

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 14 November 2022

Meeting time: 12.45

For further information contact:

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Committee Clerk

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Hybrid – Supplementary Pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

4.1 SL(6)274 – The Renting Homes (Rent Determination) (Converted Contracts) (Wales) (Amendment) Regulations 2022

(Page 1)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-29-22 – Paper 50 – Welsh Government Response

7.2 WS-30C(6)019 – The Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022

(Pages 2 – 5)

Attached Documents:

LJC(6)-29-22 – Paper 47 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 9 November 2022

LJC(6)-29-22 – Paper 48 – Commentary

8.5 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Inter-Ministerial Group for Environment, Food and Rural Affairs

(Pages 6 – 7)



Attached Documents:

LJC(6)-29-22 – Paper 49 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 11 November 2022

18 The Environmental Protection (Single-use Plastic Products) (Wales) Bill

(16.30 – 16.40)

(Pages 8 – 20)

Attached Documents:

LJC(6)-29-22 – Paper 45 – Draft letter

LJC(6)-29-22 – Paper 46 – Letter from the Minister for Climate Change, 25 October 2022

Agenda Item 4.1

Government Response: *The Renting Homes (Rent Determination) (Converted Contracts) (Wales) (Amendment) Regulations 2022*

Technical Scrutiny point 1

Response

The Welsh Government has considered technical scrutiny point 1 and confirms “licence” has been replaced with “assured agricultural occupancy” because an assured agricultural occupancy is the only type of licence that is within scope of the provision, as suggested in technical scrutiny point 1. References to “licence” elsewhere in the Original Regulations are clear and legally accurate, when read alongside the provisions which set out the types of occupation contracts in relation to which an application to the tribunal may be made under the Regulations.

The Welsh Government does not therefore consider an amendment is necessary to achieve the intended legal effect.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products
(Amendment) Regulations 2022**

DATE **9 November 2022**

BY **Lesley Griffiths AS/MS**
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Members of the Senedd will wish to be aware that I have given consent for the Secretary of State to exercise a subordinate legislation-making power in a devolved area in relation to Wales. The former Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, requested my consent to make the Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022.

The above titled Statutory Instrument (SI) will be made by the Secretary of State in exercise of powers conferred by section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, as well as sections 50(3) and 53(1) of the Agriculture Act 2020.

The SI makes operability amendments to address deficiencies and ensure clarity to the following retained direct EU legislation and EU derived domestic legislation relating to marketing standards for agricultural products in both England and Wales:

- Amendment of Council Regulation (EC) No 1234/2007
- Amendment of Commission Regulation (EC) No 543/2008
- Amendment of Regulation (EU) No 1308/2013 of the European Parliament and of the Council
- Amendment of the Hops Certification Regulations 1979

For efficiency and expediency, and to ensure consistency and coherence of the statute book, I consider it appropriate to consent to the above titled SI. I do so whilst reserving the ability to diverge in future as per our devolved competence.

The regulations were laid before Parliament on 8 November 2022 to come into force 21 days later.

UK MINISTERS ACTING IN DEVOLVED AREAS

019 - [The Common Organisation of the Markets in Agricultural Products \(Amendment\) Regulations 2022](#)

Laid in the UK Parliament: 8 November 2022

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made negative
Date of consideration by the Joint Committee on Statutory Instruments	Unknown
Date of consideration by the House of Commons Statutory Instruments Committee	Unknown
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Unknown

Background

These Regulations were made by the UK Government under:

- sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Withdrawal Act 2018; and
- sections 50(3) and 53(1) of the Agriculture Act 2020.

However, it is only those parts of the Regulations made under the 2018 Act that apply in relation to Wales.

Summary

The parts of the Regulations made under the 2018 Act (i.e. regulations 2, 3, 4 and 12) correct deficiencies in retained EU law so that it operates

effectively in a domestic context. The deficiencies being corrected by regulations 2, 3, 4 and 12 are relatively minor. For example:

- references to 'Member States' are changed to references to 'relevant authority' (the relevant authority in relation to Wales is the Welsh Ministers);
- reference to an EU Directive is changed to a reference to corresponding domestic legislation (namely the Weights and Measures Act 1985);
- regulation 3(1) of the Hops Certification Regulations 1979 is omitted because it is no longer required. Regulation 3(1) provided that hops and hops products could be moved from Northern Ireland to Great Britain provided they met the requirements for sale in Northern Ireland. Regulation 3(1) is no longer required because of the United Kingdom Internal Market Act 2020.

Statement by the Welsh Government

Senedd Legal Advisers note that the statement laid by the Welsh Government dated 9 November 2022 does not provide any description of the actual changes being made by the Regulations.

Actual examples are provided above and, while they are relatively minor and technical, Members of the Senedd may have found it useful to see such examples in the written statement.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Senedd Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Agenda Item 8.5

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

Huw.Irranca-Davies@senedd.wales

11 November 2022

Dear Huw,

In accordance with the inter-institutional relations agreement, I wish to notify you a further meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 7 November.

The meeting was chaired by Lorna Slater MSP, Minister for Green Skills, Circular Economy, and Biodiversity from Scottish Government. The meeting was also attended by Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and the Islands, Scottish Government; Therese Coffey MP, Secretary of State for Environment Food and Rural Affairs, UK Government; Mark Spencer MP, Minister of State for Food, UK Government; John Lamont MP, Parliamentary Under Secretary of State at Office of the Secretary of State for Scotland, UK Government; James Davies MP, Parliamentary Under Secretary of State at the Office of the Secretary of State for Wales, UK Government; and Katrina Godfrey, Permanent Secretary, DAERA in the absence of NI ministers.

This was the first IMG since the Royal Welsh Show in July, with September and October being cancelled due to changes in UK Government.

At the meeting we discussed the Retained EU Law (Reform and Revocation) Bill, including the current status of the Bill, and in particular Defra's plans for managing the over 600 pieces of legislation in the portfolio.

We then discussed borders and I requested an update on the Target Operating Model and outlined my continuing concerns over ensuring BCPs are ready.

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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.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Following this we discussed issues with VAT in relation to Deposit Return Schemes , which is a concern to all four administrations but particularly to Scottish Government as their scheme launches in 2023.

Finally we agreed to publish the Joint Fisheries Statement.

The next meeting will be held on Monday 5 December.

A communique regarding this meeting will be published on the UK Government website at <https://www.gov.uk/government/publications/communique-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs>.

I am copying this letter to the Climate Change, Environment, and Infrastructure Committee and to the Economy, Trade and Rural Affairs Committee.

Regards,



Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Agenda Item 18

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

Document is Restricted

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Huw Irranca Davies, MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
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25th October 2022

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Dear Huw,

Thank you for the Legislation, Justice and Constitution Committee report which was published on 10 October 2022 in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Bill (“the Bill”).

Please see my response below to the set of recommendations within the report which I could not fully address during the Stage 1 General Principles Debate on 11 October 2022.

I have also written today to the Chair of the Finance Committee and the Chair of the Climate Change, Environment and Infrastructure Committee to set out my response to their recommendations.

Recommendation 1

During the Stage 1 debate, the Minister should explain why a Bill was not introduced early in the first year of the Senedd.

Response

Plans to ban and restrict single-use plastic products have been in policy development for several years. I am aware the Senedd has also previously called for legislative action in this area. However, EU Exit and the COVID-19 pandemic have undoubtedly presented some significant pressures and challenges in delivering these policies. The enactment of the United Kingdom Internal Market Act 2020 (UKIMA) caused an initial delay as we considered whether the market access principles in UKIMA had any impact on the Bill. As you are aware, the Counsel General and the Llywydd have both said the Bill’s provisions are within competence and we are confident the Bill’s provisions are fully enforceable and effective.

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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.

Recommendation 2

During the Stage 1 debate, the Minister should explain what the consequences would have been for the Welsh environment if the Bill had been subject to the Senedd's normal Stage 1 scrutiny process and full legislative scrutiny.

Response

The single-use plastic products targeted in the Bill are often difficult to recycle, are often littered and commonly found in our seas and rivers which can cause harm to our wildlife. This Bill is a key step in stemming the flow of plastic pollution and the use of the expedited process will mean it can contribute towards our action to tackle the climate and nature emergencies as quickly as possible.

Recommendation 3

During the Stage 1 debate, given her view that the legislation is needed urgently, the Minister should explain why she did not request the use of the Senedd's Emergency Bill procedure.

Response

The emergency Bill procedure was considered but was not regarded as appropriate in this instance as it completely bypasses Stage 1 scrutiny, which is necessary under specific circumstances. This was not the case for the Bill.

It was important we provided Committees with the opportunity to consider the Bill before amendments stages, even if it was a shortened one. To aid the pre-legislative scrutiny process we published the draft Bill before introduction. I also notified Committees of a small number of technical amendments to the Bill that we will be putting forward at Stage 2. I am pleased to note that your Committee was able to scrutinise the Bill and produce a comprehensive report despite the time constraints.

Recommendation 4

During the Stage 1 debate, given her view that the United Kingdom Internal Market Act 2020 "does not bite on the Bill", the Minister should explain why it was advanced as an argument to expedite scrutiny of the Bill.

Response

When I wrote to the Business Committee on this matter in July, there were two good reasons as to why the Bill should be expedited. Firstly, there was the environmental protection imperative, and secondly, the Court of Appeal's request for a legislative context in which to consider the arguments being advanced by the Counsel General in the (then ongoing) application for judicial review of UKIMA.

The Bill is part of our efforts to address the climate and nature emergencies, the scale of which means the health of our environment must be prioritised. Urgent change is needed to avoid leaving a legacy of plastic waste for future generations to deal with. We considered it necessary to introduce the Bill on an expedited timetable to ensure significant progress is made and we do not fall behind other countries in the UK and across the globe.

While the Supreme Court rejected our application for permission to appeal the Court of Appeal's decision that our claim for judicial review of UKIMA was premature, it left the door open for the substantive arguments to be considered in a future case. Our position - that the Bill is within competence and is fully enforceable and effective - is not incompatible with our view the Bill is capable of providing the context which would assist the Court in testing the arguments about UKIMA in a future case. Those two positions are not mutually exclusive. Expediting the Bill preserves all the options in terms of how that issue may be brought before the Court.

Recommendation 5

During the Stage 1 debate, the Minister should state clearly when she intends to commence all provisions of the Bill so that it is fully operational.

Response

I accept this recommendation. We intend for all commencement dates to be within this Senedd term i.e. by April 2026. To help support manufacturers, retailers and distributors of single-use plastic products, we will introduce later commencement dates for single-use plastic carrier bags, lids made from polystyrene and oxo-degradable plastics. This is intended to help businesses to adjust to the legislative change and to source alternatives.

The Bill engages the World Trade Organisation's (WTO) treaty on Technical Barriers to Trade Agreement. The WTO requires a six-month standstill period following the passing of the Bill and its being submitted for Royal Assent. This delay is needed to allow foreign operators to adapt their products to the new requirements. It is also customary to commence a Bill's provisions eight weeks after Royal Assent. As a result, the earliest any provisions can be commenced is autumn 2023.

Recommendation 6

During the Stage 1 debate, the Minister should confirm how the World Trade Organisation treaty on technical barriers to trade will impact on the commencement and implementation of the Bill's provisions.

Response

I accept this recommendation. Article 2.12 of the World Trade Organisation Technical Barriers to Trade agreement requires members to allow a reasonable interval between the publication of measures and their entry into force. This is to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member. In order to satisfy this requirement, it is intended that following the Senedd's approval of the Bill there will be a six-month standstill period prior to the Bill obtaining Royal Assent and the subsequent commencement of the Bill's provisions.

Recommendation 7

During the Stage 1 debate, the Minister should confirm whether the case study on oxo-degradable plastic is accurate and if not, why not.

Response

I refer to my response provided during the Stage 1 debate and to Recommendation 8 below for more details on this point.

Recommendation 8

No later than 10 working days after the Stage 1 debate, the Minister should write to us and the Climate Change, Environment and Infrastructure Committee, providing her detailed assessment of our case study on oxo-degradable plastic including any implications for enforcement of the law arising from the Bill.

Response

I do not agree the Legislation and Justice Committee's case study accurately represents the position. The case study deals with business-to-business supply whereas the Bill prohibits the supply of prohibited single-use plastic products to a *consumer* in Wales. A "consumer" is defined by section 5(9) of the Bill as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business or profession".

On the broader question of enforceability, our position is the provisions of the Bill are within competence and are fully effective and enforceable, including the cross-border elements of the provisions which make it an offence to supply a prohibited single-use oxo-degradable plastic product to consumers in Wales.

Recommendation 9

During the Stage 1 debate, the Minister should explain how local authorities will be able to take enforcement action in relation to all prohibited items in the Bill, even if they are supplied from other parts of the UK, including, in particular, single-use carrier bags and oxo-degradable plastics.

Response

I refer to my answer given during the Stage 1 debate and to my response to Recommendation 10 below.

Recommendation 10

No later than 10 working days after the Stage 1 debate, the Minister should write to us and the Climate Change, Environment and Infrastructure Committee providing detailed information explaining how local authorities will be able to take enforcement action in relation to all prohibited items in the Bill, even if they are supplied from other parts of the UK, including, in particular, single-use carrier bags and oxo-degradable plastics.

Response

I consider, and the Llywydd agrees, that all the provisions in this Bill are within the Senedd's competence. That determination includes the provisions which prohibit the supply to consumers in Wales, from other parts of the UK, of single-use carrier bags and oxo-degradable plastics. Accordingly, we consider the provisions are fully effective and enforceable. We expect local authorities, with the benefit of the practical guidance we will provide, to enforce them, as they would any other Senedd legislation.

Local authorities already inspect premises relevant to the provisions of the Bill under existing statutory duties. My officials are developing comprehensive guidance to help businesses, consumers and local authorities understand the changes brought in by this legislation. In the first instance, the focus will be on education and engagement with retailers and business representatives, before enforcement action is taken.

Recommendation 11

During the Stage 1 debate, the Minister should, if UKIMA "does not bite on the Bill" and the Bill is within the Senedd's legislative competence, (and following the Counsel General's comments in Plenary on 5 October) explain the grounds on which the Welsh Government could make a legal challenge in relation to UKIMA and via which legal avenue.

Response

Our position is the Bill is within the Senedd's competence, that it is fully enforceable, and it is not affected by UKIMA. We take that view because this Bill makes provision in relation to devolved matters. UKIMA cannot and does not, in our view, cut across the Senedd's competence to legislate about those matters. It cannot impliedly repeal the Government of Wales Act 2006 (GoWA), which is a constitutional statute. It cannot reserve matters by the back door.

All the options for challenging UKIMA remain open to the Counsel General. The Counsel General has a power under section 112 of GoWA to refer this Bill to the Supreme Court. He has made no decision on that yet and he cannot do so until the Bill is passed by the

Senedd, and its final content is known. As the Counsel General has said, he will consider all the relevant factors in making his decision at that time.

The UK Government's Attorney General also has a power to refer the Bill to the Supreme Court and we will of course respond accordingly if he does.

Recommendation 12

The Minister should re-visit the definitions in section 1 of the Bill, with a view to tabling amendments that contain more complete definitions, which reduce the scope for loopholes to be exploited and provide greater certainty for those enforcing the Bill.

Response

I resist this recommendation. Legislative drafting often involves a trade-off between ease of understanding and absolute certainty. At the Climate Change, Environment and Infrastructure Committee evidence hearing I explained that while the drafting of key terms in Section 1 of the Bill differed to the drafting of those terms under the European Union's Single Use Plastic Directive, we consider these definitions to be the same in so far as their practical effect is concerned.

The drafting is not identical as we have sought to clarify the text or to remove wording we considered to be unnecessary, in accordance with our drafting practice. Our position, therefore, is the drafting of the key terms is clear. To aid further clarity, we will be publishing comprehensive guidance to help businesses, consumers and local authorities to understand the various legal definitions in the Bill. This will be developed collaboratively and undertaken in advance of the legislation coming into effect.

We will also work with stakeholders when developing communications relating to the Bill. This will include provision of information to help clarify the products being included.

Recommendation 13

The Minister should table amendments to the Bill to provide that there is a duty in the Bill to provide guidance; that the duty includes consultation with stakeholders and that the guidance should be subject to scrutiny by the Senedd.

Response

I accept this recommendation in principle. I will table an amendment to the Bill at Stage 2 to confer a duty on the Welsh Ministers to publish guidance about the single-use plastic products that are prohibited under the Bill and exemptions listed in column 2 of the Table in the Schedule.

Recommendation 14

The Minister should table an amendment to the Bill to provide a duty to consult stakeholders including manufacturers and producers before making regulations under section 3.

Response

I accept this recommendation. An amendment will be tabled to provide a duty to consult stakeholders including manufacturers and producers before making regulations under section 3.

Recommendation 15

During the Stage 1 debate, the Minister should explain the reasons for providing that a person outside Wales commits an offence where they supply a prohibited single-use plastic product to a consumer who is in Wales.

Response

I accept this recommendation. The Bill seeks to tackle the negative impacts from plastic pollution on our environment, wildlife, health and well-being. A person from outside of Wales who supplies products listed in the Bill to consumers in Wales will be liable for a criminal offence. We believe this will provide a deterrent to those wishing to undermine our legislation and will help prevent the inward supply of these prohibited goods in Wales.

We recognise there are practical issues in enforcing the offence in respect of distance selling (particularly when the item is being supplied from outside of the England and Wales legal jurisdiction). However, we intend to work with businesses to ensure we restrict the supply of these products into Wales as far as possible.

Recommendation 16

During the Stage 1 debate, the Minister should explain how section 5 of the Bill will be enforced as regards single-use carrier bags and oxo-degradable plastics.

Response

We consider, and the Llywydd agrees, that all the provisions in this Bill are within the Senedd's competence. That determination includes the provisions which prohibit the supply to consumers in Wales, from other parts of the UK, of single-use carrier bags and oxo-degradable plastics. Accordingly, we consider that the provisions are fully effective and enforceable. We expect local authorities – with the benefit of the practical guidance we will provide – to enforce them, as they would any other Senedd legislation. There will be further engagement and consultation with local authorities as we co-produce the guidance for single-use carrier bags and oxo-degradable plastics.

Recommendation 17

The Minister should ensure that detailed responses in relation to the substance of each recommendation are included in her response to this report, which should be provided no later than 10 working days after the Stage 1 debate.

Response

I accept this recommendation. Please accept this letter as fulfilling this recommendation.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change