

## LEGISLATIVE CONSENT MEMORANDUM

### DEREGULATION 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 a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Deregulation Bill (the “Bill”) was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2013-14/deregulation.html>

#### Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government’s policy objective for the Bill is to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.
4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The Bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition the Bill will repeal legislation that is no longer of any practical use.

#### Provisions in the Bill for which consent is sought

5. For ease of reference, the provisions for which consent is sought are listed below in the order in which they appear in the Bill at introduction, followed by a detailed description of each of the provisions in turn. References to clause and schedule numbers are also as they appear in the Bill at introduction.

#### List of provisions in the Bill for which consent of the Assembly is sought:

Clause 3	Schedule 1	Part 3 (Apprenticeships: Wales)
Clause 24	Schedule 8	Part 2 (road humps)
Clause 30	Schedule 11	Part 1 (destructive imported animals)
Clause 30	Schedule 11	Part 4 (air quality)

Clause 30	Schedule 11	Part 5 (noise abatement zones)
Clause 35	Schedule 12	Part 1 (abolition of Office of the Chief Executive of Skills Funding)
Clause 36	Schedule 13	Part 1 (measures applying to England and Wales in relation to Further and Higher Education: reduction of burdens)
Clause 57	Schedule 16	Part 2, paragraph 18 (removal of consultation requirements)
Clause 60	Schedule 17	Part 5, paragraphs 17-21 (legislation no longer of practical use – environment)
Clause 60	Schedule 17	Part 6, paragraphs 22-27 (legislation no longer of practical use – animals and food)
Clause 60	Schedule 17	Part 8, paragraph 29 (legislation no longer of practical use – criminal law)

### **Clause 3 – Apprenticeships: Simplification**

#### ***Schedule 1 – Part 3- Apprenticeships: Wales***

6. Clause 3(4) introduces Part 3 (paragraphs 21 to 24) of Schedule 1, which contains minor amendments to the provisions about Welsh apprenticeships in Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (the 2009 Act).
7. Paragraphs 21 to 24 of Schedule 1 amend, in part, sections 18 to 20 inclusive of the 2009 Act.
8. Section 18 of the 2009 Act provides Welsh Ministers with powers to designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector. Part 3 of Schedule 1 amends section 18 so that Welsh Ministers themselves may act as a Welsh issuing authority in addition to having the power to designate others. Part 3 of Schedule 1 also makes some amendments which are consequential on the amendments to section 18.
9. Clause 68(4) and (6) provide for Welsh Ministers' order making powers related to the Welsh apprenticeships provisions in Schedule 1 Part 3. Clause 68(4) provides a power for Welsh Ministers to commence the Schedule 1, Part 3 provisions by order made by statutory instrument.

10. Clause 68(6) provides a related power for Welsh Ministers by order made by statutory instrument to make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of Schedule 1, Part 3.
11. As these order making powers relate to commencement of provisions, no Assembly procedures will apply.
12. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Education, vocational, social and physical training and the careers service; and promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

## **Clause 24 – Reduction of burdens relating to the use of roads and railways**

### ***Schedule 8, Part 2 relating to construction of road humps***

13. Clause 24 of the Bill refers to Schedule 8. Part 2 of Schedule 8 amends section 90C of the Highways Act 1980. Section 90C currently requires the Welsh Ministers or a local highway authority to consult with the chief officer of police for the area and other persons or bodies as may be prescribed by regulations made by the Welsh Ministers before constructing road humps. Notice of any proposals must be published in one or more local newspapers and placed on site, and a local inquiry may be held to consider any objections received. The procedure to be followed at a local inquiry must comply with provisions in section 250(2) to (5) of the Local Government Act 1972 but with such modifications as may be prescribed by regulations made by the Welsh Ministers.
14. Part 2 of Schedule 8 would amend the above section so that the consultation and publication requirements, as well as local inquiries procedures, would all be specified in regulations to be made by the Welsh Ministers.
15. The provisions include powers for the Welsh Ministers to make subordinate legislation. The provisions give a regulation making power regarding the publication of details of proposals to construct road humps and procedures for making objections to such proposals, and procedures for dealing with such objections. Regulations would be made under the negative procedure.
16. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Highways and Transport under paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006.

## **Clause 30 – Other measures relating to animals, food and the environment**

### ***Schedule 11 - Part 1 – Destructive Imported Animals***

17. Clause 30 of the Bill introduces Schedule 11 (“Other measures relating to animals, food and the environment”), Part 1 of Schedule 11 (“Destructive imported animals”) makes amendments to the Destructive Imported Animals Act 1932 and the Grey Squirrel (Prohibition of Importation and Keeping) Order 1937 (paragraphs 1 and 2 of Part 1 of Schedule 11 to the Bill).
18. The proposed amendments remove the obligation for an occupier of land to report the presence of grey squirrels under the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 (SI 1937/437) and amend the enabling legislation, the Destructive Imported Animals Act 1932, to facilitate easier future amendments to the 1937 Order.
19. The Destructive Imported Animals Act 1932 enables regulation of the importation and keeping of certain destructive non-indigenous mammal species within Great Britain. It also requires occupiers of land to report sightings of any certain specified species seen (so that the animals concerned can be caught and removed and thus the species eradicated from the wild).
20. Initially the 1932 Act only applied to musk rats, but section 10 of the 1932 Act enables an Order to be made which extends the provisions of that Act to other non-indigenous mammalian species. The 1937 Order was made pursuant to that section and applied the provisions of the 1932 Act to grey squirrels. The effect of the 1937 Order is that sightings of grey squirrels by land occupiers should be reported.
21. Despite this measure and the introduction of a bounty scheme in the 1950’s (introduced in 1953 but abandoned in 1958), efforts to eradicate the grey squirrel population in the UK have failed and they have subsequently become so well established that eradication is now impractical. A general obligation to report the presence of grey squirrels therefore has no management value at this stage.
22. Unfortunately, it is not possible to simply revoke or amend the 1937 Order in the usual way (i.e. by subsequent statutory instrument) because the enabling power in the 1932 Act (which is also the power under which the 1937 Order would be amended) requires that, in order to exercise the Order making power, the Welsh Ministers (for our purposes) must be satisfied that it is desirable to prohibit or control the keeping of grey squirrels and destroy any at large. Given that grey squirrels are now common in the UK, neither the Welsh Ministers nor the UK Government can be so satisfied and consequently, the power in the 1932 Act is no longer available in relation to that species.

23. The amendments proposed by paragraphs 1 and 2 of Part 1 of Schedule 11 to the Deregulation Bill will remove the reporting requirement within the 1937 Order and facilitate easier future amendments to the Order by way of amendment to the 1932 Act.
24. The need to prohibit the keeping and importation of grey squirrels still remains and so the remainder of the 1937 Order will remain in force. Land managers are investing significant time and money in the management of grey squirrels to conserve red squirrels and wider woodland biodiversity. Revocation of the Grey Squirrel Order in its entirety would remove an effective instrument for limiting the spread of the species to areas where they are currently absent or back into areas where they have been removed.
25. The amendments to the 1932 Act and the 1937 Order do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation. The amendments to section 10 of the 1932 Act do, however, make changes to a power to make an Order which is exercisable by the Welsh Ministers in relation to Wales. An Order under section 10 of the 1932 Act is subject to affirmative procedure (i.e. an Order under that section will have no effect until a resolution approving it has been made by the Assembly (in relation to Wales), see section 10(1) of the 1932 Act).
26. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

#### ***Schedule 11- Part 4 – Air Quality***

27. Part 4 of Schedule 11 relates to 'Air Quality'. The provisions relate to the repeal of 'Further Assessments', which have to be carried out by local authorities following the declaration of an Air Quality Management Area (AQMA) as required in Section 84, Part IV, of the Environment Act 1995.
28. Local authorities have statutory duties for local air quality management (LAQM) under Part IV of the Environment Act 1995. These require them to:
  - a) review present and likely future air quality in their local authority area against objectives set out in the Air Quality (Wales) Regulations 2000;
  - b) carry out an assessment, along with a review, as to whether air quality standards and objectives are being achieved; and
  - c) where it is projected that air quality standards and objectives will not be achieved, declare a local air quality area as an AQMA.
29. Section 84 (1) of the Environment Act requires that once an AQMA has been declared the local authority must instigate a "supplementary" assessment. Section 84 (2)(a) requires a report of the assessment,

known as a 'Further Assessment', to be published. An informal consultation with local authorities revealed that the Further Assessment was not helpful in preparing plans to improve air quality as in most cases the information would be gathered as part of the initial assessment which precedes it.

30. A formal consultation was carried out by the Welsh Government during summer 2013. Its conclusion was that the repeal was warranted. The functions under Section 84 of the Environment Act 1995, so far as exercisable in relation to Wales, transferred from the Secretary of State to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1., and are now exercisable by the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (GOWA).
31. This provision does not include powers for Welsh Ministers to make subordinate legislation.
32. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Environmental protection, including pollution, nuisances and hazardous substances and powers and duties of local authorities under paragraph 6 and 12 of Part 1, Schedule 7 to the Government of Wales Act 2006.

#### ***Schedule 11- Part 5 – Noise Abatement Zones***

33. These provisions repeal sections 57, 63 to 67 and 69, and amend section 73, in Part 3 of the Control of Pollution Act (COPA) 1974, which relate to local authorities' duty to inspect and the power to implement Noise Abatement Zones (NAZs) in England, Wales and Scotland. They also repeal Schedule 1 to COPA, and make certain consequential changes to other legislation.
34. NAZs were introduced to prevent deterioration in environmental noise levels and to achieve reductions in noise levels wherever practicable. The repeal and amendment of the relevant provisions of COPA will abolish existing NAZs and prevent new ones being established.
35. Analysis has shown that the legislation is little used. In some cases, NAZs have been set up but are not being actively enforced, and their abolition through these provisions provides a resource efficient way of removing the burden on local authorities of individually removing their NAZs.
36. In Wales, NAZs have only been implemented by Newport City Council and Swansea City Council. These are not being actively enforced as other more efficient noise enforcement measures are being used.

37. Responses to a joint consultation between the Department of Environment, Food and Rural Affairs (DEFRA) and the Welsh Government carried out by DEFRA in January 2013 unanimously supported the repeal and no unexpected negative consequences were highlighted.
38. These provisions purely repeal existing legislation, so do not contain powers for Welsh Ministers to make subordinate legislation.
39. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to environmental protection, including pollution and nuisances (paragraph 6), and powers and duties of local authorities under paragraph 12, of Part 1 of Schedule 7 to the Government of Wales Act 2006.

### **Clause 35 – Abolition of office of Chief Executive of Skills Funding**

#### ***Schedule 12 —Part 1 — Main amendments***

40. Clause 35 abolishes the office of the Chief Executive of Skills Funding and introduces Schedule 12.
41. Paragraph 16 of Schedule 12 amends section 107 of the Apprenticeships, Skills, Children and Learning Act 2009. This section permits the Chief Executive of Skills Funding to provide services (including providing accommodation or managing accommodation, or procuring, or assisting in procuring goods and services) to a permitted recipient. The Welsh Ministers are specified in section 107(4)(b) as a permitted recipient'. The Welsh Ministers also have a power to specify by Order other 'permitted recipients' where such a person they provide education or training in Wales (107(4)(g)).
42. The effect of the proposed amendments are to replace references to the Chief Executive of Skills Funding with the Secretary of State meaning the Secretary of State rather than the Chief Executive of Skills Funding Agency must obtain the consent of the Welsh Ministers before providing services in Wales.
43. Paragraph 17 omits section 108 which enables the Chief Executive to take part in arrangements made by the Secretary of State, the Welsh Ministers or the Scottish Ministers under section 2 of the Employment and Training Act 1973.
44. This provision does not include new powers for Welsh Ministers to make subordinate legislation.
45. It is the view of the Welsh Government that this provision falls within the legislative competence of the National Assembly for Wales in so far as it relates to Education, vocational, social and physical training and the

careers service; and the promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

## **Clause 36 - Further and higher education sectors: reduction of burdens**

### ***Schedule 13 — Further and higher education: reduction of burdens***

46. Clause 36 introduces Schedule 13 which makes provision for the reduction of burdens in the further and higher education sectors.
47. Paragraph 1 of Schedule 13 repeals section 3 of the Further Education Act 1985. Section 3 gives the Secretary of State powers to set the minimum interest rate of loans made by a Local Authority to Further Education ("FE") or Higher Education ("HE") Corporations or to local authority maintained FE or HE institutions. The Welsh Ministers also have powers under this section to set the minimum interest rate of loans made by Local Authorities but these powers have not recently been used and they are considered unnecessary. We are therefore content that section 3 of the 1985 Act should be repealed.
48. Paragraph 2 of Schedule 13 amends the Education (No 2) Act 1986, by repealing both section 61 and section 62 of the 1986 Act. Section 61 provides the Secretary of State in England, or Welsh Ministers in Wales, with a regulation making power to restrict the participation of student governors within the governing body of Local Authority maintained FE or HE institutions. Section 62 provides a regulation making power for the Secretary of State, or Welsh Ministers, to make available to people prescribed documents and information relating to the meetings and proceedings of the governing body of Local Authority maintained FE or HE institutions. There are currently no Local Authority maintained FE or HE institutions in Wales, therefore the powers in sections 61 and 62 of the 1986 Act are not viewed as necessary in Wales. We are therefore content that they should be repealed.
49. Paragraph 3 subparagraphs (2) - (4) of Schedule 13 amend the Education Reform Act 1988. Sub-paragraph 2 repeals section 158 of the 1988 Act, which provides a power to require reports from the governing bodies of Local Authority maintained FE or HE institutions. Sub-paragraph 3 repeals section 159 of the 1988 Act, which gives the Secretary of State, or Welsh Ministers, powers to make regulations requiring Local Authorities to provide information about Local Authority maintained FE or HE institutions. Sub-paragraph 4 omits section 219 of the 1988 Act, which provides the Secretary of State or (Welsh Ministers powers to prevent the unreasonable exercise of functions of the governing body of Local Authority maintained FE or HE institutions. The powers in sections 158, 159 and 219 of the 1988 Act have never been exercised by Welsh Ministers. The Welsh Government is therefore content that these provisions should be repealed.



50. Paragraph 4 of Schedule 13 makes amendments to the Further and Higher Education Act 1992 (FHEA 1992) in relation to local authority maintained further education institutions; there are no such institutions in Wales.
51. Paragraph 4(2) repeals sections 23 to 26 of the FHEA, which relate to powers which were concerned with the mechanics of transferring FE provision from institutions maintained by local authorities to FE corporations established by the FHEA 1992.
52. Paragraph 4(3) repeals section 32 and 33 which are time-dated sections concerning the transfer of property and staff from Local Authorities to Designated Institutions.
53. Paragraph 4(4) omits sections 34 which concerns powers connected with the mechanics of transferring FE provision from institutions maintained by local authorities to FE corporations established by the FHEA 1992. There is currently no policy intention to introduce Local Authority maintained FE corporations in Wales and so there is no practical reason to maintain these provisions.
54. Paragraph 4(5) contains consequential amendments in light of the repeals made by paragraph 4 (1) to (4).
55. There are no local authority maintained FE institutions in Wales, and there is currently no policy intention to introduce local authority maintained FE corporations in Wales either. There is, therefore, no practical reason to keep these provisions for Wales, and the Welsh Government is therefore content that they should be repealed.
56. These are repealing provisions and therefore do not contain any new powers for Welsh Ministers to make subordinate legislation.
57. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Education, vocational, social and physical training and the careers service; and the promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

#### **Clause 57- Repeal of duties relating to consultation or involvement**

##### ***Schedule 16, Part 2 – Measures affecting England and Wales***

58. Clause 57 introduces Schedule 16, which relates to the removal of certain consultation requirements in various legislation. Part 2 makes provision for legislation affecting England and Wales.
59. Consent is sought for the removal of Section 53(7) of the Local Government Act 2003 which relates to Business Improvement District (“BID”) arrangements. Section 53(7) requires the Welsh Ministers to seek the views of billing authorities (county councils and county borough

councils) and ratepayers about the day on which BID arrangements should come into force following an appeal against a veto.

60. A BID arrangement is a partnership between a billing authority and the local business community to develop projects and services for the benefit of a defined area. The non-domestic ratepayers in the area pay a levy in return for the benefits outlined in the BID arrangements, for example projects to regenerate the area, or to increase security. The provisions relating to BID arrangements are contained in Part 4 of the Local Government Act 2003 and the Business Improvement Districts (Wales) Regulations 2005.
61. BID arrangements may not come into force unless the proposals are approved by ballot of the non-domestic ratepayers who are to be liable to pay the levy.
62. Where the ballot approves the proposals, the billing authority may veto the proposals in prescribed circumstances. Section 52 of the 2003 Act allows any person entitled to vote in the ballot to appeal against the veto to the Welsh Ministers. In the event that an appeal against the veto is successful, the Welsh Ministers determine the day on which the BID arrangements are to come into force (section 53(5)).
63. Before making such a determination the Welsh Ministers must consult the relevant billing authority and such persons as appear to be representative of the non-domestic ratepayers who are to be liable for the proposed levy (section 53(7)). It is this consultation requirement that is being repealed.
64. Section 53(7) provides that:

“(7) Before making a determination under subsection (5), the Secretary of State must consult—

  - (a) the billing authority concerned, and
  - (b) such persons as appear to him to be representative of the non-domestic ratepayers who are to be liable for the proposed BID levy.”
65. The repeal allows the Welsh Ministers to decide on the timing of the coming into force of a BID arrangement in a more timely and efficient way where there has been a successful appeal against a veto. The existing requirements include a stage in a process that, when examined as a whole, is unnecessary.
66. At the moment, before determining when a BID arrangement should come into force following an appeal against a veto the Welsh Ministers are required to consult with the billing authority and any other persons that appear to be representative of non domestic ratepayers.

67. The views of the billing authority will have already been made clear as it is they who have initiated the veto. The 'any other persons' that the legislation refers to will already have had the opportunity to express their views in the original ballot of non-domestic ratepayers.
68. The Welsh Ministers will therefore have sufficient information on which to base their decision on the timing of the coming into force of a BID arrangement without undertaking a further time consuming consultation.
69. Section 53 of the 2003 Act forms part of the law of England and Wales. The repeal will apply to BID arrangements in both England and Wales and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.
70. The provisions repeal section 53 (7) of the Local Government Act 2003 and do not contain powers for Welsh Ministers to make subordinate legislation.
71. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to economic regeneration and development under paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006 and local government finance under paragraph 12 of Part 1, Schedule 7 to the Government of Wales Act 2006.

## **Clause 60 - Legislation no longer of practical use**

### ***Schedule 17, Part 5 – Environment***

#### *Farm and Garden Chemicals Act 1967 (c.50)*

72. Clause 60 of the Deregulation Bill (entitled "Legislation no longer of practical use") introduces Schedule 17 which makes wide ranging amendments and repeals to the various specified legislation.
73. Paragraphs 17 and 18 (entitled "Farm and Garden Chemicals Act 1967 (c.50)") in Part 5 (Environment) of Schedule 18 to the Bill effect the repeal of the redundant Farm and Garden Chemical Act 1967 and, as a result of repealing that Act, make consequential amendments to the Food Safety Act 1990 (removing paragraph 5 of Schedule 3) and the Regulatory Enforcement and Sanctions Act 2008 (removing the entry for the Farm and Garden Chemicals Act 1967 in Schedule 3 to the 2008 Act). That repeal and those amendments will take effect in relation to England, Scotland and Wales.
74. The Farm and Garden Chemicals Act 1967 enables "the Ministers" as defined by section 5 of the 1967 Act, to make regulations regarding the labelling and marking of products which contain specified substances. Functions under the 1967 Act have not been transferred to the Welsh Ministers in relation to Wales. The Act makes it an offence to sell,

consign or deliver products which contain the specified substances unless those products have been labelled and marked in accordance with the provisions of regulations made under the Act. The Act also makes provision relating to evidence regarding the analysis of products where proceedings for an offence under that Act are being undertaken.

75. The provisions within the Farm and Garden Chemicals Act 1967 relating to the labelling and marking of farm and garden pesticides are now redundant as they have been replicated by specific legal requirements contained in other UK and EU legislation such as the Plant Protection Products Regulations 2011 (S.I. 2011/2131) and Plant Protection Products (Sustainable Use) Regulations 2012 (S.I. 2012/1657). Biocide and chemical product legislation have also been updated by the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013 (S.I. 2013/1506).
76. The provisions repealing the Farm and Garden Chemicals Act 1967 and making consequential amendments described above do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation.
77. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to:
  - Agriculture, Horticulture, Forestry, Plant Health and Rural Development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006;
  - Economic regeneration and development, including improvement of the environment excluding product standards, safety and liability, apart from in relation to food agricultural and horticultural products and pesticides (and things treated by virtue of any enactment as pesticides) under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and
  - Environmental protection, including pollution, nuisances and hazardous substances, Nature conservation, biodiversity, smallholdings and allotments under paragraph 6 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Statutory Water Companies Act 1991 (c.58)*

78. Paragraph 19 in Part 5 of this Schedule repeals the Statutory Water Companies Act 1991.
79. Paragraph 20 removes references to the 1991 Act and the term “statutory water company” from other Acts.

80. Statutory water companies were private businesses with share capital that were incorporated under individual Acts of Parliament. Most dated from the middle of the 19th Century and included, for example, York Waterworks which provided water supply services to the city of York. Unlike the water authorities that were privatised in 1989, statutory water companies were never in the public sector and were not required to register as limited companies under the Companies Act 1985 because they were incorporated under local Acts. The Statutory Water Companies Act regulated how the statutory water companies could operate. For example, it restricted the rate of dividend payable to shareholders and the amount the company could borrow.
81. There are no longer any statutory water companies left as, since privatisation, they have either merged with other water companies or been taken over by other limited companies. This means the provisions of the Statutory Water Companies Act are now redundant and can be repealed.
82. These provisions do not include powers for Welsh Ministers to make subordinate legislation.
83. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to water supply, water resources management and water quality under paragraph 19 of Part 1, Schedule 7 to the Government of Wales Act 2006.

*Sea Fish (Conservation) Act 1992 (c.60)*

84. Paragraph 21 (entitled “Sea Fish (Conservation) Act 1992 (c. 60)”) in Part 5 (Environment) of Schedule 17 to the Bill will repeal section 10 of Sea Fish (Conservation) Act 1992 (c. 60). Section 10 of the 1992 Act currently forms part of the law of England and Wales, Scotland and Northern Ireland.
85. Section 10 of The 1992 Act contained a requirement for the Minister to report to Parliament with a review of the Act, within 6 months of the 1 January 1997, after consulting those representing the interests of the fishing industry. On 20 March 1997, Lord Lucas answered a parliamentary question to explain that there was nothing of substance to report. He explained that the principal purpose of the Act had been to make provision for the introduction of restrictions on time spent at sea but the policy was suspended because of a legal challenge and a decision was subsequently made not to pursue it.
86. Paragraph 21 of Schedule 17 to the Bill repeals section 10 of the 1992 Act as the period within which the duty to report was to be discharged expired several years ago.

87. The provision simply repeals section 10 of Sea Fish (Conservation) Act 1992, and does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.
88. It is the view of the Welsh Government these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Fisheries and Fishing under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

### **Schedule 17, Part 6 – Animals and Food**

#### *Agricultural Produce (Grading and Marking) Acts 1928 and 1931*

89. Paragraphs 22 and 23 (entitled “Agricultural Produce (Grading and Marking) Acts 1928 and 1931”) in Part 6 (Animals and Food) of Schedule 17 to the Bill effect the repeal of both the Agricultural Produce (Grading and Marking) Act 1928 and the Agricultural Produce (Grading and Marking) Amendment Act 1931.
90. The Agricultural Produce (Grading and Marking) Act 1928, as amended by the Agricultural Produce (Grading and Marking) Amendment Act 1931, currently enables regulations to be made prescribing grade designations and marks to indicate the quality of agricultural and fishery produce and contains provisions to do with the storage and marking of eggs.
91. The 1928 and 1931 Acts have hardly been used during the last 70 years. They have been overtaken by more recent domestic legislation as well as European Union marketing legislation. The Acts are regarded as redundant and as serving no useful purpose at this stage. Consequently, paragraph 22 in Part 6 of Schedule 17 to the Deregulation Bill repeals the 1928 and 1931 Acts and paragraph 23 of that Schedule makes consequential amendments to Acts as a result of the repeal of the 1928 and 1931 Acts.
92. The 1928 and 1931 Acts form part of the law of England and Wales and Scotland. The proposed repeal of the Agricultural Produce (Grading and Marketing) Acts 1928 and 1931, set out in the Deregulation Bill, extends to England and, with the consent of the Assembly, Wales.
93. The Bill provision simply repeals the Agricultural Produce (Grading and Marketing) Act 1928 and the Agricultural Produce (Grading and Marketing) Amendment Act 1931, and does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation. The 1928 Act currently includes powers to make statutory instruments which, pursuant to section 6 of the 1928 Act, are subject to negative procedure.
94. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they as they relate to:

- Agriculture and Rural Development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006:
- Economic Regeneration and Development and Promotion of business and competitiveness (which excludes product standards...except in relation to food...agricultural and horticultural products and animals and animal products) under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and
- Food and food products, Food safety and the Protection of interests of consumers in relation to food under paragraph 8 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Animal Health Act 1981(c. 22)*

95. Paragraphs 24 and 25 (entitled “Animal Health Act 1981 (c.22)”) in Part 6 (Animals and Food) of Schedule 17 to the Bill effect the repeal of Part 2A (Sections 36A to 36M) of the Animal Health Act 1981. Part 2A of the 1981 Act enables the Secretary of State to specify, by Order, sheep genotypes which are (in the Secretary of State’s opinion) more susceptible to Scrapie and then provides powers for the Secretary of State to prohibit breeding from sheep of that genotype.
96. These powers were inserted in the 1981 Act by the Animal Health Act 2002 and reflected concerns (at that time) about the possibility that BSE in sheep might be masked by scrapie. At that time no tests existed which could distinguish between BSE and scrapie. The EU has since decided against the introduction of compulsory breeding programmes for genetic resistance to scrapie in sheep, making these powers redundant. In addition, tests are now available which can distinguish between BSE and scrapie.
97. A voluntary GB programme, the National Scrapie Plan (NSP), began in 2001 and closed in 2009 in response to updated scientific advice from the Spongiform Encephalopathies Advisory Committee (SEAC), that revealed that the risk of BSE in sheep is zero or negligible. To date, BSE has not been diagnosed in sheep in Great Britain or elsewhere in the world.
98. The powers in Part 2A (Sections 36A-M) of the Animal Health Act 1981 have never been used and, consequently, no-one will be affected by their proposed repeal.
99. These repealing provisions do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation. Part 2A of the Animal Health Act 1981 (which is to be repealed) does contain powers to make statutory instruments. Those powers have never been used and will be removed by the proposed repeal.

100. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Agriculture and Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Milk (Cessation of Production) Act 1985 (c. 4)*

101. Paragraph 26 (entitled “Milk (Cessation of Production) Act 1985 (c.4)”) in Part 6 (Animals and Food) of Schedule 17 to the Bill will repeal the Milk (Cessation of Production) Act 1985. That 1985 Act currently forms part of the law of England and Wales, Scotland and (for certain purposes) Northern Ireland.

102. Council Regulation (EEC) No 857/84 established, with effect from 2 April 1984, a system under which each producer of milk or milk products was allocated an individual “reference quantity”. If a producer’s production exceeded their reference quantity, there was provision for them to pay a levy. The reference quantity is commonly referred to as “milk quota”.

103. Council Regulation (EEC) No 857/84 also allowed Member States to grant compensation to producers who undertook to discontinue milk production. Such cessation of production would involve surrender of the producer’s milk quota. The 1985 Act enables schemes to be made allowing the payment of compensation on the cessation of milk production and the surrender of milk quota.

104. Such schemes were made under that Act in relation to England, Wales and Scotland. These schemes were revoked with effect from 6 April 2007 and have not been replaced (there is no intention to replace them). The underlying milk quota system itself (whose provisions are now contained in Council Regulation (EC) No 1234/2007) is intended to cease with effect from 31 March 2015.

105. The 1985 Act is, therefore, now redundant and paragraph 26 in Part 6 of Schedule 17 to the Bill will repeal that Act in relation to England, Northern Ireland and, with the consent of the Assembly, Wales. For information, the Scottish Government has confirmed that it intends to enact legislation to repeal the 1985 Act in relation to Scotland, at a later date.

106. The Bill provision simply repeals the Milk (Cessation of Production) Act 1985. This Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.

107. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to:

- Agriculture and rural development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006;



- Economic Regeneration and Development under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and
- Food and food products under paragraph 8 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Coal and Other Mines (Horses) Order 1956 (S.I. 1956/1777)*

108. Paragraph 27 (entitled “Coal and Other Mines (Horses) Order 1956 (S.I. 1956/1777)”) in Part 6 (Animals and Food) of Schedule 17 to the Bill will repeal The Coal and Other Mines (Horses) Order 1956 (SI 1956/1777). That 1956 Order sets out health and welfare rules for horses employed in mines and forms part of the law of England and Wales and Scotland.
109. This 1956 Order was originally made under section 190 of the Mines and Quarries Act 1954 (“the 1954 Act”). That enabling power has since been repealed and the 1956 Order now has effect by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974 (S.I. 1974/2013) (“the 1974 Regulations”) which were made under section 15 of the Health and Safety at Work etc. Act 1974.
110. The 1956 Order contains detailed provisions about the treatment of horses which work underground in mines, such as the age at which a horse may be taken underground, hours of work, veterinary inspections, stabling requirements etc.
111. The 1956 Order is no longer considered to be of practical use, since horses have not been used in mines in England and Wales for a considerable period of time.
112. Revoking the 1956 Order would remove an explicit prohibition on taking a horse underground if it is under four years of age, blind or not recently certified as being free of the disease of glanders. However, any horses employed in mines would in any event be appropriately protected under modern animal welfare legislation of general application, namely the Animal Welfare Act 2006.
113. The Bill provision described above simply repeals the Coal and Other Mines (Horses) Order 1956 and this Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.
114. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

***Schedule 17, Part 8 – Criminal Law***

*Town Police Clauses Act 1847 (10&11 Vict (c.89))*

115. This Part will repeal a number of provisions in the Town Police Clauses Act 1847, which are considered no longer to be of practical use.

116. Section 28 of the 1847 Act provides for a number of offences, in relation to certain activities carried out in the street. Broadly, these offences can be described and grouped as follows:

*Animal issues*

- Sale of animals
- Dangerous Dogs
- Slaughter of cattle
- Keeping a pigsty

*Transport issues*

- Not driving on the left
- Driving a horse and cart or carriage or cattle furiously
- Obstruction of the highway by a carriage or cart
- Safely securing loads on a cart or carriage
- Blocking footways with a horse, cart or carriage

*Retail issues*

- Shops displaying their wares on the footway
- Placing lines or cords across the street

*General*

- Providing or selling obscene literature or papers or singing obscene songs
- Discharging firearms, throwing stones, missiles or fireworks or making a bonfire
- Disturbing residents by 'wantonly' ringing the doorbell or knocking or extinguishing street lights
- Flying a kite or making snow or ice slides
- Making or repairing casks
- Laying down building materials unless they are safely enclosed
- Beating carpets or rugs (except doormats beaten before 8 am)
- Placing flower pots or boxes in upstairs windows without ensuring they are properly secured
- Throwing items from the roof of a house
- Allowing people to stand on windowsills to maintain the property
- Leaving cellar doors open without the appropriate handrails or fencing

*Environmental*

- Throwing litter

The proposed repeals would remove all but the following offences from the statute book:

- Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry or put in fear any person or animal.
- Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle.
- Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework.

117. Currently, these offences apply equally in both England and Wales. The inter-connected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision to remove the offences to be taken forward at the same time in the same legislative instrument. Many of these offences are no longer relevant in today's world, and others have been overtaken by more recent legislation, therefore their removal from the statute book is not contentious.

118. It is the view of the Welsh Government that a number of the offences referred to above fall within the legislative competence of the National Assembly for Wales in so far as they relate to animal health and welfare under paragraph 1 of Part 1, Schedule 7 to the Government of Wales Act 2006; highways and transport facilities and services under paragraph 10 of Part 1, Schedule 7; and environmental protection under paragraph 6 of Part 2, Schedule 7 to Government of Wales Act 2006.

119. All the provisions in this Memorandum extend to Wales and apply in relation to Wales.

### **Advantages of utilising this Bill rather than Assembly legislation**

120. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales because most Bill provisions, that are within the Welsh legislative competence, are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

### **Financial implications**

121. There are no financial implications for the Welsh Government.

**Alun Davies, AM**  
**Minister for Natural Resources and Food**  
**February 2014**