

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

For further information contact:

Videoconference via Zoom

P Gareth Williams

Meeting date: 27 March 2023

Committee Clerk

Meeting time: 13.00

0300 200 6565

SeneddLJC@senedd.wales

Remote – Supplementary Pack

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

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(13.05 – 13.10)

Made Negative Resolution Instruments

3.1 SL(6)332 – The Agricultural Wages (Wales) Order 2023

(Page 1)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 2a – Welsh Government response

3.5 SL(6)339 – The Care and Support (Population Assessments) (Wales) (Amendment) Regulations 2023

(Page 2)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)-11-23 – Paper 7a – Welsh Government response

6 Papers to note

(13.20 – 13.25)

6.5 Correspondence with the Minister for Rural Affairs and North Wales, and Trefnydd: Retained EU Law (Revocation and Reform) Bill

(Pages 3 – 4)

Attached Documents:

LJC(6)11-23 – Paper 31 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 23 March 2023

6.6 Correspondence from the Minister for Social Justice to the Llywydd: Illegal Migration Bill

(Pages 5 – 6)

Attached Documents:

LJC(6)-11-23 – Paper 32 – Letter from the Minister for Social Justice to the Llywydd, 23 March 2023

11 Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Economic Crime and Corporate Transparency Bill

(13.55 – 14.00)

(Pages 7 – 15)

Attached Documents:

LJC(6)-11-23 – Paper 21 – Legal Advice Note

12 Justice in Wales: Correspondence on oral evidence provided by Lord Bellamy KC, Parliamentary Under-Secretary of State for Justice

(14.00 – 14.10)

(Pages 16 – 33)

Attached Documents:

LJC(6)-11-23 – Paper 22 – Letter from Lord Bellamy KC, 14 March 2023

LJC(6)-11-23 – Paper 23 – Submission from Race Council Cymru, 14 March

2023

LJC(6)-11-23 – Paper 24 – Submission from Professor Emyr Lewis,
Aberystwyth University, 17 February 2023

LJC(6)-11-23 – Paper 25 – Draft response to Lord Bellamy KC

13 Health Service Procurement (Wales) Bill: Draft report

(14.10 – 14.40)

(Pages 34 – 80)

Attached Documents:

LJC(6)-11-23 – Paper 26 – Draft report

LJC(6)-11-23 – Paper 27 – Letter from the Minister for Health and Social
Services to the Health and Social Care Committee, 17 March 2023

LJC(6)-11-23 – Paper 28 – Letter from the Health and Social Care Committee
to the Minister for Health and Social Services, 9 February 2023

LJC(6)-11-23 – Paper 29 – Letter from the Minister for Health and Social
Services, 24 March 2023

LJC(6)-11-23 – Paper 30 – Letter to the Minister for Health and Social
Services, 13 March 2023

Agenda Item 3.1

Government Response: The Agricultural Wages (Wales) Order 2023

Technical Scrutiny point 1: We accept the point and are grateful for the Committee's identification of this typographic error. The reference in article 29(3) should be to paragraph (2). We will seek to make the change by correction slip.

Technical Scrutiny point 2: We accept the point and are grateful for the Committee's identification of this typographic error. We will seek to make the change by correction slip.

Merit Scrutiny point 4: In accordance with sections 2(2) and 4(1) of the Agricultural Sector (Wales) Act 2014, the Agricultural Advisory Panel for Wales ('the Panel') prepare Agricultural Wages Orders. Differences can develop between the adoption of a proposal and the drafting of that proposal in final legislative form. The Panel's aim to clarify the effect of article 14 was constant though the form of words through which it sought to achieve that aim were refined over the drafting process, hence the difference in the wording between the Explanatory Memorandum and the Order.

Agenda Item 3.5

Government Response: The Care and Support (Population Assessments) (Wales) (Amendment) Regulations 2023

Merit Scrutiny point 1: The Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Commencement No. 4) Order 2023 (not yet made) will commence:

- section 23 and Schedule 2 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (“the 2020 Act”) on 29th March 2023 to enable a transfer scheme to be made; and
- to the extent that it is not already in force, the remainder of Part 4 of the 2020 Act on 1st April 2023 to coincide with the date upon which the Citizen Voice Body for Health and Social Care, Wales (“the CVB”) will be fully operational. This is with the exception of section 19(3) and (4) of the 2020 Act (Access to premises by Citizen Voice Body: duty to have regard to code of practice (“the Code”)) which is expected to be commenced on 1st July 2023 following a bespoke consultation exercise on the Code with the CVB once the CVB is in receipt of its full powers.

Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and
Trefnydd

23 March 2023

Dear Lesley

Retained EU Law (Revocation and Reform) Bill – Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)

At our meeting this week we considered your letter of 17 March 2023 in which you told us that the Welsh Government has moved the Senedd debate on legislative consent for the Retained EU Law (Revocation and Reform) Bill from 21 March to 28 March 2023. You note that this has been possible because Report Stage in the House of Lords will begin on 19 April.

You also note that, because it has been possible to move the debate, you would be recommending a reporting deadline of 27 March and that you "hope this additional time allows [my] Committee to consider and report on Memorandum No. 4".

We noted the laying of Memorandum No. 4 at our meeting on 13 March 2023 and you will be aware that we wrote to the Business Committee advising that we do not believe it is practical for us to give careful and detailed consideration to Memorandum No. 4 and produce a report that could meaningfully and usefully inform the Senedd's debate on a legislative consent motion for the Bill.

As I believe we have demonstrated regularly, we will always aim to respond positively to tight deadlines. However, piecemeal delays to debates and postponements to reporting deadlines do not necessarily assist or enable my Committee (nor perhaps other Senedd Committees) to plan and perform our scrutiny function effectively, and often create missed opportunities.

We appreciate that the scheduling of business in the UK Parliament is outside the control of the Welsh Government and, in relation to the Bill, the Welsh Government itself may be having to adjust programmed work and key tasks. We have said on many occasions that the lack of control of the

legislative process is one of the serious inadequacies of a different parliament legislating for Wales on matters within the Senedd's legislative competence.

We understand that the amendments made to the Bill which are the subject of Memorandum No. 4 do not change the Welsh Government's recommendation on whether the Senedd should give its consent to the Bill, and note that the Welsh Government's position is that "the Bill continues to present the same legal, constitutional, policy and practical concerns".

Given that the Bill is yet to complete Lords Report Stage, we are mindful that the Bill could be further amended and such amendments may require the Welsh Government to lay additional supplementary legislative consent memoranda.

You will be aware that we wrote to the Counsel General on 8 March 2023 and expressed our concerns that, as Bills which are subject to legislative consent memoranda near the end of the scrutiny process in the UK Parliament, the Welsh Government should do more to ensure the Senedd is given critical information in a more timely manner.

Should the Welsh Government become aware of relevant amendments being tabled in the UK Parliament for the purpose of Lords Report Stage proceedings, we would welcome early notification, even if that is in advance of any necessary supplementary legislative consent memoranda being laid before the Senedd. This may afford us time to consider the fast-moving developments and changes to the Bill and plan how we may be able to report to the Senedd.

I am copying this letter to the Counsel General and to the Llywydd.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies
Chair

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

Ein cyf/Our ref MA/JH-/0928/23

Agenda Item 6.6



Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd - Senedd Cymru
Llywydd@senedd.wales

23 March 2022

Dear Elin,

The Home Secretary, Suella Braverman MP, introduced the Illegal Migration Bill (the Bill) in the House of Commons on 7 March.

From our initial analysis, the Bill touches upon areas of devolved competence. In a letter to me on the 7 March, the Minister for Immigration, Robert Jenrick MP, stated the UK Government's view that the entirety of the Bill's contents relate to reserved matters. Therefore, the UK Government is not seeking the consent of the Senedd to the Bill.

Given the complete absence of meaningful engagement by the UK Government ahead of introduction and the complexity of the issues raised in the Bill, it has not yet been possible to consider properly the devolution consequences of what is being proposed.

I have major concerns that the Bill has the potential to breach international obligations and further analysis is required to inform our position. The UK Government has not been able to state that the Bill is compliant with the European Convention on Human Rights, and the UN Refugee Agency claims that the Bill is a breach of the 1951 Refugee Convention.

I expect to lay a Legislative Consent Memorandum before the Senedd as soon as we have a clear picture of the devolution consequences of the proposed legislation. However, this is outside the normal two-week Standing Order 29 deadline. We expect to be able to provide an LCM shortly before Senedd Cymru's Easter recess. We anticipate that the Bill will make progress into the House of Lords around the same time as the first week after Senedd Cymru returns.

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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.

I am copying this letter to the First Minister, the Counsel General and Minister for the Constitution, the Minister for Rural Affairs and North Wales, and Trefnydd, the Chair of the Equality and Social Justice Committee and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter "J".

Jane Hutt AS/MS

Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

Document is Restricted

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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CF99 1SN

14 March 2023

MoJ ref: ADR103208

Dear Mr. Irranca-Davies,

EVIDENCE TO THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE

Thank you for your letter of 16 December following my evidence session before your Committee. Please accept my apologies for the delay in replying.

We are keen to take forward some of the Thomas Commission recommendations which have the potential to improve justice outcomes in Wales, provided they do not require a change to the devolution settlement. Last year, the Welsh Government identified 14 recommendations that they considered would meet this objective. As I said during my evidence session, we have been working with the Welsh Government and have agreed to deliver five of those recommendations:

- *Recommendation 20: Digital court services and other dispute resolution services that are being developed and introduced must be fully accessible.*
- *Recommendation 54: Digital services that are being introduced must be accessible, free help must be available, and all must be available in Welsh at the same time as the English version*

The MoJ and its agencies are already making progress on the recommendations concerning digital court services and will continue to address any gaps in digital service provision.

HM Courts and Tribunals Service's technology strategy covers England and Wales as standard, so Welsh court users will have access to the same digital services as English court users. HMCTS's digital court services are being built around user needs to ensure that they are fully accessible, including support for users that need help to access HMCTS' services online.

In terms of digital Welsh language provision, the MoJ Welsh Language Scheme commits the MoJ to working with the Government Digital Service to ensure that MoJ information and material relating to the most-used aspects of its business and services are available both in Welsh and English.

HM Prison and Probation Service follows the MoJ Welsh Language Scheme. The HMCTS Welsh Language Scheme also commits to making sure all online services will be available in Welsh at the same time as the English service. Staff in HMCTS's Welsh Language Unit are trained to provide a Welsh language service.

Building on the above, we are currently identifying whether there are any other areas in which we need to ensure that there is equal accessibility.

- *Recommendation 26: The Administrative Court should have the power to stay court proceedings whilst the Public Services Ombudsman for Wales investigates a complaint. The Ombudsman should have the power to refer a point of law to the Court.*

The MoJ supports this proposal, which will need to be given effect by way of a change to the Civil Procedure Rules. As the recommendation relates to the staying of proceedings in relation to investigations by the Public Services Ombudsman for Wales, the appropriate mechanism would be for the Welsh Government to submit a rule change application to the Civil Procedure Rule Committee, with the support of the MoJ.

- *Recommendation 57: All coroner services should be available in the Welsh language.*

Whilst responsibility for coroner law and policy in England and Wales rests with the MoJ, coroner services are funded and administered by local authorities. We will work with Welsh Government colleagues to establish how this recommendation can be implemented, but given that roll-out will be undertaken by local authorities, the Welsh Government will need to lead on this recommendation.

- *Recommendation 50: Wales specific data should be collected and published to enable data disaggregation.*

It is important that decisions about the justice system are underpinned by data which is as accurate and detailed as possible. A significant volume of Wales-specific justice data is already collected and disaggregated. We already publish most statistics with a Welsh categorisation and are not aware of any areas in which further disaggregation is required to improve outcomes. However, the Welsh Government has recently submitted a list of areas in which Welsh-specific data is not published and we are considering these to see whether they may aid policy development or operational delivery.

In addition to the five recommendations above, we have continued thinking about the remaining nine recommendations identified as part of this process. The recommendations will have a range of downstream impacts on the justice system and it is right that we consider those impacts properly, including how they would be implemented if they were to be taken forward. As I said during the evidence session in December, there will be some recommendations which we do not consider appropriate to take forward. In particular at this stage I can confirm that the UK Government remains opposed to the raising of the age of criminal responsibility and therefore will not be taking forward this recommendation.

As you are aware, I visited the Cardiff Civil and Family Justice Centre after my evidence session. It was helpful to see the building first-hand and get the views of those working there. I have asked my officials to investigate a number of funding options to improve the experience of those who use and work in the building. I have also discussed the issue with the Counsel General and we have agreed to investigate the possibility of utilising publicly owned estate, such as Welsh Government offices, or other UK Government premises.

Yus Simmer
Christophe Bellamy

LORD BELLAMY KC

To the Chair of the Legislation, Justice, and Constitution Committee.

Race Council Cymru's response to Lord Bellamy's response to the findings of engagement work on access to justice Huw's Committee had commissioned earlier this year.

As valued partners, we would like to provide our views on the responses provided, along with some key issues which we believe should be brought to Lord Bellamy's attention. We hope that this evidence will be useful in your letter setting out the views you have collected.

The justice system is vital for ensuring a safe environment for everyone and for the resolving of disputes in an orderly way. Where the public, or a section of it, lacks confidence in the system, this may lead to a reduction in the reporting of crime or the provision of assistance to the police and courts, and may militate against the orderly resolution of disputes. There is a perception amongst some communities that the criminal justice system is not fair and just. There is evidence that some of the concerns underlying those perceptions may be well-founded. Further, the experience of racism or disadvantage in one sector of society will have an impact on perceptions about the administration of justice as a whole. An appearance before a court cannot be isolated from other social experiences. There is, then, a particular need for judges to demonstrate fairness in the carrying out of their responsibilities if confidence in the justice system is to be maintained and promoted amongst all ethnic groups. This requires an awareness of the way in which our own actions might affect perceptions of, and confidence in, parts of the justice system. Knowledge and information about what happens outside court can help judges to ensure that what happens inside is fair and seen to be fair.

References:

- https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_Ethnicity_finalised_.pdf
- <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>

1. Attracting and Retaining Talent

RCC Comments: The business of law remains a significant contributor to the overall UK economy. TheCityUK's 2017 report found that Legal services employ around 311,000 people, two-thirds of whom are located outside of London. Major centres of legal services employment included Manchester (with 12,000 in employment), Birmingham and Leeds (8,000 each), and Bristol (7,000). These jobs are highly skilled with clusters of expertise which attract investment and drive growth. **Focusing just on overall representation in the profession can be misleading, and a more nuanced perspective is needed looking at the experiences of different ethnic groups, across different parts of the profession. Not all groups are faring equally well.**

For example,

- There are specific barriers to entry to the profession for some Black, Asian and minority ethnic groups including a lack of role models and connections in the profession.
- The culture of law firms, particularly larger city firms, is not felt to be inclusive.
- Black, Asian and ethnic minority solicitors report lower levels of workplace wellbeing compared to White solicitors. The feeling of having no voice has led many to struggle with their mental health, paying for counselling or taking a break from the profession.
- Retention rates for Black, Asian and ethnic minority solicitors are lower in larger City firms than for their White peers, with many leaving to join smaller firms, or parts of the legal sector that are seen as being more inclusive, such as in-house legal departments.
- Black, Asian and minority ethnic solicitors see slower career development up to and including partner status, again impacting on retention rates, and there is a significant ethnicity pay gap.
- Representation at partner level is poor, particularly in the larger City firms. This has not improved significantly over the years, despite improvements in representation at junior levels.

The SRA's report '*Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales*' found that although the legal profession has become more broadly representative of the population over the last twenty years, with more women and minority ethnic groups entering it, **the profession remains heavily stratified by class, gender and ethnicity**. It also found that women are less likely to work in senior roles in large city law firms and other high-income areas of the profession and minority ethnic women face a double disadvantage.

The main trends highlighted within the SRA's report are: • Across all ethnic groups, men are more likely to become a partner compared to their female counterparts. • The share of Black Asian Minority Ethnic males becoming a partner, especially those of Asian origin, has increased significantly. • The share of white males becoming a partner has decreased. • There is an increasing share of solicitors leaving private practice to work in-house. This tendency is more pronounced amongst women and white women.

However, it is our view that these actions do not go far enough. Race discrimination cannot be successfully eliminated through piecemeal and disjointed efforts, focusing on a few specific themes, rather than the big picture. The Equality Human rights [report on race](#) revealed a worrying picture of a post-Brexit rise in hate crime and long-term systemic unfairness and race inequality. For example, it found that:

- race discrimination cases dropped by 61% since the introduction of fees in employment tribunals.
- Black workers with degrees are paid 23.1% less on average than White workers with degrees.
- ethnic minorities are still hugely underrepresented in positions of power.

- Black African women had a mortality rate four times higher than White women in the UK.
- in school, Black Caribbean and Mixed White/Black Caribbean children have rates of permanent exclusion about three times that of the pupil population as a whole.

In other words, ethnic minorities continue to face stubborn obstacles in all areas of life – in accessing justice, in employment, education and health.

References:

- <https://www.equalityhumanrights.com/en/our-work/blogs/race-inequalities-criminal-justice-system>
- <https://www.boltburdonkemp.co.uk/our-insights/campaigns/inequality-in-britains-legal-aid-funding-system/>
- [report on race](#)

2. Impact of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012 Access to justice is a fundamental right.

RCC's Comments: Access to justice in England and Wales continues to be severely hampered by budget cuts and political decisions made over a decade ago, according to a new report by the Bar Council released on 16 November 2022 - '[Access denied: The state of the justice system in England and Wales in 2022](#)'. The report reveals the current state of the courts, legal aid and law reform twelve years on from the court closures of the 'court estates reform programme' and ten years on from the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, which significantly restricted access to civil legal aid.

The report combines data from the Bar Council's Access to Justice dashboard with powerful testimony from barristers and other practitioners working in crime, civil, and family law who took part in a Justice Week workshop earlier this year.

The report paints a worrying picture of the current state of access to justice in England and Wales. Key findings include:

- Cuts to legal aid funding having a catastrophic impact on the ability of people to access justice.
- A mixed experience of remote justice that requires further investigation.
- Crumbling court buildings that are not fit-for-purpose, including leaks, infestations, and a lack of basic facilities.
- An increase in litigants in person, due to reductions in the availability of civil legal aid, resulting in cases taking longer and costing more – the opposite of what LASPO set out to do.

- Barristers diversifying away from legal aid work due to workload pressures and poor remuneration, further reducing the capacity of the system.
- Worrying political attacks on the rule of law and anti-lawyer rhetoric that undermines confidence in the justice system and contributes to burnout and stress.

To counter these issues, we are calling for adequate funding across the justice system and a greater focus on early intervention and diverting people away from the system.

The report also included direct quotes from those who took part in the Justice Week workshop, providing important insight into the daily experiences of those working in the justice system:

On access to courts: “We have to remember that the people we represent do not have money by and large. The cost of travelling to court added an extra burden and the court does not keep any data on why people don’t turn up to the hearing. Anecdotally, people don’t show up as they can’t afford it.”

On funding cuts: All parties in this unusual, complex, bizarre situation are scared, anxious, angry. The judges are having to manage this. There is increased pressure on the Bar. We are doing more pro bono work, keeping the system afloat by assisting.”

On access to legal aid: “Prices rise, the cost of living is up, legal advice costs a lot. The threshold [for eligibility for legal aid] is quite high. Universal Credit is so low, people are expected to make it work on very little. There is a huge national crisis about the working poor.”

The consequences of cuts are not only a failing system, but one that ultimately costs more – both in terms of money and in human terms. The Government must commit to long-term planning and resourcing of the system to provide people with the legal redress to which they are entitled.

Regarding the capacity of providers, the Legal Aid Agency monitors capacity in the legal aid market and the provision of services, taking action when gaps appear. **Question to Lord Bellamy:** “How is this monitored and what measures are being put in place to ensure consistency across the board”?

Wherever someone is in England or Wales, legal advice remains available through the civil legal advice telephone service, subject to eligibility criteria – Is this criteria different in England and Wales?

Reference:

- [Access denied: The state of the justice system in England and Wales in 2022](#)

3. Courts and Tribunals

RCC’s Comments: The UK Government has taken important steps to improve victim support and access to legal aid, including the Victims’ Code coming into force. However, issues remain around the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 on access to justice in England and Wales. **There is evidence of barriers for disabled people to access the**

justice system, and court modernisation – including the rapid roll-out of remote hearings – might negatively affect participation for certain groups. The coronavirus (COVID-19) pandemic has placed the court system and legal advice sector under significant additional strain, including by exacerbating existing case backlogs, though action has been set out to support recovery.

- Despite changes to improve access to legal aid, issues remain around the impact of LASPO, particularly for those with certain protected characteristics. Issues include the removal or reduced availability of civil legal aid, inaccessibility of the exceptional case funding scheme, the financial eligibility thresholds for legal aid, and unnecessary barriers to justice in discrimination claims.
- **A 2019 report by the Commission on Justice in Wales concluded that proper access to justice is not available in Wales due to legal aid cuts under LASPO.**
- The UK Government plans to increase selected court fees in line with inflation, though many respondents to a consultation on these plans noted that increases could negatively impact access to justice.
- There is evidence that the needs of disabled defendants with certain impairments are not being met in the criminal justice system. There are concerns in England and Wales that aspects of the court reform programme, particularly the move to remote hearings and online processes, could make it difficult for certain disabled defendants to take part in justice processes and also put older people at a disadvantage.
- There are risks that court closures under the reform programme might particularly disadvantage disabled people, women with the protected characteristic of pregnancy and maternity, and carers.
- The use of video and telephone hearings to support the court system expanded during the COVID-19 pandemic before their impact had been fully evaluated or any unintended negative effects mitigated.
- Advice organisations and the legal aid sector face financial challenges, while demand for free advice has increased during the COVID-19 pandemic.
- Provisions in the Judicial Review and Courts Bill could be used to restrict access to, and remedies from, successful judicial reviews, undermining access to justice.

Reference:

- <https://www.legislation.gov.uk/ukpga/2012/10/contents>

The state's reluctance to address the social rights gap has meant that shifting sands beneath the surface are re-orientating constituent parts of the UK towards a substantive rights based model of the rule of law, whilst the national political discourse is focussed on regression and diminution of existing

protection. This includes retreating from European Convention on Human Rights (ECHR) under the Human Rights Act (HRA) 1998¹⁵, subject to consultation at the time of writing¹⁶, and the judicial enforcement of human rights post-IRAL review.

The devolved trajectories may ultimately compel the UK to address this normative gap or, alternatively, lead to greater state fragmentation in a fragile unitary state. The dominant narrative of rejecting social rights as legal rights is subject to challenge at both the devolved level and emerging discourses from civil society and oppositional parties at the national level. Providing an opportunity to ensure evidence-led research informs potential reform to address this accountability gap.

It is important to consider those who experience violations of social rights. These are those who are mostly likely to be excluded from hegemonic structures of power. They face intersectional structural discriminations and barriers on the basis of immigration status, disability, gender, age, ethnicity and socio-economic disadvantage among others. They may be at risk of homelessness, face significant debt, experience in-work poverty, or be fleeing domestic abuse.

Clustered injustice recognises that people in such positions often experience multiple synchronous clusters of legal problems for which the traditional 'single issue' lawyering approach is ill-equipped. Their situation is therefore compounded by the fact that social rights violations are often systemic in nature, but the legal system is individualised and siloed into distinct 'legal problems'.

UK justice system faces in resolving social rights violations:

- the hostile immigration environment,
- the crippling impact of austerity and the increase in inequality and poverty and the decimation of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO').
- the Grenfell housing tragedy,
- the removal of free school meals for children during Covid,
- the proliferation of food banks,
- the removal of the £20 Universal Credit (UC) uplift²⁵,
- the imposition of the benefit cap in housing and social welfare provision,
- the two-child social security limit,
- the debt crisis for those below the poverty line,
- the section 21 housing eviction process,
- the risk to life by way of destitution,

References:

- The Independent Human Rights Act Review Report, available at <https://www.gov.uk/guidance/independent-human-rights-act-review#the-panels-report>.

- Human Rights Act Reform: A Modern Bill of Rights (Responses due by 8 March 2022), available at <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights>
- Independent Review of Administrative Law Report available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRAL-report.pdf

4. Technology

RCC Comments: The move to online advice services during the COVID-19 pandemic potentially disadvantages groups that are digitally excluded. We are aware that there has been a monumental effort by all working in courts and tribunals to maintain a functioning system despite the COVID-19 pandemic. Hearings rapidly moved online, new temporary court rooms were opened, and buildings were adapted to facilitate social distancing. **But recognition of these significant efforts should not obscure the scale of the challenges now facing our courts and tribunals. The sudden shift to remote hearings has stretched limited court resources and risks excluding court users. The backlog of cases, which predated the pandemic, has reached record levels.** The impact of virtual hearings across the justice system remains fundamentally unclear in a number of respects, as insufficient data is being collected and analysed by Her Majesty's Courts and Tribunals Service (HMCTS).

Some of the new technology introduced to the courts service in recent months has not been fully embraced by court users. Use of the Cloud Video Platform, a new IT platform developed for use in the criminal courts, has started to decline since its introduction, and police have recently withdrawn support for video remand hearings on the Platform. This represents a missed opportunity to use technology to ease pressures on the court system. We recommend that the Government sets out what lessons it has learned from the uneven adoption of new technologies during the pandemic and how it plans to support public bodies in making full and effective use of digitised court services.

The sudden shift to remote hearings has stretched limited court resources, created new barriers to communication between lawyers and their clients, and risks excluding court users. Limited IT access, home distractions, and the more tiring nature of remote hearings all threaten to undermine effective participation. To ensure access to justice is sustained during virtual hearings, we recommend that the Government ensures clear guidance on their use is made available to all court users, judges and court staff. This will aid preparation, enhance public perceptions of fairness and help to secure procedural justice. The interruption to the normal operation of the courts has had a detrimental impact on the publicly funded and legally aided sectors of the legal profession. The reduction in legal aid funding over the preceding decade has exacerbated barriers for accessing legal representation. We recommend that the Government increases the legal aid budget to meet the new challenges for access to justice that have arisen during the pandemic.

Reference:

- <https://www.equalityhumanrights.com/sites/default/files/parliamentary-briefing-wec-response-evidence-on-coronavirus-impact-on-people-with-protected-characteristics-1-may-2020.docx>

5. Accessibility of Welsh Law

RCC's comments: There is a need for the growing body of Welsh law to be easily accessible to people living, working, and doing business in Wales, as well as to lawyers, other advisers and the judiciary. There may be challenges connected with providing academic and professional training in Welsh law to law students, practitioners, and judges. These issues form part of a broader set of jurisdictional issues connected with the possible emergence of a distinct and growing body of Welsh law and the possible formation of a distinct Welsh legal jurisdiction. **These must be addressed in a coherent and pragmatic way to help clarify for users the law applying in cases proceeding through courts and tribunals in Wales and England. The report considers, in the context of these changes and wider reforms of the justice system and the Welsh language, how a Welsh approach to justice could be developed.**

We fully endorse the 7 *recommendations* put forward by the Commission on Justice in Wales and urge the Government to consider them:

- Recommendation 1 – The Welsh Government should consider how it can take a greater role in ensuring the effective and comprehensive promotion of the law affecting Wales, including access to the law of Wales.
- Recommendation 2 – The Welsh Government should seek consequential funding from the UK Government to support the publication, promotion, and accessibility of Welsh laws.
- Recommendation 3 – The Welsh Government should further engage with the administrators of the legislation.gov.uk website to further develop the Cyfraith Cymru/Law Wales website.
- Recommendation 4 – The Welsh Government should seek consequential funding from the UK Government to support the publication, promotion and accessibility of legal texts and materials that address the law in Wales.
- Recommendation 5 – The Welsh Government should undertake research on how codification has operated in practice in common law jurisdictions, including countries such as Canada, New Zealand, and Australia.

- Recommendation 6 – The Welsh Government should engage with law schools and training bodies to support the development of Welsh law in education and training programmes for law students, practitioners, and the judiciary.
- Recommendation 7 – The Welsh Government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales, without creating barriers for the operation of justice or the ability of practitioners to continue to work across England and Wales.

RCC believes that our justice system could be so much better. Our successful partnerships happen in the broader context of a disjointed system, where services which should be tied together are instead split across devolved and non-devolved bodies. The effectiveness of these partnership arrangements and their ability to improve are therefore fundamentally limited — which impacts on our collective ability to deliver the best possible outcomes for people in Wales.

In the words of the former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, “*the people of Wales are being let down by the justice system in its present state*”. These words are contained in the report of the independent Commission on Justice in Wales, which he chaired, following the largest ever examination of the state of the justice system in Wales, based on written evidence from more than 200 individuals, institutions, and organisations, and over 150 oral evidence sessions across the whole spectrum of the justice system.

The commission’s conclusions were clear. ***If the justice system is to be truly reformed, policies and decisions about justice need to be determined and delivered in Wales, so that they align with the distinct and developing social, health, social justice and education policy and services in Wales and the growing body of Welsh law.*** - Lord Thomas of Cwmgiedd

Justice policy should be developed, and funding allocated to serve the needs of, and provide greater benefits for, the people of Wales.

However, only through joining up the justice system with the rest of government can we truly find effective ways of reducing crime — or indeed reducing the numbers of family breakdowns, or all the other causes of the immense pressures on our justice system. **It is important that our vision for the future of justice in Wales is co-produced with experts and those with lived experiences of contact with the justice system; particularly those often least heard.**

6. Hybrid

RCC’s Comments: Research indicates that workers perceive both benefits and disadvantages to flexible working. Benefits of remote and hybrid working for staff can include increased wellbeing, self-reported productivity and work satisfaction, reduced work-life conflict, new ways to collaborate and more inclusive ways of working using technology. Challenges can include increased work intensity,

longer working hours, distractions, health issues, decreased social interactions, less promotion and learning opportunities and an inability to disconnect from work.

Available research suggests that:

- remote and hybrid working can have both positive and negative impacts on workers' health and wellbeing. ONS data show that in February 2022, almost half of those who worked from home in some capacity reported that it improved well-being (47%). Positive and negative health impacts vary by socio-demographic characteristics as well as individual factors, such as an employee's work satisfaction and personal circumstances. During the pandemic, enforced home working has been among the most common causes of workplace stress; however, it is difficult to attribute findings on health and wellbeing from data collected during the pandemic to remote and hybrid working, because of the wider impact of the pandemic on people's mental health and wellbeing.
- remote and hybrid working can have both positive and negative impacts on work-life balance. ONS data show that in February 2022 more than three-quarters (78%) of those who worked from home in some capacity said that being able to work from home gave them an improved work-life balance. **However, remote and hybrid working can lead to blurring of work-life boundaries and a feeling of pressure to always be available online, as well as an increase in unpaid overtime work hours. Use of information and communication technologies to engage in work-related tasks outside of work time can make it difficult for workers to 'switch off'.**
- in self-reported surveys, around two-thirds or more of employees working at home say they got as much or more done as pre-pandemic in the workplace. There is variation in worker self-reported productivity, with younger workers reporting feeling less productive and disabled workers reporting feeling more productive; and
- before the COVID-19 pandemic, people who worked mainly remotely were less likely to be promoted and to have access to training opportunities. There are limited data to suggest whether this trend has continued throughout the pandemic, and it may change if a larger proportion of people work at home more frequently. **Research from before and during the lockdowns indicates that there is 'flexibility stigma' – a biased attitude – towards remote workers, though there are some indications that the COVID-19 lockdowns have reduced this stigma.**

7. Wider impacts

RCC's Comments: Experts suggest that **supporting remote and hybrid working in the longer term will require supporting more inclusive approaches to remote working, more training and support to workers on cybersecurity and increasing access to digital technologies and infrastructure as well as improving digital skills.** Other potential wider impacts, but with less available evidence, include those on energy and the environment. Increased remote and hybrid

working could improve air quality, reduce plastic pollution and reduce greenhouse gas emissions. However, it could also increase energy consumption and electronic waste.

In conclusion, there remains an over-representation of ethnic minorities within the Criminal Justice System, and disparities in aspects of their treatment, which Government is determined to challenge and change. The Lammy Review offered a concerning picture of our Criminal Justice System and provided deep and valuable insight into one area of life experienced by Black, Asian and Minority Ethnic people. The data picture is summarised in the Race and the Criminal Justice System statistics report which was published in November 2019. **The systemic nature of disproportionality means that progress in tackling it is incremental and positive outcomes will take time to be reflected in official statistics. While progress in some areas will take time, it is nonetheless clear that the case to address disparities remains compelling.**

As various stakeholders have pointed out during the progression of this work, mistrust among Black, Asian, and Minority Ethnic communities often stems from the evidence and/or experience of unequal treatment in the CJS. **Trust should therefore be (re)built as outcomes improve, with the entire programme of work to tackle race disparity trained on this objective.** However, given the systemic nature of the reforms and the need to unpick historical relationships with the CJS, it may take some time for improved outcomes to have the desired impact on trust.

In addition, there is evidence that Black, Asian, and Minority Ethnic and foreign national women can have distinctly different experiences or outcomes at some stages of the Criminal Justice System in comparison to other offenders, and that these may differ between faiths and cultures. The Government has committed to consider the needs of Black, Asian and Minority Ethnic women in the CJS in both their response to the Lammy Review and in the Female Offenders Strategy. We understand that work is being taken forward jointly by these policy areas, under the governance of the Race and Ethnicity Board and the Female Offender Programme Board respectively. **Question: Would Lord Bellamy be able to comment on this?**

Yours sincerely,

Nkechi Allen Dawson, Lead Policy Officer, Race Council Cymru

Sources:

- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf
- <https://www.equalityhumanrights.com/sites/default/files/parliamentary-briefing-wec-response-evidence-on-coronavirus-impact-on-people-with-protected-characteristics-1-may-2020.docx>

- [https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB Ethnicity finalised .pdf](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_Ethnicity_finalised_.pdf)
- <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>
- <https://www.equalityhumanrights.com/en/our-work/blogs/race-inequalities-criminal>

Thank you for asking me to respond to the evidence of Lord Bellamy, the Parliamentary Under Secretary of State for Justice, to the Welsh Parliament's Legislation, Justice and Constitution Committee.

It is valuable that Lord Bellamy has come to give evidence, in order to initiate a much-needed public dialogue between Cardiff and London on the issue of justice. It is also valuable to note a tone that, on the whole, respects and recognises the need for collaboration between the two governments, and the fact that there are specific considerations in Wales that require specific treatment from the Ministry of Justice.

Nevertheless, his response to the problem of the 'jagged edge' is not convincing. One cannot make a comparison between the difficulties of working across (1) on the one hand, the boundary between the operational departments of a central Government and those of a devolved Government, and (2) on the other, the boundary between the various operational departments of a central Government alone. When all is said and done, the departments of the central Government are all accountable to and under the ultimate executive control of the same authority – the Prime Minister and Cabinet in London – and they have the same power and the same *locus standi* as each other. That enables policy and operational co-ordination, and it also ensures that any disputes can be easily resolved. On the other hand, devolved departments are accountable to and under the executive control of the First Minister of Wales and the Cabinet in Wales. They do not have any power centrally except to try and influence and persuade. This lack of symmetry in terms of power is one of the main sources of practical difficulties created by the jagged edge. Furthermore, of course, the London Government, ultimately, is democratically accountable to the Parliament of the United Kingdom, while the Cardiff Government is accountable to Senedd Cymru.

The following statement by the under secretary of state about one of the recommendations of the Thomas Commission perhaps demonstrates the difficulty of the power asymmetry:

There is one [recommendation] that I think is unlikely to proceed, which is a proposal to change the age of criminal responsibility for a child, where the Government's view is that we should have one age across England and Wales. (para 52 of the transcript)

The recommendation in the Thomas Commission report (para 4.195) was made in the context of a reasoned, evidence-based discussion on how Welsh policy and operation emphasise the need to adopt a preventative approach to dealing with youth offending. If justice were to be devolved to Wales, Senedd Cymru would be able to change the age of criminal responsibility, and also present alternative approaches to dealing with young people, as in Scotland. There was no attempt from the under secretary of state to offer reasons against such a change (whether in Wales or in England and Wales), nor any attempt to deal with the recommendation in the context of broader Welsh Government policy. Instead, what was received was an *ex cathedra* response that his position of power enabled him to make.

Emyr Lewis

Department of Law and Criminology

Aberystwyth University

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

Document is Restricted

Agenda Item 13

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

Document is Restricted



Russell George MS
Chair,
Health and Social Care Committee

SeneddHealth@senedd.wales

17 March 2023

Dear Russell,

Thank you for your letter and the questions put forward by your Committee relating to the Health Service Procurement (Wales) Bill. I am pleased to provide my response which is attached at Annex A.

In your letter, you also offered the opportunity to provide supplementary written evidence in relation to the Bill. As such, I have provided additional information on liaison with the Department of Health and Social Care to support the Committee with the scrutiny of the Bill.

I trust the responses in Annex A answer your questions. However if there are any further questions or areas requiring clarification, my officials and I are happy to provide further information in writing, or as part of a technical briefing session.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee for information.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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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.

ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL - RESPONSE TO QUESTIONS FROM THE HEALTH AND SOCIAL CARE COMMITTEE, 9 MARCH 2023

Q1: Please provide a timeline setting out key milestones and your current best estimates of the timescales associated with the HSP Bill, regulations and other associated events, including:

- a. Your understanding of when the UK Government's Procurement Bill is likely to get Royal Assent and come into force; when the UK Government is expected to publish the outcomes of its consultation on a Provider Selection Regime (PSR); and when the UK Government is expected to lay draft regulations to give effect to the PSR before Parliament.**

UK Government's Procurement Bill

Following its introduction in May 2022, the UK Government's Procurement Bill has completed its passage through the House of Lords and is now well on its way through the House of Commons. It is expected to receive Royal Assent in late Spring 2023, after which, secondary legislation will be made to bring some elements of the Bill and the wider regime into effect. This means the Bill is likely to 'go live' in early 2024.

Department of Health and Social Care's (DHSC) Provider Selection Regime

DHSC and NHS England are working to establish the Provider Selection Regime and will provide an update on delivery in due course, including the publication of the consultation responses, which are expected to be made public prior to the laying of the regulations. The regulations are anticipated, with DHSC advising stakeholders that the Provider Selection Regime is not expected to be in use before July 2023 – see information on link [here](#).

- b. When you anticipate the 12 week consultation to which you have committed will take place?**

At present, the expectation is for the consultation to take place as soon as is practical, following Royal Assent, subject to Senedd approval. This would mean the consultation period is likely to begin in early Autumn. However, this timing is predicated on having seen the final Regulations and guidance on the Provider Selection Regime from the DHSC in the next few months, to enable us to develop operational principles for Wales, on which we intend to consult.

- c. When do you anticipate laying draft regulations and publishing statutory guidance under the Bill, and when do you anticipate them coming into force?**

Notwithstanding the assumptions of the successful passage of both the UK Government's Procurement Bill and the Health Service Procurement (Wales) Bill, and the receipt of the detail of the Provider Selection Regime from DHSC, we

anticipate consulting on the operation principles of a new health service procurement regime for Wales as detailed above in Q1(b). We anticipate laying regulations in early 2024 and those regulations and coming into force in Spring 2024.

This proposed timeline aims to coincide as far as is possible with wider procurement reform changes as a result of the UK Government's Procurement Bill to minimise operational impact for the 'relevant authorities' who will be implementing the new procurement regimes.

Q2: A broad summary of the approach you anticipate taking in your 12 week consultation. For example, will the consultation focus on the suitability of the UK Government's PSR for application in Wales, on the principles that might underpin new arrangements in Wales, or on specific draft regulations or draft statutory guidance.

Our current intention to undertake a 12 week public consultation on the operational principles of the new procurement regime, based on how the Provider Selection Regime will operate in England and whether this is an approach we should replicate in Wales to a greater or lesser degree where appropriate.

The outcome of the consultation exercise will inform the development of the future regulations and statutory guidance (which will be developed in partnership with NHS Wales). As such, we are not at this stage proposing to consult on the detail of Welsh regulations and statutory guidance.

Q3: In your session with the Legislation, Justice and Constitution Committee on 6 March, the committee Chair, Huw Irranca-Davies MS, questioned the interaction between the United Kingdom Internal Market Act 2020 and goods connected to health services that are procured following regulations made under the Bill's 'creation' power. In response, one of your officials explained that the Welsh Government's position is that "when the Senedd legislates in a non-reserved area, it does so free from the requirements of the Act." As this includes where primary legislation provides regulation-making powers, "provisions relating to the procurement of goods connected to healthcare services contained in both the Bill and any future regulations made using the powers in this Bill will not engage the UK Internal Market Act." Are you able to provide further analysis that demonstrates how and why the Welsh Government has reached this view?

The Welsh Government's position is that the Senedd's legislative competence is not impacted by the UK Internal Market Act - i.e. it does not prevent the Senedd from, for example, banning or regulating the sale of a variety of goods in Wales, unless those same items are also subject to equivalent bans or regulation across the UK, or because the UK Government has agreed to a specific exclusion on an issue. To achieve this, given the status of the Government of Wales Act 2006 as a constitutional statute, would require express amendment to large areas of the Senedd's existing competence. The UK Internal Market Act does not do this. To do otherwise – to impliedly amend competence – is contrary to the principle of legality. This is why both the Bill and any future regulations will not engage the UK Internal Market Act.

Supplementary information

Ongoing relationship with the Department of Health and Social Care on the Provider Selection Regime

I would like to take the opportunity to outline the position in relation to previous and ongoing dialogue with DHSC on the introduction of the Provider Selection Regime in England.

The UK Government's Health and Care Act received Royal Assent in April 2022 and the provisions in the Act relating to health service procurement applied to England only. There had been limited interaction between DHSC and my officials on the Provider Selection Regime at this time as DHSC's policy was being developed, and there was limited appreciation by DHSC on the perceived operational impact for health service procurement in Wales.

However, as policy was further developed and interaction increased, the potential impact of the proposed Provider Selection Regime on health service procurement in Wales was recognised. As a result, in July 2022 I wrote to the then UK Government's Minister for Health, Maria Caulfield MP, to express my desire to better understand how the planned introduction on the Provider Selection Regime in England would impact health service procurement in Wales. I stressed the importance of strengthening the existing relationship between our officials; continuing engagement on the matter and requesting sight of the draft Provider Selection Regime regulations at the earliest opportunity.

My officials and their counterparts in DHSC have since fostered an excellent working relationship. DHSC have maintained regular contact with my officials on the progress of the Provider Selection Regime and my officials have discussed the introduction of the Health Service Procurement (Wales) Bill. Where appropriate to do so, DHSC have provided my officials with draft information on the Provider Selection Regime proposals, including sight of draft regulations, which were shared in confidence early in their development. This close working relationship remains in place and we anticipate that DHSC will share copies of the completed regulations when finalised and ready for laying.

Eluned Morgan
Minister for Health and Social Services
Welsh Government

9 March 2023

Dear Eluned

Health Service Procurement (Wales) Bill

Thank you for agreeing to attend our meeting on Thursday 30 March 2023 to discuss the Health Service Procurement (Wales) Bill.

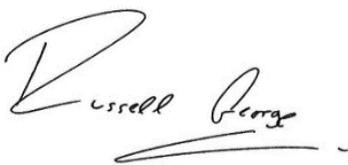
As the scrutiny timetable agreed by the Business Committee for this Bill allows limited time for Stage 1 scrutiny, we have followed with interest the evidence that you have given this week to the Legislation, Justice and Constitution Committee and the Finance Committee. To help us prepare for our evidence session on 30 March, we would be grateful if you could provide written evidence addressing the following points (and any other issues that you think it would be helpful to set out in writing to supplement the information already available in the Explanatory Memorandum and Statement of Policy Intent):

1. Please provide a timeline setting out key milestones and your current best estimates of the timescales associated with the HSP Bill, regulations and other associated events, including:
 - a. Your understanding of when the UK Government's Procurement Bill is likely to get Royal Assent and come into force; when the UK Government is expected to publish the outcomes of its consultation on a Provider Selection Regime (PSR); and when the UK Government is expected to lay draft regulations to give effect to the PSR before Parliament.
 - b. When you anticipate the 12 week consultation to which you have committed will take place.

- c. When you anticipate laying draft regulations and publishing statutory guidance under the Bill, and when you anticipate them coming into force.
2. A broad summary of the approach you anticipate taking in your 12 week consultation. For example, will the consultation focus on the suitability of the UK Government's PSR for application in Wales, on the principles that might underpin new arrangements in Wales, or on specific draft regulations or draft statutory guidance.
3. In your session with the Legislation, Justice and Constitution Committee on 6 March, the committee Chair, Huw Irranca-Davies MS, questioned the interaction between the United Kingdom Internal Market Act 2020 and goods connected to health services that are procured following regulations made under the Bill's 'creation' power. In response, one of your officials explained that the Welsh Government's position is that "when the Senedd legislates in a non-reserved area, it does so free from the requirements of the Act." As this includes where primary legislation provides regulation-making powers, "provisions relating to the procurement of goods connected to healthcare services contained in both the Bill and any future regulations made using the powers in this Bill will not engage the UK Internal Market Act."
Are you able to provide further analysis that demonstrates how and why the Welsh Government has reached this view?

To ensure we can take your evidence into account as we prepare for the session, we would be grateful for a response **by 17 March 2023**. I am copying this letter to the LJC and Finance Committees, as I am sure they will also find this information of assistance in their scrutiny of the Bill.

Yours sincerely



Russell George MS
Chair, Health and Social Care Committee

cc Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee
Peredur Owen Griffiths MS, Chair, Finance Committee

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

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair Legislation Justice and Constitution Committee
Senedd Cymru

SeneddDCC@senedd.cymru

24 March 2023

Dear Huw,

Thank you for your letter and the questions put forward by your Committee relating to the Health Service Procurement (Wales) Bill. I am pleased to provide my response, which is attached at Annex A.

In your letter, you also offered the opportunity to provide supplementary written evidence in relation to the Bill and I have also received similar requests from the Chairs of the Health and Social Care Committee and Finance Committee. As such, I have provided additional information in Annex A to support all three Committees with the scrutiny of the Bill.

I trust my response answers your questions. However, if there are further questions or areas requiring clarification, my officials and I are happy to offer additional written evidence or provide a technical briefing session.

I am copying this letter to the Chairs of the Health and Social Care Committee and Finance Committee.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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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.

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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.

ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL - RESPONSE TO QUESTIONS FROM THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE, LETTER DATED 13 MARCH 2023

Q1 - The timescales for the development of regulations to be made under the Bill to introduce a new separate procurement regime for health services in Wales, including consultation and the opportunities for the Senedd to undertake scrutiny of the draft and final regulations.

At present and subject to Senedd approval, the expectation is for the Bill to receive Royal Assent in August.

Following Royal Assent, it is proposed to undertake a 12 week public consultation commencing as soon as practical, and likely to begin in early Autumn. However, this timing is predicated on having seen the final Regulations and statutory guidance on the Provider Selection Regime from DHSC in the next few months.

The consultation will focus on the operational principles of the new procurement regime for Wales, based on how the Provider Selection Regime will operate in England and whether this is an approach we should replicate in Wales to a greater or lesser degree, where appropriate.

The outcome of the consultation exercise will help inform the development of the future regulations and statutory guidance (which will be developed in partnership with NHS Wales). As such, we are not proposing to consult on the actual Welsh regulations and statutory guidance.

We anticipate laying regulations in early 2024 following the 'draft affirmative procedure' to allow the Senedd the opportunity to scrutinise the regulations, and aiming for those regulations coming into force in Spring 2024, subject to Senedd approval.

This proposed timeline aims to coincide as far possible with wider procurement reform changes as a result of the UK Government's Procurement Bill to minimise operational impact for the 'relevant authorities' who will be implementing the new procurement regimes.

Q2 – As the regulations are developed, detail on any barriers that arise which may impede the Senedd's ability to scrutinise them within set timescales.

The timelines provided in the response to Q1 are based on assumptions of the successful passage of both the UK Government's Procurement Bill receiving Royal Assent this Spring and the Health Service Procurement (Wales) Bill receiving Royal Assent in August. Crucially, we need to have sight of the detail and final regulations on the Provider Selection Regime from DHSC in the next few months, to enable us to develop operational principles of a new health service procurement regime for Wales.

Q3 – Further examples of ‘mixed procurements’ for both healthcare services and goods, for which statutory guidance will state which procurement regime applies: either the rules provided by the UK Government’s Procurement Bill or the rules provided by regulations to be made under this Bill.

The definition of ‘health services’ contained in the Bill relates to ‘**clinical**’ health services’ as described by sections 1 and 3 of the National Health Service (Wales) Act 2006. The clinical health services will be defined under future regulations by Common Procurement Vocabulary codes (“CPV codes”). For example, a **draft** list of proposed CPV codes under DHSC’s Provider Selection Regime in England can be found on the link [here](#). Once we have sight of the agreed list of CPV codes in DHSC’s final regulations, my officials and I will consider whether we choose to replicate the same CPV codes in the proposed future regulations.

The Bill therefore does not cover the procurement of ‘non-clinical services’ or goods **in isolation** (such as food). Goods and other services in isolation procured by the health sector in Wales will remain subject to the existing procurement regulations, until these are replaced by the wider procurement reforms under the forthcoming UK Government Procurement Bill.

The Health Service Procurement (Wales) Bill does however make provision for the procurement of goods or other services that are ‘**connected to**’ clinical health services (i.e. mixed procurement). Provisions around mixed procurement will need to be consistent with rules set out in provisions under existing procurement regulations and reforms under the forthcoming UK Government Procurement Bill.

It is anticipated that ‘mixed procurement’ within the Health Service Procurement (Wales) Bill will only apply within a defined set of rules and under certain circumstances. For example, this could apply to arrangements where the main subject matter is a ‘clinical health service’ and the procurement of the connected goods or services are not reasonably separable, or procuring such goods and services separately would adversely impact the delivery of the ‘clinical health service’.

DHSC are considering a similar position on ‘mixed procurement’ in their Provider Selection Regime and the circumstances and scope of when such rules will apply. Information on DHSC’s approach to this matter is included on the link [here](#) and as detailed in the House of Lords debate on the UK Government’s Procurement Bill last November¹.

In summary, my officials and I will consider the operational detail around how ‘mixed procurement’ will work in practice as part of the development of future regulations and new health service procurement regime guidance in Wales.

¹ [https://hansard.parliament.uk/Lords/2022-11-28/debates/916A209A-EB71-4F08-A080-5DE3DE3A5284/ProcurementBill\(HL\)#contribution-A83EB580-2EC1-4C3F-A08F-DE7F493BC143](https://hansard.parliament.uk/Lords/2022-11-28/debates/916A209A-EB71-4F08-A080-5DE3DE3A5284/ProcurementBill(HL)#contribution-A83EB580-2EC1-4C3F-A08F-DE7F493BC143)

ADDITIONAL SUPPLEMENTARY INFORMATION – following correspondence from the Chairs of the Health and Social Care Committee and the Finance Committee in relation to the Bill.

Ongoing relationship with the Department of Health and Social Care on the Provider Selection Regime

I would like to take the opportunity to outline the position in relation to previous and ongoing dialogue with DHSC on the introduction of the Provider Selection Regime in England.

The UK Government's Health and Care Act received Royal Assent in April 2022 and the provisions in the Act relating to health service procurement applied to England only. There had been limited interaction between DHSC and my officials on the Provider Selection Regime at this time as DHSC's policy was being developed, and there was limited appreciation by DHSC on the perceived operational impact for health service procurement in Wales.

However, as policy was further developed and interaction increased, the potential impact of the proposed Provider Selection Regime on health service procurement in Wales was recognised. As a result, in July 2022 I wrote to the then UK Government's Minister for Health, Maria Caulfield MP, to express my desire to better understand how the planned introduction on the Provider Selection Regime in England would impact health service procurement in Wales. I stressed the importance of strengthening the existing relationship between our officials; continuing engagement on the matter and requesting sight of the draft Provider Selection Regime regulations at the earliest opportunity.

My officials and their counterparts in DHSC have since fostered an excellent working relationship. DHSC have maintained regular contact with my officials on the progress of the Provider Selection Regime and my officials have discussed the introduction of the Health Service Procurement (Wales) Bill. Where appropriate to do so, DHSC have provided my officials with draft information on the Provider Selection Regime proposals, including sight of draft regulations, which were shared in confidence early in their development. This close working relationship remains in place and we anticipate that DHSC will share copies of the completed regulations when finalised and ready for laying.

Information on the detailed workings in relation to the increase in staff costs to NHS Bodies of £2.7 million identified in the Regulatory Impact Assessment of the Bill.

A breakdown of the illustrative figures for NHS staffing costs set out in paragraph 93 and table 7 of the Regulatory Impact Assessment of the Bill is set out below:

Health Service Procurement (Wales) Bill		
Illustration of NHS Wales staffing costs		
Total revenue cost per annum of 257 NHS procurement staff		£ 10,470,018
10% capacity in revenue costs 257 NHS NHS procurement staff	<i>per annum</i>	£ 1,047,002
	<i>per month</i>	£ 87,250
year 1 2023-24	<i>(7months @ £87,250)</i>	£ 610,751
year 2 2024-25		£ 1,047,002
year 3 2025-26		£ 1,047,002
Total		£ 2,704,755
Rounded to the nearest £000's		£ 2,705,000

Confirmation on the likelihood of the Welsh Government receiving consequential funding as a result of the expenditure in England.

At present there is no indication that Welsh Government will receive consequential funding as a result of expenditure related to the proposed introduction of the Provider Selection Regime in England. Should this position change, I will provide an update to committees during the Bill scrutiny process.

Eluned Morgan MS
Minister for Health and Social Services

13 March 2023

Dear Eluned

Health Service Procurement (Wales) Bill – Oral evidence to the Legislation, Justice and Constitution Committee

Thank you for appearing before us on 6 March to provide evidence in respect of the Health Service Procurement (Wales) Bill.

During the session, we suggested that you write to us to provide further detail on some of the matters which were discussed.

I would therefore be grateful to receive further initial detail on the matters listed in the Annex by 23 March 2023. I would also be grateful to receive any further detail you may be able to provide on these areas during the later stages of the Bill's passage and its implementation, if enacted.

I am copying this letter to the Chair of the Health and Social Care Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Annex – Information requested by the Committee

- 1.** The timescales for the development of regulations to be made under the Bill to introduce a new separate procurement regime for health services in Wales, including consultation and the opportunities for the Senedd to undertake scrutiny of the draft and final regulations.
- 2.** As the regulations are developed, detail on any barriers that arise which may impede the Senedd's ability to scrutinise them within set timescales.
- 3.** Further examples of 'mixed procurements' for both healthcare services and goods, for which statutory guidance will state which procurement regime applies: either the rules provided by the UK Government's Procurement Bill or the rules provided by regulations to be made under this Bill.