

Explanatory Memorandum to the Amendments to Subordinate Legislation (Miscellaneous Corrections) (Wales) Regulations 2025 and the Amendments to Subordinate Legislation (Minimum Landing Size and Miscellaneous Corrections) (Wales) Order 2025

This Explanatory Memorandum has been prepared by Legislative Codes Office and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Counsel General's declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of both the Amendments to Subordinate Legislation (Miscellaneous Corrections) (Wales) Regulations 2025 and the Amendments to Subordinate Legislation (Minimum Landing Size and Miscellaneous Corrections) (Wales) Order 2025.

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Counsel General and Minister for Delivery
9 July 2025

PART 1

1. Description

1.1. Both the Amendments to Subordinate Legislation (Minimum Landing Size and Miscellaneous Corrections) (Wales) Order 2025 (“the Order”) and the Amendments to Subordinate Legislation (Miscellaneous Corrections) (Wales) Regulations 2025 (“the Regulations”) make corrections to existing subordinate legislation.

1.2. The following statutory instruments are corrected by the Regulations –

- The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 [S.I. 2003/3227 (W. 308)]
- The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003 [S.I. 2003/3246 (W. 321)]
- The Home Energy Efficiency Schemes (Wales) Regulations 2011 [S.I. 2011/656 (W. 94)]
- The Care and Support (Financial Assessment) (Wales) Regulations 2015 [S.I. 2015/1844 (W. 272)]
- The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 [S.I. 2021/77 (W. 20)]
- The Building Control Profession (Charges) (Wales) Regulations 2023 [S.I. 2023/1303 (W. 233)]
- The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 [S.I. 2024/28 (W. 11)]
- The National Health Service Joint Commissioning Committee (Wales) Regulations 2024 [S.I. 2024/135 (W.29)]
- The Nutrition and Health Claims (Wales) Regulations 2007 [S.I. 2007/2611 (W. 222)]
- The Bread and Flour (Wales) Regulations 2025 [S.I. 2025/88 (W. 22)]

1.3. The following statutory instruments are corrected by the Order –

- The Animal Gatherings (Fees) (Wales) Order 2018 [S.I. 2018/645 (W. 119)]
- The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 [S.I. 2024/767 (W. 112)]
- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 [S.I. 2012/801 (W. 110)]
- The Developments of National Significance (Procedure) (Wales) Order 2016 [S.I. 2016/55 (W. 25)]

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

2.1. The Regulations and the Order have been made by the First Minister, as one of the Welsh Ministers.

- 2.2. The Committee has identified several errors that are corrected by both the Regulations and Order – a summary of the relevant reports is attached at the Annex.
- 2.3. Making these instruments is in line with commitments given to the Committee during my general evidence on 9 December 2024, evidence in the Stage 2 proceedings for the Legislation (Procedure, Publication and Repeals) (Wales) Bill (on 31 March 2025) and in my letters to the Committee of 28 April and 4 June 2025.
- 2.4. The Cabinet Secretary for the Economy, Energy and Planning wrote to the Committee in response to their report on the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2025 confirming that corrections would be made before the end of this year. Those corrections have been addressed in the Order¹.

Subject headings

- 2.5. The subject headings in these instruments reflect the subject classification of the legislation being corrected. *Statutory Instrument Practice* explains (at paragraph 3.8.6) that

...if more than one subject heading is used, they can be listed in order of relevance or importance, but should be listed in alphabetical order where no particular order of priority applies.

The headings are therefore in alphabetical order in both the Order and the Regulations.

Free of charge procedure

- 2.6. The free of charge procedure is normally applied when an instrument is found to be defective in some way and a new instrument is produced containing provisions that address the problem. Because both the Regulations and the Order correct errors in earlier instruments, the free of charge procedure is applicable. As such, both instruments include a headnote setting out that the procedure applies.
- 2.7. Application of the procedure results in additional publication charges for the Welsh Government (or Government Department if not the Welsh Government), because the authoring organisation is covering the cost of free copies for any known recipients of the earlier instruments.

¹ Although the error arose in the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2025, the corrections now being made are to earlier orders: the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and the Developments of National Significance (Procedure) (Wales) Order 2016. This ensures there is consistency across the 2012 and 2016 Orders as to the use of specific terms and reduces the potential for confusion.

Section 39, Legislation (Wales) Act 2019

- 2.8. Section 39(1) of the Legislation (Wales) Act 2019 provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument. For example, to make a single instrument in exercise of both regulation and order making powers. Section 39 may only be relied upon to combine regulation and order making powers to make changes to the law as it extends to England and Wales.
- 2.9. Consideration was given to making the amendments to both the Animal Gatherings (Fees) (Wales) Order 2018 and the Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 in one instrument, alongside amendments made in exercise of regulation-making powers, in reliance on section 39 of the Legislation (Wales) Act 2019. The powers for the Welsh Ministers to legislate by statutory instrument in section 84(1) of the Animal Health Act 1981 extend to England, Wales and Scotland. The powers of the Welsh Ministers to legislate under section 316(1) of the Marine and Coastal Access Act 2009, extend to the United Kingdom. On the basis that the legislation made in reliance on these powers extended beyond England and Wales, it was not considered that reliance on section 39 to combine these order making powers with regulation-making powers would be appropriate.
- 2.10. Given that no other orders are being amended by the Regulations, the amendments to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and the Developments of National Significance (Procedure) (Wales) Order 2016 were also included within the same instrument as the amendments to the Animal Gatherings (Fees) (Wales) Order 2018 and the Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024.

Accessibility of the law

- 2.11. The Committee will be aware of the Government's commitments to improve the accessibility of Welsh law, and this includes correcting errors and resolving ambiguities in legislation. As such we consider both the Order and Regulations will improve the accessibility of the law being corrected.
- 2.12. However, there is an argument that any amending instrument may itself cause complexity for the reader of legislation, as the reader could be required to identify the need for and then find the later enactments that are necessary to be read alongside the original text. This was particularly the case when print-based legislation was the general (or only) way legislation was accessed. However, the legislation.gov.uk website has resolved those problems to a significant extent. Most readers now access legislation through that platform, and very few

print copies of instruments are purchased². Additionally, the legislation.gov.uk platform shows legislation in its “revised form”. The legislation.gov.uk site explains: “By ‘revised’ we mean that amendments made by subsequent legislation are incorporated into the text.”

- 2.13. The Committee will also be aware that the Legislative Codes Office within the Welsh Government are working with the team behind legislation.gov.uk to annotate Welsh legislation on the site, so that is available in its revised form in both languages. We intend to prioritise applying the corrections made by the Order and the Regulations on the legislation.gov.uk platforms.

Practical impact of the errors

- 2.14. With the exception of the matter noted at para 2.15 below, the Government is not aware of any practical implications as a result of the errors being corrected by either the Regulations or the Order.
- 2.15. In relation to the Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024, a drafting issue had been identified in the definition of “minimum landing size” that is now addressed by article 7(3) of the Order. This has had some practical implications for enforcement activity. The current wording of the definition limits the ability to take formal enforcement action in cases where undersized cockles are gathered. As a result, enforcement officers have been focusing on providing advice and encouraging the re-distribution of undersized cockles. This approach has been effective to date, and there have been no reported challenges from gatherers. Resolving this matter via the Order is considered an appropriate, and timely, way to deal with this.

Matters not being corrected

- 2.16. When the Government responded to point 20 of the Committee's report on the Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 (“the 2024 Order”), it indicated further consideration would be given to referring to the maps of the specified area in the 2024 Order. However, as set out in my letter to the Committee of 4 June, the Government does not consider an amendment should be made to the 2024 Order. This is because the specified area is defined by Schedule 1 to the 2024 Order by reference to geographic coordinates. While maps of the area are provided to fishers alongside permit conditions and are available on the Welsh Government website, these maps are intended for illustrative purposes only and do not form part of the legally operative definition of the specified area.
- 2.17. To assist the Senedd, the maps can be accessed at:
<https://www.gov.wales/cockle-fishing-specified-area-maps>

² Sales figures are not available for commercial reasons, but in respect of instruments made by the Welsh Ministers are understood to be extremely low, particularly when compared to page views and access rates on the legislation.gov.uk platform.

3. Legislative background

3.1. Both the Regulations and the Order are subject to annulment (the so-called “negative procedure”).

3.2. The Regulations have been made under the powers conferred –

- on the National Assembly for Wales by sections 52(3)(c) and (d), 167A and 210(7) of the Education Act 2002, and now vested in the Welsh Ministers;
- on the Secretary of State by sections 16(1)(a), (c), (e) and (f), 17(2), 18(1)(c), 26(1)(a), (2)(e) and (3) and 48(1) of the Food Safety Act 1990, and now vested in the Welsh Ministers;
- on the Secretary of State by section 15(1) of the Social Security Act 1990, and now vested in the Welsh Ministers;
- by section 64(1) and (2)(b) of the Social Services and Well-being (Wales) Act 2014;
- on the Secretary of State by section 92(1) of the Water Resources Act 1991 and now vested in the Welsh Ministers;
- by sections 105B(1) and 120A(2)(a) of the Building Act 1984; and
- by sections 11(6) and 203(9) and (10) of, and paragraphs 4(1)(d) and (e) and 5 of Schedule 2 to, the National Health Service (Wales) Act 2006.

3.3. In relation to Parts 4 and 11 of the Regulations, the Welsh Ministers had regard to relevant advice given by the Food Standards Agency as required by section 48(4A) of the Food Safety Act 1990.

3.4. Further, in relation to Parts 4 and 11 of the Regulations, the consultation required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002³ was undertaken when the regulations being corrected were made. As the corrections being made through these Regulations are necessary to give effect to the original policy intention, the consultation on the original legislation remains effective for the purposes of the corrections. No additional consultation was necessary.

3.5. In relation to Part 8 of the Regulations, the consultation required by section 120C(1) of the Building Act 1984 was undertaken when the Regulations now being amended were made. As the corrections being made by these Regulations (to the Welsh language text of the original Regulations) are necessary to give effect to the original policy intention, the consultation remains effective for the purposes of the corrections. No additional consultation was necessary.

3.6. The Order has been made under the powers conferred by –

- sections 189(1) and 316(1) of the Marine and Coastal Access Act 2009;
- section 84(1) of the Animal Health Act 1981; and

³ laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

- sections 59(1), (2)(b) and (3)(a), 61Z(8) and (9), 62R and 74(1)(c) of the Town and Country Planning Act 1990.

4. Purpose and intended effect of the legislation

- 4.1. Both the Regulations and Order are being made to correct errors in subordinate legislation. Amending the earlier subordinate legislation in an “omnibus” instrument in this way has been adopted as no other immediate suitable legislative vehicles have been identified by which the corrections could have been made.
- 4.2. In addition to correcting earlier instruments, the Order also makes two minor technical amendments:
 - 4.2.1. firstly, to the definition of “minimum landing size” within article 9(7)(b) of The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 following representation from Natural Resources Wales (and see paragraph 2.15 above).
 - 4.2.2. secondly to both the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and to the Developments of National Significance (Procedure) (Wales) Order 2016 to ensure consistency in references in the 2012 and 2016 Orders to the body known as the “Natural Resources Body for Wales” (and see paragraph 2.4 above).

5. Consultation

- 5.1. The Regulations and Order are correcting and making limited amendments to previous instruments. None of the corrections or amendments reflect any change in the Welsh Government’s policies implemented by earlier subordinate legislation. As such consultation was not deemed necessary.
- 5.2. Note also paragraphs 3.4 and 3.5 above.

6. Regulatory Impact Assessment (RIA)

- 6.1. As both the Regulations and the Order make corrections to earlier subordinate legislation and those corrections do not alter the policy (or its impact) in those earlier instruments, nor how the legislation is to apply, an RIA is not required.
- 6.2. This is in line with the policy set out in the Welsh Ministers’ code of practice for carrying out regulatory impact assessments for subordinate legislation.

ANNEX – relevant reports of the Legislation, Justice and Constitution Committee

[SL\(6\)427 - The Building Control Profession \(Charges\) \(Wales\) Regulations 2023](#) - reporting point 3 is addressed in Part 8 of the Regulations.

[SL\(6\)436 - The Water Resources \(Control of Agricultural Pollution\) \(Wales\) \(Amendment\) \(No. 4\) Regulations 2023](#) - reporting point 3 is addressed in Part 7 of the Regulations rather than utilising a Correction Slip as originally stated in the Welsh Government response to the report, also note that the corrections are made to the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021.

[SL\(6\)444 - The Independent Schools \(Prohibition on Participation in Management\) \(Wales\) Regulations 2024](#) - reporting point 1 is addressed in Part 9 of the Regulations.

[SL\(6\)454 - The National Health Service Joint Commissioning Committee \(Wales\) Regulations 2024](#) - reporting points 2, 4, 5 and 6 are addressed in Part 10 of the Regulations.

[SL\(6\)466 - The Education \(Pupil Exclusions and Appeals\) \(Pupil Referral Units\) \(Wales\) \(Amendment\) Regulations 2024](#) - reporting point 3 is addressed by Parts 2 and 3 of the Regulations, but note that the corrections are made to both the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003.

[SL\(6\)470 - The Home Energy Efficiency Schemes \(Wales\) \(Amendment\) Regulations 2024](#) - reporting point 2 is addressed in Part 5 of the Regulations, but note that the corrections are made to the Home Energy Efficiency Schemes (Wales) Regulations 2011.

[SL\(6\)538 - The Nutrition and Health Claims \(Wales\) \(Amendment\) Regulations 2024](#) - reporting points 2, 3, 4, 5 and 6 are addressed in Part 4 of the Regulations, but note that the corrections are made to the Nutrition and Health Claims (Wales) Regulations 2007.

[SL\(6\)580 - The Bread and Flour \(Wales\) Regulations 2025](#) - reporting points 1, 3, 4 and 5 are addressed in Part 11 of the Regulations.

[SL\(6\)588 - The Care and Support \(Charging\) and \(Financial Assessment\) \(Wales\) \(Miscellaneous Amendments\) Regulations 2025](#) - reporting point 2 is addressed in Part 6 of the Regulations but note that the corrections are made to the Care and Support (Financial Assessment) (Wales) Regulations 2015.

[SL\(6\)503 - The Cockle Fishing Management and Permitting \(Specified Area\) \(Wales\) Order 2024](#) - reporting points 3, 5, 7, 10, 11, 14, 15, 16 and 17 are addressed in Part 3 of the Order.

[SL\(6\)544 - The Animal Health \(Miscellaneous Fees\) \(Amendment and Revocation\) \(Wales\) Order 2024](#) - reporting point 1 is addressed in Part 2 of the Order, but note the correction is made to the Animal Gatherings (Fees) (Wales) Order 2018.

[SL\(6\)609 - The Development Procedure \(Consultees\) \(Wales\) \(Miscellaneous Amendments\) Order 2025](#) - the reporting point is addressed by both Parts 4 and 5 of the Order, but note that corrections are made to both the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and the Developments of National Significance (Procedure) (Wales) Order 2016.