

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 16 March 2020

Meeting time: 13.00

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6565

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

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**1 Introduction, apologies, substitutions and declarations of interest**  
13.00

**2 Legislative Consent Memorandum on the Fisheries Bill: Evidence session**

13.00–13.45

(Pages 1 – 72)

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

Gareth Bevington, Deputy Director – Marine & Fisheries, Welsh Government

Tamsin Brown, UK Fisheries Bill Manager, Welsh Government

## [Fisheries Bill 2019–21](#)

CLA(5)–10–20 – Briefing 1

CLA(5)–10–20 – Paper 1 – Legislative Consent Memorandum

CLA(5)–10–20 – Paper 2 – Legal Advice Note

CLA(5)–10–20 – Paper 3 – Research briefing

CLA(5)–10–20 – Paper 4 – UK Bills relating to exiting the EU: Briefing

**3 Legislative Consent Memorandum on the Agriculture Bill: Evidence session**

13.45–14.30

(Pages 73 – 137)

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

James Owen, Deputy Director for Land Management Reform, Welsh Government

Lam Tran, Brexit Policy Advisor, Welsh Government



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Cenedlaethol  
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## [Agriculture Bill 2019–21](#)

CLA(5)–10–20 – Briefing 2

CLA(5)–10–20 – Paper 5 – Legislative Consent Memorandum

CLA(5)–10–20 – Paper 6 – Written statement by the Welsh Government

CLA(5)–10–20 – Paper 7 – Legal Advice Note

CLA(5)–10–20 – Paper 8 – Research briefing

## **4 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

### **4.1 SL(5)513 – The Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020**

(Pages 138 – 146)

CLA(5)–10–20 – Paper 9 – Report

CLA(5)–10–20 – Paper 10 – Regulations

CLA(5)–10–20 – Paper 11 – Explanatory Memorandum

### **4.2 SL(5)516 – The Health Protection (Notification) (Wales) (Amendment) Regulations 2020**

(Pages 147 – 156)

CLA(5)–10–20 – Paper 12 – Report

CLA(5)–10–20 – Paper 13 – Regulations

CLA(5)–10–20 – Paper 14 – Explanatory Memorandum

CLA(5)–10–20 – Paper 15 – Letter from the Minister for Finance and Trefnydd  
to the Llywydd, 6 March 2020

## **5 Paper(s) to note**

14.35–14.40

### **5.1 Letters from the Minister for Finance and Trefnydd: Finance Ministers’ Quadrilateral**

(Pages 157 – 158)

**CLA(5)–10–20 – Paper 16** – Letter from the Minister for Finance and  
Trefnydd, 9 March 2020

**CLA(5)–10–20 – Paper 17** – Letter from the Minister for Finance and  
Trefnydd, 11 March 2020

**5.2 Letter from the Minister for Environment, Energy and Rural Affairs: The  
Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales)  
Regulations 2020**

(Pages 159 – 161)

**CLA(5)–10–20 – Paper 18** – Letter from the Minister for Environment, Energy  
and Rural Affairs, 10 March 2020

**CLA(5)–10–20 – Paper 19** – Letter to the Minister for Environment, Energy  
and Rural Affairs, 2 March 2020

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

14.40

**7 Legislative Consent Memorandum on the Fisheries Bill:  
Consideration of evidence**

14.40–15.00

**8 Legislative Consent Memorandum on the Agriculture Bill:  
Consideration of evidence**

15.00–15.20

**Date of the next meeting – 23 March 2020**

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## **LEGISLATIVE CONSENT MEMORANDUM**

### **Fisheries Bill**

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

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

### **Policy Objective**

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

### **Summary of the Bill**

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

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

### **Provisions in the Bill for which consent is required**

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

#### *Fisheries Objectives, fisheries statements and fisheries management plans*

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

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

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

#### *Access to British Fisheries and regulation of foreign fishing boats*

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

#### *Licensing of fishing boats*

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

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

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

*Access and licensing: offences and consequential amendments*

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



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

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

### *Fishing opportunities*

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

### *Grants and charges*

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

### *Powers to make further provision*

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

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

### *Miscellaneous*

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

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

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

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

46. Clause 45 introduces Schedule 10.

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

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

### **Provisions in the Bill for which consent is not required**

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

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

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

### **Reasons for making these provisions for Wales in the Fisheries Bill**

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

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

### **Financial implications**

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

### **Conclusion**

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

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

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## **LEGISLATIVE CONSENT MEMORANDUM**

### **Agriculture Bill**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Agriculture Bill (The Bill) was introduced by George Eustice MP in the House of Commons on 16 January 2020. The Bill can be found at:  
  
<https://services.parliament.uk/bills/2019-20/agriculture.html>
3. The Bill is similar in many respects to the Agriculture Bill introduced to Parliament on 12 September 2018, and which will make no further progress following the general election in December 2019. That Agriculture Bill was the subject of a legislative consent memorandum laid on 4 October 2018 and a supplementary legislative consent memorandum laid on 26 March 2019.

### **Policy Objective(s)**

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

### **Summary of the Bill**

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

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

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

### **Provisions in the Bill for which consent is required**

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

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

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

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

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

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

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

#### Clause 31: Fertilisers

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

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

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

#### Clause 32: Identification and traceability of animals

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

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

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

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

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

#### Clauses 36 and 37: organic products

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

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

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

#### Clauses 40 to 42: WTO Agreement on Agriculture

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



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

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

#### Clause 44: Duration of provision in relation to Wales

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

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

#### Clause 46: Data protection

59. This clause makes clear that any duty or power to disclose information under Parts 1 to 6 of the Bill does not operate to require the disclosure of information which would contravene the data protection legislation. The "data protection legislation" is (from exit day) the GDP Regulation 2016/679 as retained in domestic law (the "GDPR"), the Data Protection Act 2018, regulations made under that Act, and regulations made under section 2(2) of the European Communities Act 1972 as it relates to the EU GDPR or the Law Enforcement Directive 2016/680 (section 3 of the Data Protection Act 2018).
60. The GDPR and the Data Protection Act 2018 are concerned with the protection of individuals with regard to the processing of personal data (see, for example, section 2 of the 2018 Act). The "protection of personal data" is a reserved matter (paragraph 170 of Schedule 7A to GoWA). This provision is ancillary, however, to relevant provisions in Parts 1 to 6 as it restates the existing "data protection legislation" as it applies to those provisions. To the extent that the relevant provisions in Parts 1 to 6 are devolved (as considered above) then it is the Welsh Government's view that this clause requires consent because it makes ancillary provision with regard to devolved matters.

#### Clauses 47 to 54 (and Schedule 7)

61. These clauses makes general and final provision about regulations, including procedures and related matters; interpretation; consequential amendments to the CMO regulation (set out in Schedule 7); powers to make consequential etc. provision by regulation; financial provision; extent; commencement; and the short title of the Bill.
62. It is the Welsh Government's view that they each require consent to the extent that they each make provision with regard to provisions in the Bill that are considered to be devolved, as described in this memorandum (save for the short title which is a devolved matter insofar as it makes provision in relation to Wales).

#### Schedule 3 and clause 34: Agricultural tenancies

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

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

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

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

#### Schedule 5 and clause 43

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

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

69. Paragraphs 1-3 of Part 1 of Schedule 5 provide for the payment of Direct Payments in Wales under the basic payment scheme.
70. Paragraph 2 provides powers for the Welsh Ministers to make regulations to modify, after exiting the EU, retained EU law relating to the basic payment scheme, and include powers to simplify or improve the basic payment scheme or to terminate greening payments.
71. Paragraph 3 provides for the Welsh Ministers to make regulations to continue the basic payments scheme after 2020. This will allow for the basic payment scheme to continue beyond 2020.
72. Paragraph 4 enables the Welsh Ministers to make regulations that modify, in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation. That includes Regulation 1306/2013 and retained direct legislation made under that Regulation.
73. Paragraph 5 provides the Welsh Ministers with power to make regulations that modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. The

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

#### Schedule 5, Part 2: Intervention in Agricultural Markets

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

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

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

#### Schedule 5, Part 3: Collection and sharing of data

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

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

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

#### Schedule 5, Part 4: Marketing standards and carcass classification

80. Part 4 confers powers on the Welsh Ministers by regulations to make provision about the standards which apply to certain products marketed in Wales. This Part also enables the Welsh Ministers by regulations to make provision in respect of carcass classification by slaughterhouses in Wales.
81. Paragraph 16 contains the list of agricultural products for which marketing standards may be made. The Welsh Ministers may make regulations to amend the list of products for which marketing standards may be set or altering the description of the listed agricultural products (paragraph 16(3)).

#### Schedule 5, Part 5: Data Protection

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

#### Conclusions on Schedule 5 (and clause 43) consent

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

#### **Powers to create subordinate legislation**

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

#### **Reasons for making these provisions for Wales in the Agriculture Bill**

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

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

### **Financial implications**

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

### **Conclusion**

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

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

## Annex

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

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



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

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

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



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** UK Agriculture Bill

**DATE** 16 January 2020

**BY** Lesley Griffiths Minister for Environment, Energy and Rural Affairs

I am informing Members I have asked the UK Government to include powers for Welsh Ministers in an Agriculture Bill which has been introduced to the UK Parliament. The Agriculture Bill (the “Bill”) was introduced by George Eustice MP in the House of Commons on 16 January 2020.

The Bill can be found at: <https://services.parliament.uk/Bills/2019-20/agriculture.html>

The powers being taken for Welsh Ministers are intended to be temporary until an Agriculture (Wales) Bill is brought forward to design a ‘Made in Wales’ system which works for Welsh agriculture, rural industries and our communities. Provisions relating to Wales are contained in a separate Schedule.

The Bill introduced on 16 January, provides powers for the Welsh Ministers to continue paying Direct Payments to farmers beyond 2020 and gives our farmers much needed stability during this period of uncertainty. It also contains certain other powers, including those which are important to ensure the effective operation of the internal market in the UK.

Given the passage of time since the original Bill was first introduced in September 2018, I have reflected on the scope of the Welsh schedule, taking into account the helpful reports provided by the Senedd during scrutiny. I have concluded it is no longer appropriate to take powers to allow the Welsh Ministers to operate or transition to new schemes. My intention now is these will be provided for instead by the Agriculture (Wales) Bill. I intend to publish a White Paper towards the end of 2020 which will set out the context for the future of Welsh farming and pave the way for an Agriculture (Wales) Bill.

Overall, the introduction of the Bill is an important step to provide stability as we look towards transitioning to a new system of farm support in Wales. The Bill makes provision with regards to devolved matters and I will lay a Legislative Consent Memorandum.

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 4.1

## SL(5)513 – The Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020

### Background and Purpose

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The Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020 ("the Regulations") amend the Trade in Animals and Related Products (Wales) Regulations 2011 ("the 2011 Regulations"), which had previously been amended by the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 ("the Official Controls Regulations").

Amendments were made by the Official Controls Regulations to regulations 20(7) and 23(6) of the 2011 Regulations which, as described in the Explanatory Memorandum to these Regulations, "could be interpreted as an unintended financial liability for government to compensate importers for non-compliant consignments [of products of animal origin or animals] that are destroyed." These Regulations remove the wording in regulations 20(7), and 23(6) in order that the legislation provides that the importer is liable for any expenses incurred in dealing with the measures imposed on the importer following the import of a non-compliant consignment.

Regulation 12(4) of the 2011 Regulations is amended, in relation to the remit of official fish inspectors. The amendment clarifies that official fish inspectors are responsible for decisions relating to composite products containing processed fishery products.

Regulation 20(8) of the 2011 Regulations, which concerns the importer or the importer's representative being entitled to be heard regarding a non-compliant consignment, is omitted.

Paragraph 9(1) of Schedule 2 to the 2011 Regulations is amended to address an error that was introduced into this Schedule by the Official Controls Regulations.

The Regulations are made under the powers conferred by section 2(2) of the European Communities Act 1972.

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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

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

1. Regulation 20(8) of the 2011 Regulations which concerns the importer or the importer's representative being entitled to be heard regarding a non-compliant consignment, is omitted by these Regulations. It is unclear why regulation 20(8) has been removed.



Regulation 20(8) provides that *“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.”*

Paragraph 4.2 of the Explanatory Memorandum provides that regulation 20(8) is omitted as the importer (or the importer's representative) is *“already entitled to be heard regarding a non-compliant consignment by relying directly on Article 66(3) of EU Regulation 2017/625”*.

The final paragraph of article 66(3) of EU Regulation 2017/625 provides that before the operator is ordered to take action, *“the competent authority shall hear the operator concerned, **unless immediate action is necessary** in order to respond to a risk to human, animal or plant health, animal welfare or, as regards the GMOs and plant protection products, also to the environment”*.

We are of the view that the Explanatory Note accurately reflects the wording of article 66(3), whilst the Explanatory Memorandum does not. The Explanatory Note accurately provides that by virtue of article 66(3) the importer or the importer's representative is entitled to be heard in **certain circumstances** regarding a requirement proposed to be imposed in relation to a non-compliant consignment. However, the Explanatory Memorandum does not acknowledge that there are exceptions to the entitlement to be heard, and fails to make it sufficiently clear to the importer or the importer's representative that in certain circumstances they may not be entitled to be heard.

Removing regulation 20(8) appears to leave the importer or the importer's representative with less of an entitlement to be heard than is currently provided. It is not sufficiently clear why this provision has been removed, and what impact the removal of this provision may have.

## Implications arising from exiting the European Union

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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

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We accept that the expression of the explanatory note is clearer than the explanatory memorandum. However, accurate legal citation in both documents lead the reader to the pertinent provision of the EU Regulation. Further, both documents indicate the reason for and effect of the amendment – the entitlement to be heard is provided by the pertinent provision of the EU Regulation. As such, on balance, we do not propose to amend the explanatory memorandum.

### Legal Advisers

Legislation, Justice and Constitution Committee

4 March 2020



Cynulliad Cenedlaethol Cymru  
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales  
Legislation, Justice and Constitution Committee

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*This Statutory Instrument has been printed to correct errors in S.I. 2020/44 (W. 5) and is being issued free of charge to all known recipients of that Statutory Instrument.*

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

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**2020 No. 177 (W. 38)**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

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

**EXPLANATORY NOTE**

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

These Regulations amend the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”).

Regulation 12(4) of the 2011 Regulations is amended to clarify that official fish inspectors are responsible for decisions relating to composite products containing processed fishery products.

Regulations 20(7) and 23(6) of the 2011 Regulations relate to cases where non-compliant products and animals are required to be treated, re-dispatched or destroyed. These provisions make the importer or the importer’s representative liable for the costs incurred for any enforcement measures taken following failure of checks or seizure of goods and animals imported from countries outside the European Union. The amendments to these provisions ensure that the importer or importer’s representative is not entitled to any payment following their destruction.

Regulation 20(8) of the 2011 Regulations is omitted, in view of the last subparagraph of Article 66(3) of the 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 (OJ No. L 95, 7.4.2017, p. 1). By virtue of Article 66(3), in certain circumstances the importer or

the importer's representative is entitled to be heard regarding a requirement proposed to be imposed in relation to a non-compliant consignment.

Schedule 2 to the 2011 Regulations is amended to correct a minor error in its text.

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.

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

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**2020 No. 177 (W. 38)**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

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

*Made* 24 February 2020

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

*Coming into force* 20 March 2020

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>.

The Welsh Ministers are designated for the purposes of section 2(2) of that Act in relation to the veterinary and phytosanitary fields for the protection of public health<sup>(2)</sup>.

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- (1) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2008/1792, which is prospectively revoked by S.I. 2018/1011 from IP completion day.

### **Title and commencement**

1. The title of these Regulations is the Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020 and they come into force on 20 March 2020.

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

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

(2) In regulation 12(4), for the words from “echinoderms” to “local authority” substitute “echinoderms, live tunicates and live marine gastropods and composite products containing processed fishery products intended for human consumption, the enforcement authority”.

(3) In regulation 20—

- (a) in paragraph (7), omit the words from “but is entitled” to the end;
- (b) omit paragraph (8).

(4) In regulation 23(6), omit the words from “but is entitled” to the end.

(5) In Schedule 2, in paragraph 9(1), in the English language text, after “purposes” insert “of”.

*Lesley Griffiths*

Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
24 February 2020

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(1) S.I. 2011/2379 (W. 252), amended by S.I. 2020/44 (W. 5); there are other amending instruments but none is relevant.

## **Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020**

This Explanatory Memorandum has been prepared by Andrew Gill, OCVO 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**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020.

Lesley Griffiths

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

26 February 2020

## **PART 1**

### **1. Description**

1.1. The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 (“the 2020 Regulations”) amended the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”). Further amendments to the 2011 Regulations are required to implement the Regulation (EU) 2017/625 on official controls and other official activities to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the EU Regulation”). This instrument amends provisions that relate to the seizure of non-compliant animals and animal product consignments as well as the remit of Official Fish Inspectors.

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

2.1 This instrument removes and corrects certain amendments made to the 2011 Regulations by the 2020 Regulations. The 2020 Regulations were previously reported on by the Committee under SL(5)491.

### **3. Legislative background**

3.1 The 2011 Regulations make provision in Wales for trade in live animals and animal products and the import conditions for live animals and animal products from third countries. These were amended by the 2020 regulations due to the commencement of the EU Regulation on 14 December 2019.

3.2 This instrument is made under section 2(2) of the European Communities Act 1972 and it amends the 2011 Regulations to ensure the domestic legislation is implemented as originally intended. This instrument is being made under the negative resolution procedure and will come into force on 20 March 2020.

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

4.1 The 2020 Regulations amended the 2011 Regulations. A clause was added to regulation 20(7) of the 2011 Regulations that relates to payments to importers for the destruction of consignments of products of animal origin. This mirrors a similar provision for live animals. These provisions could be interpreted as an unintended financial liability for government to compensate importers for non-compliant consignments that are destroyed. This instrument removes wording in regulation 20(7) and the similar provision for live animals so that the legislation provides that the importer is liable for any expenses

incurred in dealing with the measures imposed on the importer following the import of a non-compliant consignment.

4.2 Further amendments are made to regulations 12(4) and 20(8) of the 2011 Regulations. Regulation 12(4) relates to composite products containing processed fishery products and clarifies that these are in the remit of Official Fish Inspectors. Regulation 20(8) of the 2011 Regulations is omitted as the importer (or the importer's representative) is already entitled to be heard regarding a non-compliant consignment by relying directly on Article 66(3) of the EU Regulation.

4.3 These regulations also seek to correct a minor error introduced to paragraph 9(1) of Schedule 2 to the 2011 Regulations by the 2020 Regulations.

## **5. Consultation**

5.1 No consultation was undertaken in relation to this instrument.

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

6.1 There is no, or no significant impact on business, charities or voluntary bodies.

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

6.3 A Regulatory Impact Assessment has not been prepared for this instrument.

# SL(5)516 – The Health Protection (Notification) (Wales) (Amendment) Regulations 2020

## Background and Purpose

These Regulations amend the Health Protection (Notification) (Wales) Regulations 2010 ("the Principal Regulations"). The Principal Regulations place obligations on various persons for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. This includes placing a duty on health professionals to notify relevant local authority public health staff if they discover the presence of 'notifiable diseases' and 'causative agents' in their patients or elsewhere.

These Regulations are being made to address the public health risk of Corona Virus Disease (COVID-19), by placing this and 'Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2)' (the causative virus of coronavirus disease) on the list of 'notifiable diseases' and 'causative agents'.

## Procedure

Negative.

## Technical Scrutiny

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

## Merits Scrutiny

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

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

1. 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 6 March 2020.

In particular, we note what the letter says about these Regulations coming into force on the day they are laid:

"The 2020 Regulations were made and laid as soon as practicable on public health grounds in order to ensure appropriate procedures are in place for monitoring and containing the spread of the disease. 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 5 March 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 implications are identified for reporting under Standing Order 21.3 in respect of this instrument.





## Government Response

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A government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**11 March 2020**



Cynulliad Cenedlaethol Cymru

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

—  
National Assembly for Wales

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**Legislation, Justice and Constitution Committee**

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

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**2020 No. 232 (W. 54)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Notification) (Wales)  
(Amendment) Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations amend the Health Protection (Notification) (Wales) Regulations 2010 (“the 2010 Regulations”) which place obligations on various persons for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination.

Regulation 2(2) inserts “Coronavirus Disease 2019 (COVID-19)” into Schedule 1 to the 2010 Regulations for the purposes of adding this to the list of “Diseases and Syndromes” for which there is a duty upon medical practitioners to notify a relevant local authority if a patient they are attending is believed to have such a disease or syndrome. This extends to the notification of suspected disease, infection or contamination in a dead body.

Regulation 2(3) inserts “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)” into Schedule 2 to the 2010 Regulations for the purposes of adding this to the list of “Causative agents” for which there is a duty upon operators of diagnostic laboratories to notify a relevant local authority if they identify an agent, or evidence of such an agent, in a human sample.

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

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

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**2020 No. 232 (W. 54)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Notification) (Wales)  
(Amendment) Regulations 2020**

*Made* 5 March 2020

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

*Coming into force* 6 March 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 13, 45C(1), (2) and (3)(a), 45F(2)(a) and (b), 45P(2) and 60A of the Public Health (Control of Disease) Act 1984<sup>(1)</sup>.

In accordance with section 45Q(3) of the Public Health (Control of Disease) Act 1984, the Welsh Ministers declare that they are of the opinion that these Regulations do not contain provision made by virtue of section 45C(3)(c) of that Act which imposes or enables the imposition of a special restriction or

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(1) 1984 c. 22. Functions of the Secretary of State under section 13, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). Functions exercised under sections 45C(1), (2) and (3)(a), 45F(2)(a) and (b), 45P(2) and 60A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) are exercisable in relation to Wales by the Welsh Ministers by virtue of section 45T(6) of that Act which defines “the appropriate Minister” as being the Welsh Ministers as respects Wales for the purposes of Part 2A of that Act, and section 60A(6) of that Act which defines “the appropriate Minister” as being the Welsh Ministers in relation to Wales for the purposes of section 60A of that Act. Sections 45C, 45F, 45P and 45T were inserted into the 1984 Act by section 129 of the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”), and section 60A was inserted into the 1984 Act by section 130 of, and paragraph 16 of Schedule 11 to, the 2008 Act.

requirement<sup>(1)</sup> or any other restriction or requirement which has or would have a significant effect on a person's rights.

#### **Title and commencement**

1. The title of these Regulations is the Health Protection (Notification) (Wales) (Amendment) Regulations 2020 and they come into force on 6 March 2020.

#### **Amendments to the Health Protection (Notification) (Wales) Regulations 2010**

2.—(1) The Health Protection (Notification) (Wales) Regulations 2010<sup>(2)</sup> are amended as follows.

(2) In Schedule 1 (notifiable diseases and syndromes), after “Cholera” insert “Coronavirus Disease 2019 (COVID-19)”.

(3) In Schedule 2 (causative agents), after “SARS coronavirus” insert “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

*Vaughan Gething*

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

5 March 2020

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(1) See section 45C(6) of the 1984 Act for the meaning of “special restriction or requirement”.

(2) S.I. 2010/1546 (W. 144).

## **Explanatory Memorandum to the Health Protection (Notification) (Wales) (Amendment) Regulations 2020**

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

### **Minister**

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

Vaughan Gething

**Minister for Health and Social Services**

**6 March 2020**

## **PART 1**

### **1. Description**

These Regulations amend the Health Protection (Notification) (Wales) Regulations 2010 (“The Principle Regulations”).

The Principle Regulations place obligations on various persons for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. This includes placing a duty on health professionals to notify relevant local authority public health staff if they discover the presence of ‘notifiable diseases’ and ‘causative agents’ in their patients or elsewhere.

These Regulations are being made to address the public health risk of Corona Virus Disease (COVID-19), by placing this and ‘Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2)’ (the causative virus of coronavirus disease) on the list of ‘notifiable diseases’ and ‘causative agents’.

### **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. The Regulations add Corona Virus to the list of ‘notifiable diseases’ and ‘causative agents’. Given the current status of the outbreak of Corona Virus in the UK the shortened period is considered necessary and justifiable.

### **3. Legislative background**

The instrument is being made under sections 45C(1), (2) and (3)(a), 45F(2)(a) and (b), 45P(2) and 60A of the Public Health Control of Diseases Act 1984 which confers a power on the Welsh Ministers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales,

In accordance with section 45Q(3) of the 1984 Act, these Regulations do not contain provisions which impose or enables the imposition of a special restriction or requirement or any other restriction or requirement which has or would have a significant effect on a person’s rights.

The instrument is also being made under section 13 of the 1984 Act.

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

Amendments to the Principle Regulations ensure help to ensure that appropriate procedures are in place for monitoring and containing the spread of the Coronavirus Disease (COVID-19).

## **5. Consultation**

No formal consultation has been carried out but the Welsh Government has been in regular contact with the UK government and other devolved administrations who have introduced similar provisions. Public Health Wales, which operates the only laboratories in Wales currently capable of testing for COVID-19, has been informed of this change to the Regulations.

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

An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation and the urgency required to make these Regulations.



Ein cyf/Our ref RE/00147/20

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

6 March 2020

Dear Llywydd,

### **The Health Protection (Notification) (Wales) (Amendment) 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 Health Protection (Notification) (Wales) Regulations 2010 ("the Principal Regulations"). The Principal Regulations place obligations on various persons for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. This includes the duty to on health professionals to notify relevant local authority public health staff if they discover the presence of 'notifiable diseases' and 'causative agents' in their patients or elsewhere.

The 2020 Regulations amend the principle regulations by inserting 'Coronavirus Disease 2019 (COVID-19)' into the schedule 1 list of 'Diseases and Syndromes' and 'Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2)' (the causative virus of coronavirus disease) into the schedule 2 list of 'Causative Agents' for which a duty of notification will now apply.

The 2020 Regulations were made and laid as soon as practicable on public health grounds in order to ensure appropriate procedures are in place for monitoring and containing the spread of the disease. 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 5 March 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.

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.



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

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

**Rebecca Evans AC/AM**

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

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



Llywodraeth Cymru  
Welsh Government

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

09 March 2020

Dear Mick,

I am writing to inform you that a meeting of the Finance Ministers' Quadrilateral will take place on 10 March.

The agenda will cover the UK Government's plans for the UK Budget and Comprehensive Spending Review, including replacement EU funding and future participation in EU programmes as well as fiscal flexibilities. There are also items relating to inter-governmental relations, including the Statement of Funding Policy and strengthening the finance machinery of government. We will also discuss areas of shared interest, including tackling climate change and Covid 19 (Coronavirus).

I will report to the Committee on the outcome of the meeting.

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.

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



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

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

11 March 2020

Dear Mick,

Further to my recent letter advising you of the Finance Quadrilateral on 10 March, I wish to feedback on discussions.

The meeting was constructive and I took the opportunity to emphasise the need for additional funding in Wales to tackle Covid 19 and to address the impact of recent flooding. After the meeting I issued a joint press notice with the Finance Ministers of Scotland and Northern Ireland.

Link to the Welsh Government press notice: <https://gov.wales/government-must-engage-devolved-administrations-eu-negotiations>

The Chief Secretary indicated that he is planning for a UK Spending Review in summer, and we expect a three year timeframe for this. We had a positive conversation on the Terms of Reference for the Quad and Statement of Funding Policy, and committed to continuing our collaborative work in developing these frameworks.

As expected, the Chief Secretary was unable to share details about the forthcoming Budget, but I look forward to providing a written statement to members once the Budget is published.

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.

**Back Page 158**  
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.

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

## Agenda Item 5.2



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref LG-0825-20

Mick Antoniw AM  
Chair  
Legislation, Justice and Constitution Committee

[LegislationJustice.ConstitutionCommittee@assembly.wales](mailto:LegislationJustice.ConstitutionCommittee@assembly.wales)

10 March 2020

Dear Mick

Thank you for your letter dated 2 March 2020 regarding the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020. The technical points you mention have or will be addressed by the Welsh Government as follows:

Reporting point 4 has been addressed by regulation 2(5) of the Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020.

Reporting point 6 has been addressed by regulation 55(3) of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020.

Reporting points 1 and 5. Due to the continued implementation of EU law the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 will require amendment before they come into force on implementation period completion day (31 December 2020). The reporting points will be addressed this year when the Regulations are next amended.

Regards  
Lesley

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

[Gohebiaeth.Lesley.Griffiths@llyw.cymru](mailto:Gohebiaeth.Lesley.Griffiths@llyw.cymru)  
[Correspondence.Lesley.Griffiths@gov.wales](mailto:Correspondence.Lesley.Griffiths@gov.wales)

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

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

Lesley Griffiths AM  
Minister for Environment, Energy and Rural Affairs

2 March 2020

Dear Lesley

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

At our meeting on 24 February 2020 we considered, for the second time, The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020.

At our meeting on 10 February 2020, we identified 10 points for reporting to the Assembly under Standing Orders 21.2 and 21.3. Due to the reporting deadline for these Regulations, as prescribed by Standing Order 21.4, our report was laid before the Assembly on 11 February 2020 ahead of receipt of a Welsh Government response to the identified reporting points. We have now had the opportunity to consider the Welsh Government response to the reporting points and there is one matter which we wish to raise with you further.

Technical reporting points 1, 4, 5 and 6 identified errors within the Regulations. In response to these four points, the Welsh Government response states that it “will take steps to correct” the errors. We would be grateful if you would clarify the precise steps that will be taken and when, in line with the Welsh Government’s standard practice. For example, will the errors be corrected by the Queen’s printer by means of a correction slip, or will amending regulations be forthcoming?

We would be grateful to receive your reply at the earliest opportunity. I am copying this letter to Jeremy Miles AM, the Counsel General.



**Cynulliad Cenedlaethol Cymru**  
Bae Caerdydd, Caerdydd, CF99 1NA

✉ SeneddDCC@cynulliad.cymru

☎ 0300 200 6565

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**National Assembly for Wales**  
Cardiff Bay, Cardiff, CF99 1NA

✉ SeneddLJC@assembly.wales

☎ 0300 200 6565

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

**Mick Antoniw AM**  
**Chair**

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

