In determining whether the person is resident in a place on the relevant date for the purposes of section 4(3)(a), the person's residence is not to be taken to have been interrupted by the person's detention if-
  - (a) a declaration of local connection is in force in respect of the person, and
  - (b) the declaration was made by virtue of the person falling within section 7B(2)(c)."
- (4) Yn adran 7B (preswylfa dybiannol: datganiadau o gysylltiad lleol) –
  - (a) yn is-adran (2A) –
    - (i) hepgorer paragraff (a);
    - (ii) ym mharagraff (b), yn lle "paragraphs (a) to (c)" rhodder "paragraphs (a) or (c)";
    - (iii) ym mharagraff (c), ar ôl "(2B)" mewnosoder "or (2E)";
  - (b) yn lle is-adran (2B) rhodder –
    - "(2B) The requirements are that the person –
      - (a) is under 18 years of age and is, or has been, a child who is looked after by a local authority, or
      - (b) is being kept in secure accommodation.";
  - (c) hepgorer is-adran (2C);
  - (d) ar ôl is-adran (2D) mewnosoder –
    - "(2E) In relation to the registration of local government electors in Wales, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1), is a person –
      - (a) to whom section 7AA applies (persons in custody), and
      - (b) who would not be entitled to be registered as resident at the place in which the person is in legal custody by virtue of section 5(6) or any other place by virtue of section 7AA.";
  - (e) yn is-adran (4), ar ôl paragraff (c) mewnosoder –
    - "(d) in the case of a person falling within subsection (2E) –
      - (i) the address in Wales where the person would be residing but for the person's detention,
      - (ii) if the person cannot give an address under subparagraph (i), the address in Wales at which the person was resident immediately before the person's detention (but not the address of a penal institution), or if the person was homeless at that time, the address of, or which is nearest to, a place in Wales where the person commonly spent a substantial part of the person's time (whether during the day or night), or

- (iii) if the person can only give an address under paragraph (i) or (ii) at which the person would be prevented from residing because of an order of any court (“the prohibited address”), an address used by a council of a county or county borough in Wales in whose area the prohibited address is located.”;
- (f) yn is-adran (7B)(a), ar ôl “(2A)” mewnosoder “or (2E)”;
- (g) ar ôl is-adran (7C), mewnosoder –
  - “(7D) In a relevant declaration, a person may not give an address under subsection (3)(a)(i) or subsection (4)(d)(i) or (ii) at which the person would be prevented from residing because of an order of a court.”.

**Julie James**

7

Schedule 2, page 123, after line 7, insert –

- ‘(b) in paragraph 2 (manner of voting), after sub-paragraph (6) insert –
  - “(6ZA) In relation to a local government election in Wales, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”;
- (c) in paragraph 3(3) (absent vote at elections for definite or indefinite period) –
  - (i) in paragraph (c) omit the “or” at the end of the paragraph;
  - (ii) at the end of paragraph (d) insert “, or”;
  - (iii) after paragraph (d) insert –
    - “(e) in the case of local government elections in Wales, if the person is a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies,”.

Atodlen 2, tudalen 123, ar ôl llinell 7, mewnosoder –

- ‘(b) ym mharagraff 2 (y modd o bleidleisio), ar ôl is-baragraff (6) mewnosoder –
  - “(6ZA) In relation to a local government election in Wales, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”;

- (c) ym mharagraff 3(3) (pleidlais absennol mewn etholiadau am gyfnod penodol neu amhenodol) –
- (i) ym mharagraff (c) hepgorer yr “or” ar ddiwedd y paragraff;
  - (ii) ar ddiwedd paragraff (d) mewnosoder “, or”;
  - (iii) ar ôl paragraff (d) mewnosoder –
    - “(e) in the case of local government elections in Wales, if the person is a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies,”.

**Julie James**

8

Schedule 2, page 123, after line 14, insert –

- ‘(5B) A person is not capable of voting as proxy at a local government election in Wales if on the date of the election section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies to the person.’.

Atodlen 2, tudalen 123, ar ôl llinell 14, mewnosoder –

- ‘(5B) A person is not capable of voting as proxy at a local government election in Wales if on the date of the election section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies to the person.’.

**Julie James**

9

Schedule 2, page 124, after line 18, insert –

- ‘(2) Omit sections 10 and 11.’.

Atodlen 2, tudalen 124, ar ôl llinell 19, mewnosoder –

- ‘(2) Hepgorer adrannau 10 ac 11.’.



Document is Restricted

# Agenda Item 7

## LEGISLATIVE CONSENT MEMORANDUM

### BIRMINGHAM COMMONWEALTH GAMES BILL [HL] 2019-20

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Birmingham Commonwealth Games Bill (the “Bill”) was introduced in the House of Lords on 7 January 2020. The Bill can be found at:

<https://services.parliament.uk/Bills/2019-20/birminghamcommonwealthgames.html>

#### Policy Objective(s)

3. The UK Government’s stated policy objectives are to address a small number of areas which require a legislative response in respect of the preparations for the Commonwealth Games, which are due to take place in Birmingham in 2022.

#### Summary of the Bill

4. The Bill is sponsored by the Department for Digital, Culture, Media and Sport.
5. The Bill makes provision for the Commonwealth Games that are to be held principally in Birmingham in 2022 and for connected purposes.
6. This Bill provides for the delivery of a small number of temporary operational measures required to support successful delivery of the Commonwealth Games in 2022 to be held predominantly in Birmingham. It provides United Kingdom Ministers and the Organising Committee with the powers necessary to ensure delivery of aspects of the Games relating to funding of the Organising Committee, provisions regarding association with the Games, ticket touting, advertising and trading and transport.

#### Provisions in the Bill for which consent is required

7. Part 3 – Touting, Advertising and Trading Offences - Touting  
Section 10 creates a temporary new offence to tout a Games ticket under specific circumstances. A person guilty of an offence under this section is liable to a fine.

8. Schedule 2 Section 10 – Ticket Touting: Providers Of Information Society Services

Schedule 2 is ancillary to the main ticketing offence in Section 10. It provides exceptions from the commission of the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information without knowledge that its provision constitutes an offence under section 10.

9. Consent is required for these sections because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to the promotion of tourism and the economy of Wales. Although 'consumer protection' is a reserved matter under Schedule 7A of the Government of Wales Act 2006, the purpose of these provisions is to protect the brand and reputation of sporting venues in Wales which in turn helps to promote tourism and the economy of Wales which are both devolved matters.
10. Additionally, the provisions also fall within the legislative competence of the National Assembly for Wales in so far as they relate to the local authority functions of making byelaws. Preventing obstruction or nuisance by ticket touting could be something which falls within the good rule and government power in section 235 of the Local Government Act 1972. As the Assembly could legislate on these matters, then it could potentially legislate about the powers of local authorities to make byelaws where touting is causing a nuisance within its area.

**Reasons for making these provisions for Wales in the Birmingham Commonwealth Games Bill**

11. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill. The Bill creates a temporary offence around touting Games tickets. It is therefore appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales. It is also practical for reasons of timing and coherence. Taking the ticket touting offence forward in this UK Bill will enable it to be enacted across Wales at the same time as England.

**Financial implications**

12. There are no direct additional financial implications for the Welsh Government resulting from this Bill.
13. Part 3 of the Bill, Touting, Advertising and Trading Offences – Touting creates a new offence to tout a Games ticket under specific circumstances. A person guilty of an offence under this section is liable to a fine. The Justice Impact Assessment undertaken by the DCMS indicated that, based on the number of prosecutions for ticketing offences in London 2012 and the 2014 Glasgow Commonwealth Games there

would be fewer than five cases brought under the offence each year from when tickets go on sale to 2022 across the UK. The implication for Wales is therefore potential for one prosecution case at the most. DCMS has confirmed they have agreed to meet any downstream costs to the justice system in England and Wales arising from prosecutions under this offence.

## **Conclusion**

14. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales.

**Yr Arglwydd Elis-Thomas AC/ AM**  
**Deputy Minister, Culture, Sport and Tourism**  
**January 2020**

# The Welsh Government's Legislative Consent Memorandum on the Birmingham Commonwealth Games Bill

October 2019

## Background

### The Bill

#### Overview

---

**1.** The Birmingham Commonwealth Games Bill received its first reading in the House of Lords on 5 June 2019 and is sponsored by the Department for Digital, Culture, Media and Sport.

**2.** The explanatory notes to the Bill (as introduced) state that:

“This Bill provides for a number of operational measures required to support the delivery of the 2022 Commonwealth Games to be held predominantly in Birmingham (and venues across the West Midlands). It provides United Kingdom ministers and the Organising Committee with the powers necessary to ensure delivery of aspects of the Games relating to funding of the Organising Committee, provisions regarding



association with the Games, ticket touting, advertising and trading and transport.”<sup>1</sup>

**3.** Annex A to the explanatory notes sets out the UK Government's assessment of territorial extent and application in the United Kingdom.<sup>2</sup>

**4.** In addition, the explanatory notes state:

“We note that aspects of advertising and trade are reserved in Schedule 5 to the Scotland Act 1998 and Schedule 7A to the Government of Wales Act 2006, but consider the main purpose of the provisions is to host a successful sports event, in particular, to protect the commercial rights of sponsors and provide a good Games experience for spectators.”<sup>3</sup>

**5.** The Bill completed Report Stage in the House of Lords on 24 July 2019.

---

#### The Welsh Government's Legislative Consent Memorandum

---

**6.** In accordance with Standing Orders 29.1 and 29.2, a Legislative Consent Memorandum (LCM) is required because provisions within the Bill modify or fall within the National Assembly's legislative competence.

**7.** On 19 June 2019, the Deputy Minister for Culture, Sport and Tourism laid before the National Assembly an LCM in respect of the Bill.<sup>4</sup>

**8.** On 25 June 2019, the Business Committee referred the LCM to this Committee, and the Economy, Infrastructure and Skills Committee for consideration. The Business Committee set a reporting deadline of 3 October 2019.<sup>5</sup>

---

<sup>1</sup> Birmingham Commonwealth Games Bill: Explanatory Notes, June 2019

<sup>2</sup> Birmingham Commonwealth Games Bill: Explanatory Notes, Annex A, June 2019

<sup>3</sup> Birmingham Commonwealth Games Bill: Explanatory Notes, Annex A, June 2019

<sup>4</sup> Welsh Government, Legislative Consent Memorandum, Birmingham Commonwealth Games Bill, June 2019

<sup>5</sup> Business Committee, Timetable for consideration of the Legislative Consent Memorandum on the Birmingham Commonwealth Games Bill, June 2019

**9.** Paragraphs seven to 10 of the LCM set out the Welsh Government's assessment of which provisions in the Bill require consent, namely clause 9 and Schedule 1.<sup>6</sup>

**10.** Clauses 9(1) to (3) establish that it is a criminal offence for a person to sell, offer to sell, or expose for sale a Games ticket without authorisation from the Organising Committee. The offence is committed where it is carried out in a public place, in the course of a business (including at face value or below), or where the intention is for any person to make a profit from the sale of the ticket.

**11.** It does not cover a person giving away their ticket informally for free or for payment of up to the face value of the ticket, unless this activity takes place in a public place.

**12.** Clause 9(3)(d) also makes it an offence to advertise that a ticket is available for purchase. However, by virtue of subsection (4), this does not apply where a person advertises that a Games ticket is available to purchase from someone else and the person advertising the ticket did not know, or could not be expected to know, that the ticket was being touted.

**13.** Schedule 1(2) provides exceptions from the commission of the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information without knowledge that its provision constitutes an offence under clause 9. Once they become aware that their services are being used for touting tickets, however, the service provider must withdraw those services in the shortest reasonable time.

**14.** Paragraph 11 of the LCM sets out the Welsh Government's reasons why including provision for Wales in the Bill is appropriate:<sup>7</sup>

“The Bill creates a temporary offence around touting Games tickets. It is therefore appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales. It is also practical for reasons of

---

<sup>6</sup> Welsh Government, Legislative Consent Memorandum, Birmingham Commonwealth Games Bill, June 2019

<sup>7</sup> Welsh Government, Legislative Consent Memorandum, Birmingham Commonwealth Games Bill, June 2019

timing and coherence. Taking the ticket touting offence forward in this UK Bill will enable it to be enacted across Wales at the same time as England.”

## Committee consideration

**15.** We considered the Welsh Government's LCM in respect of the Bill at our meetings on 15 July and 16 September 2019.<sup>8</sup>

### Our view

**16.** We note the Welsh Government's assessment that clause 9 of and Schedule 1 to the Bill (as introduced) require consent. We also note the Welsh Government's reasons as to why, in its view, making provision for Wales in the Bill is appropriate.

**17.** We further note that the UK Government's assessment is that clauses 12 to 28 of and Schedule 2 to the Bill (as introduced) would also be within the legislative competence of the National Assembly. In our view, consent to these clauses and Schedule is not necessary.

---

<sup>8</sup> Constitutional and Legislative Affairs Committee, 15 July 2019 and 16 September 2019



# Agenda Item 8

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

Document is Restricted