

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Virtual – Video conference via Zoom	P Gareth Williams
Meeting date: 23 October 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

### Remote – Supplementary Pack

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

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#### 4 Inter–Institutional Relations Agreement

(13.40 – 13.45)

#### 4.3 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023

(Pages 1 – 4)

Attached Documents:

LJC(6)–29–23 – Paper 19 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 19 October 2023

LJC(6)–29–23 – Paper 20 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd. 19 October 2023

#### 4.4 Correspondence from the Counsel General and Minister for the Constitution: Inter–Ministerial Group on Justice

(Pages 5 – 6)

Attached Documents:

LJC(6)–29–23 – Paper 21 – Letter from the Counsel General and Minister for the Constitution, 19 October 2023



## **5 Papers to note**

(13.45 – 13.50)

### **5.6 Correspondence between the Minister for Economy and the Minister for Rural Affairs and North Wales, and Trefnydd and the Economy, Trade and Rural Affairs Committee: Retained EU Law (Revocation and Reform) Act 2023**

(Pages 7 – 10)

Attached Documents:

LJC(6)-29-23 – Paper 22 – Letter from the Minister for Economy and the Minister for Rural Affairs and North Wales, and Trefnydd to the Economy, Trade and Rural Affairs Committee, 13 October 2023

LJC(6)-29-23 – Paper 23 – Letter from the Economy, Trade and Rural Affairs Committee to the Minister for Economy and the Minister for Rural Affairs and North Wales, and Trefnydd, 19 September 2023

### **5.7 Correspondence from Disability Wales: Welsh Government budget 2024–2025**

(Pages 11 – 13)

[Barely Surviving: The Impact of the Cost-of-Living Crisis on Disabled People in Wales](#)

Attached Documents:

LJC(6)-29-23 – Paper 24 – Letter from Disability Wales, 19 October 2023

### **5.8 Correspondence from the Minister for Climate Change: The Welsh Government's Legislative Consent Memorandum on the UK Energy Bill**

(Pages 14 – 15)

Attached Documents:

LJC(6)-29-23 – Paper 25 – Letter from the Minister for Climate Change, 20 October 2023

### **5.9 Correspondence with the First Minister of Wales: Ministerial scrutiny**

(Pages 16 – 24)

Attached Documents:

LJC(6)-29-23 – Paper 26 – Letter from the First Minister of Wales, 20 October 2023

LJC(6)-29-23 – Paper 27 – Letter to the First Minister of Wales, 29 September 2023

## **8 Forward Work Planning**

(14.05 – 14.15)

(Pages 25 – 28)

Attached Documents:

LJC(6)-29-23 – Paper 17 – Forward work paper

## **9 Annual Report**

(14.15 – 14.25)

(Pages 29 – 79)

Attached Documents:

LJC(6)-29-23 – Paper 18 – Draft report

LJC(6)-29-23 – Paper 28 – Draft principles for legislating via UK Bills

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

Huw Irranca-Davies MS  
Chair,  
Legislation, Justice and Constitution Committee

Llywodraeth Cymru  
Welsh Government

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

19<sup>th</sup> October 2023

Dear Huw,

## **The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023**

I refer to my letter to you of 5 September. I am writing to inform the Committee I have given my consent to the Secretary of State to lay the Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023 in relation to Wales.

This SI amends retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (the "POPs Regulation"). The amendment will add perfluorohexane sulfonic acid ("PFHxS"), its salts and PFHxS-related compounds to the list of substances of which the manufacturing, placing on the market and use are prohibited under the POPs Regulation. It also sets limit values for PFHxS, its salts and PFHxS-related compounds occurring as an unintentional trace contaminant in substances, mixtures and articles.

The purpose of the Regulations is to implement international obligations, which are placed on the UK by changes to the Stockholm Convention on POPs coming into force on 16 November.

This SI has been made under Articles 15(1) and 18(1) of the POPs Regulation and is subject to the affirmative resolution procedure. The SI was made and laid before the UK Parliament on 16 October 2023, with an envisaged commencement date of 16 November 2023.

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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.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government on this matter. The POPs Regulation, which is being amended, is a GB-wide Regulation, so any amendments to it could not be made in the Welsh language.

Making these amendments through a GB-wide amending SI ensures a coherent and consistent statute book, with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would not be the most appropriate way to give effect to necessary changes nor a prudent use of Welsh Government resources given other important priorities.

Yours sincerely,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in a light grey or blue ink on a white background.

**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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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023</b>
<b>DATE</b>	<b>19 October 2023</b>
<b>BY</b>	<b>Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd</b>

Members of the Senedd will wish to be aware I have given consent to the Secretary of State for Environment, Food and Rural Affairs to exercise a subordinate legislation-making power in a devolved area in relation to Wales.

The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023 have been laid before the UK Parliament by the Parliamentary Under Secretary of State in exercise of powers under Articles 15(1) and 18(1) of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (“the POPs Regulation”). This was done to implement international obligations, which are placed on the UK by changes to the Stockholm Convention on POPs coming into force on 16 November.

This SI amends the POPs Regulation. The amendment will add perfluorohexane sulfonic acid (“PFHxS”), its salts and PFHxS-related compounds to the list of substances of which the manufacturing, placing on the market and use are prohibited under the POPs Regulation. It also sets limit values for PFHxS, its salts and PFHxS-related compounds occurring as an unintentional trace contaminant in substances, mixtures and articles.

The Welsh Ministers do not propose to introduce an equivalent Welsh SI as the Regulation being amended is GB-wide, so any amendments to it must be in English only.

### **Impact the instrument may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence:**

The draft Regulations do not diminish or undermine the powers of Welsh Ministers in any way. The Secretary of State can only exercise functions in relation to Wales without consent in the case of reserved powers. The Secretary of State can only exercise functions in relation to Wales in devolved matters with the consent of Welsh Ministers.

I would like to reassure the Senedd it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances

there are benefits in working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I have given my consent to these Regulations for reasons of efficiency and expediency, adherence to international obligations, cross-government coordination and consistency.

The Regulations were laid in draft before the UK Parliament on 16 October 2023, aiming to come into force on 16 November 2023.

Ein cyf/Our ref CG/PO/358/2023

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

19 October 2023

### **Inter-Institutional Relations Agreement: Inter-Ministerial Group on Justice**

I am writing in accordance with the inter-institutional relations agreement to notify you that the inaugural meeting of the Inter-Ministerial Group on Justice was held on 12 September.

I view the establishment of this group and the inclusion of the Welsh Government within it as an important recognition that the Welsh justice landscape is different to that of England, and that its needs therefore need to be considered separately, and to be afforded the same significance of those of the other nations of the United Kingdom.

The virtual meeting was chaired by Lord Bellamy KC, with the UK Government also represented by The Rt Hon David TC Davies MP, Secretary of State for Wales. The Scottish Government: was represented by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, and I represented the Welsh Government.

In the absence of Northern Ireland ministers, Richard Pengelly, the Permanent Secretary at the Northern Ireland Department of Justice, attended on behalf of the Northern Ireland Civil Service.

A communiqué summarising the business of the meeting has been issued and can be found [here](#). Among the points I raised were a suggestion that the group should look particularly at reoffending rates; concerns around ethnic disparities in the prison population; the availability of useful data, particularly for Wales; the equality of access issues that can arise from digitisation of justice processes, for example in the courts; and the need for amendments to the UK Government's Victims and Prisoners Bill, currently before the UK Parliament.

The meeting opened with an agreement of the group's Terms of Reference which is published [here](#).

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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.



The next meeting will take place in approximately four months time and I will keep you informed once it is scheduled.

I am copying this letter to the Minister for Social Justice and Chief Whip.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

Vaughan Gething AS/MS  
Gweinidog yr Economi  
Minister for Economy

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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Welsh Government

Paul Davies MS  
Chair  
Economy, Trade and Rural Affairs Committee  
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[SeneddEconomy@Senedd.Wales](mailto:SeneddEconomy@Senedd.Wales)

13 October 2023

Dear Paul,

Thank you for your letter of 19<sup>th</sup> September 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Act.

In answer to questions 1 and 2, we recognise that the Senedd did not give its consent to the REUL Act, however as relevant executive functions now sit with Welsh Ministers, we will exercise those functions responsibly.

Welsh Government are considering the consequences of the new powers provided to Welsh Ministers by the Act and will develop plans accordingly. We are working with our UK Government counterparts to understand their intent and any implications that their plans might have which will impact on Wales. We do not currently have any plans to use these powers to bring about substantive policy changes.

In responding to the UK Government's REUL Act, it is a priority for Welsh Government to focus on issues of devolved competence in Wales arising from the implementation of the REUL Act. We have not established a universal mechanism to address instruments covering matters of reserved competence in Wales. We will keep any such instruments under review and address any implications for matters that are the responsibility of the Welsh Government accordingly.

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In answer to question 3, no instruments were identified as giving rise to specific concerns requiring Welsh Ministers to exercise their power to preserve them insofar as they applied in devolved areas.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a prominent initial 'V'.

**Vaughan Gething AS/MS**

Gweinidog yr Economi  
Minister for Economy

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a prominent initial 'L'.

**Lesley Griffiths AS/MS**

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

Vaughan Gething MS  
Minister for Economy

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

19 September 2023

**Retained EU Law (Revocation and Reform) Act 2023**

Dear Vaughan and Lesley,

At its meeting on 13 September, the Committee received an update on the Retained EU Law (Revocation and Reform) Act 2023 and agreed to write to you to seek the following information;

- Whether any plans are being developed to use the new powers provided to the Welsh Ministers by the Act;
- Whether you are aware of any UK Government plans to use the new powers to devolved areas, or in reserved areas that will impact Wales; and
- Can you please share a copy of Welsh Government's latest analysis of the REUL listed in Schedule 1 within the remit of this Committee.

I look forward to your response.

Kind regards,



Paul Davies MS

Chair: Economy, Trade and Rural Affairs Committee

We welcome correspondence in Welsh or English



Dear Legislation, Justice and Constitution Committee,

We are writing to you to express the importance of including specific financial support for disabled people in the upcoming 2024-2025 budget.

We have all felt the effects of the cost-of-living crisis, but we have not all experienced it equally. We have found that there are disabled people across Wales, forced to live in awful circumstances due to the twin problems of poverty and the cost-of-living crisis. A fifth of the population of Wales is disabled<sup>1</sup> and households containing at least one disabled person is more likely to be living in poverty,<sup>2</sup> disabled people are more likely to be economically inactive or if in work, that work is more likely to be insecure and low wage.<sup>3</sup> Poverty has long been a problem for disabled people living in Wales, but the rising cost-of-living is forcing people into worse and worse circumstances.

The 2023-2024 budget did not provide specific support for disabled people during the crisis and our findings from our report “Barely Surviving the impact of the cost-of-living crisis on disabled people” displays some of the consequences. We found that the financial support available was short-sighted, the cost-of-living payments supporting people to pay one month of bills, but nothing beyond. Disabled people often have more essential costs than non-disabled people, this extra cost of disability has not been accounted for, beyond the support already available.

The consequences are severe. Disabled people reported only being able to eat one meal a day, having to let go of support workers or stop going to vital therapies because of cost, being unable to run access equipment due to costs, in some cases losing their lives.

These have been difficult years to be a disabled person in Wales. We have been living through a mass-disabling coronavirus pandemic, in

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<sup>1</sup> Office of National Statistics, Census 2021, “Disability, England and Wales: Census 2021”, 19<sup>th</sup> January 2023, <<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/disabilityenglandandwales/census2021#how-disability-varied-across-england-and-wales>>

<sup>2</sup> Joseph Roundtree Foundation, “UK Poverty 2023 – The essential guide to understanding poverty in the UK”, 20th January (2023), p65, <[https://www.jrf.org.uk/sites/default/files/jrf/uk\\_poverty\\_2023\\_-\\_the\\_essential\\_guide\\_to\\_understanding\\_poverty\\_in\\_the\\_uk\\_0\\_0.pdf](https://www.jrf.org.uk/sites/default/files/jrf/uk_poverty_2023_-_the_essential_guide_to_understanding_poverty_in_the_uk_0_0.pdf)>

<sup>3</sup> Department for Work and Pensions, “Employment of disabled people 2022”, UK Government, 26th January (2023), <https://www.gov.uk/government/statistics/the-employment-of-disabled-people-2022/employment-of-disabled-people2022#labour-market-statistics>

which disabled people have been disproportionately harmed. Disabled people have disproportionately been impacted by over a decade of austerity policies and with severe changes to their benefit entitlement from the UK Government, this period of financial uncertainty and continued poverty does not look likely to change.

We are calling for the Budget to include a series of recommendations and for certain questions to be asked of what we need and what is missing.

- The Welsh Government, health services and local authorities in Wales should provide specific support for the running and maintenance of disability related equipment, to ensure that all disabled people are not financially impacted by their need to use certain equipment.
- Welsh Government to urgently review its policy on social care charges, including whether the disregards for disability related expenditure are adequately protecting disabled people on low incomes with high costs.
- Urgent action to recognise and tackle mental health issues amongst disabled people, including pathways to accessing appropriate mental health support whether from social care, other areas of the health service and/or through peer support, such as from disabled people's organisations.
- Food subsidies should be considered to reduce the cost of food in shops. To supplement this, the Welsh Government and Local Authorities should provide support to and nurture the creation of community food schemes. These schemes should include accommodation for dietary requirements and include options for access requirements.
- Public transport, such as buses and trains, should be taken under public ownership to be delivered as a public service, including measures such as reduced ticket prices with the eventual goal to make public transport in Wales free.
- Provision of resources and capacity building measures to ensure the establishment and sustainability of at least one Disabled People's Organisation in every local authority, to support

coproduction of policies and services with public bodies, including peer support schemes for disabled people

- Commitment from the Welsh Government to prioritise tackling the extra cost of disability

You can find our full report here: <https://www.disabilitywales.org/wp-content/uploads/2023/07/Barely-Surviving-cost-of-living-report.pdf>

Kind regards,

Disability Wales



# Agenda Item 5.8

Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: JJ/PO/357/2023

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
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20 October 2023

Dear Huw,

Thank you for your letter following the debate on the Welsh Government's Legislative Consent Memorandum on the UK Energy Bill.

As I have set out in recent correspondence to you and as I stated in the Senedd during the debate on the Legislative consent Memorandum, I fully appreciate the challenges this Bill has created for effective scrutiny from the Senedd. The Welsh Government is fully committed to doing all that we can to ensure that our legislature gets the opportunity to properly scrutinise UK legislation which engages the Sewel convention and requires Senedd consent.

It is useful to reflect again on the early progress of the UK Energy Bill. Although the Bill was introduced in June 2022, work within the UK Government on the Bill was quickly suspended while the then department for Business, Energy and Industrial Strategy responded to the UK energy prices crisis. The UK Government Bill team was effectively disbanded to bring forward the UK Energy Prices Bill. Our arrangements in the Welsh Government mirrored those in the UK Government with resources dedicated to that new Bill. This was essential to support the financial packages for households and businesses during the winter of 2022/23.

As I stated in the Senedd we always endeavour to bring forward an LCM at the earliest opportunity in line with Standing Orders. Whilst some form of LCM could have been laid in the autumn, it was clear that key aspects of the Bill remained uncertain, and by extension any LCM itself would not have been able to clearly articulate our position, nor the requirements of Standing Orders. As I have stated on a number of occasions, we did not see the Bill until the evening before it was published and there was very limited joint work on the policy details of the Bill, and no collective policy consideration of the Bill in its entirety until after it was published. This meant that the months of joint policy work that we would

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[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@gov.Wales)

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expect to see on such a Bill did not happen prior to publication. This joint work was only possible after the Bill was published. It was only following the intergovernmental discussions and seeing the further amendments laid by the UK Government were we able to understand the implications of the Energy Bill as introduced, and to bring forward a coherent LCM to meet the requirements of Standing Orders.

Laying the first LCM so late in the process was not a position I was happy with. However, from a settled position on the Bill as introduced we were able to lay three supplementary LCMs to cover all of the agreed amendments including over 150 pages of amendments at report stage that took place just one week prior to our debate in the Senedd. I regret the lack of scrutiny possible on these LCMs, however that is yet another symptom of UK Government's wholly unacceptable approach to this Bill.

We will continue to call upon UK Government to change its approach to legislation and engagement, and I will ensure that any future situations such as experienced with the Energy Bill are communicated to the Senedd at an early opportunity.

Yours sincerely,



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



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Welsh Government

Huw Irranca-Davies  
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20 October 2023

Dear Huw,

Thank you for your letter dated 29 September regarding the Legislation, Justice and Constitution Committee meeting that I attended on 18 September. Please find attached a response to the questions in the Annex. An update on the referral of an issue between the Northern Ireland Executive and the UK Government to the dispute resolution process has also been provided.

Best Wishes,

**MARK DRAKEFORD**

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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.

**Question 1: We acknowledge your comment that the Welsh Government does not go “looking for opportunities” to use UK Bills and that you are reacting to UK Government decisions. Nevertheless, that reaction does appear to involve spotting opportunities for using UK Bills.**

- We note your comments at paragraph 70 of the Record of Proceedings. However, once the UK Government’s legislative programme is published, please can you set out how this is considered in determining your overall legislative approach: your legislative programme for the Senedd, or adaptations to it, including for future years and the opportunity provided to make law outside of Wales?**
- The Welsh Government is intending to bring forward at least 8 Bills this year. What is the maximum number of Bills the Welsh Government could bring forward in an annual programme and why were there so few in the first two years?**

We cannot ignore the legislative intentions of the UK Government, which, in the current climate, represents a significant risk to Wales and to devolution. The Committee is aware of our principles for recommending consent to UK Bills. My full statement at RoP 48 should not be misconstrued. Responding reactively to potentially advantageous opportunities in UK legislation is not the same as proactively seeking opportunity to deliver our legislative objectives through UK Bills.

My statement at RoP 78 sets out that our own legislative programme, despite challenging circumstances and the need to respond to external events, is more ambitious and significant than ever before.

Our programme demonstrates our wide-ranging use of our legislative powers, and at an extensive rate. A number of the Bills that we are bringing forward are large, technical, complex proposals and the nature and content of the proposals is a relevant consideration to the timing of their introduction. The policy development process involves detailed work with a broad range of stakeholders to get the proposal right.

A significant programme of subordinate legislation sits alongside and underpins our primary legislative programme. The Committee will appreciate how broad and important subordinate legislation is. In recent years, there has been an increase in the volume, scale and complexity of such legislation and the importance of the decisions determined in this way. This has significantly increased the workload of the Executive and the legislature in recent years, both in Plenary and committees.

Therefore, there is no maximum number of Bills or items of subordinate legislation per year – the scale, complexity and length of time necessary to develop and scrutinise each Bill or statutory instrument varies considerably. What is important is ensuring the law is clear, accessible, delivers our policy ambitions and is developed with the support and engagement of stakeholders to ensure it can be implemented effectively. In sequencing our programme, we are also mindful of the capacity of the Senedd and the need to ensure that adequate time is allowed for Committees and Members to scrutinise our legislative proposals.

**Question 2: The Counsel General wrote to us on 1 March 2022 and 4 August 2022 about the Welsh Government’s approach to using UK Bills to legislate in devolved areas. In the August letter he said: "In those instances where we have sought**

**provision, or where we are minded to agree to provision in UK Bills, I am committed to ensuring the Senedd remains informed at the earliest meaningful opportunity, rather than include information in the annual legislative statement." Please would you make a commitment that the Welsh Ministers will inform the Senedd as soon is possible that they have either sought provision in a UK Bill or are minded to accept the offer from the UK Government of the inclusion of devolved provision in a UK Bill? .We acknowledge that this need not be in the form of a legislative consent memorandum, and could precede the formal legislative consent process.**

The Counsel General has already made such a commitment.

**Question 3: You will know that we monitor and scrutinise intergovernmental relations. For that reason, we are interested in who initiates contact regarding the use of UK Bills for legislating in devolved areas. – Once you have spotted an opportunity to use a UK Bill, does the relevant Minister contact their counterpart to initiate discussions? – How does the Welsh Government go about requesting provisions in UK Bills (for example as happened with the Non Domestic Rating Bill)? – How does the UK Government invite you to include provisions in UK Bills?**

As noted during our discussions and as the Counsel General has consistently highlighted to the Committee, it is not the case that Welsh Government would proactively approach UK Government to legislative on our behalf.

The Counsel General and the Minister for Finance and Local Government have been clear with the Committee on the situation with the Non-Domestic Rating Bill. UK Government invited us to explore provision with them ahead of the Bill's introduction.

**Question 4: When Ministers are making decisions on whether to recommend to the Senedd that it should consent to the use of a UK Bill, can you set out the criteria that are used to decide whether using a UK Bill to make legislation in a devolved area is more "sensible and advantageous" than passing legislation in the Senedd?**

The final decision on recommending consent to a UK Bill typically involves consideration of a range of constitutional, policy, political and other factors.

Our principles are applied in the context of often complex and fluid negotiations and it will sometimes be necessary to consider the possibility of compromises in order to secure our most important policy objectives. We approach our recommendations in terms of maximising the outcomes for the people of Wales in line with our priorities.

It is then for Members to decide whether or not to accept the reasoning put forward by Government.

**Question 5: Who in the Welsh Government makes the decision on whether to recommend to the Senedd that it should consent to provisions being made in devolved areas in UK Bills? Do you have oversight of final decisions?**

All decisions made by the Welsh Government are made on behalf of the whole Welsh Government and are owned collectively by all Ministers.

**Question 6: How many times has the Welsh Government declined to be involved in a Bill following an invitation from the UK Government on grounds that it would be more appropriate for the Senedd to legislate? Please would you provide the details of each occasion.**

It is simply not possible to reduce this information to a specific number. Evaluation of UK Bills includes consideration of whether it might be more appropriate for the Senedd to legislate, alongside a range of constitutional, policy, political and other factors.

**Question 7: In your evidence you said that, when speaking about the UK Government legislating, "sometimes, in the things they decide to do, there will be an opportunity that would benefit people in Wales, and where the prospects of a Bill coming in front of the Senedd are reasonably remote."**

- Why do you consider it appropriate that the initial decision of what would benefit the people of Wales should rest solely with the Welsh Government and accordingly deny the Senedd a role until the end of the process, when all it has is a take or leave it vote?**
- Using a UK Bill to legislate for Wales in devolved areas means by-passing detailed Senedd scrutiny. Why is denying the Senedd its proper law-making role, including the decision on whether to delegate regulation-making powers to the Welsh Ministers, appropriate and how could that be regarded as "sensible and advantageous"?**
- Why would the prospects of a Bill coming in front of the Senedd be "reasonably remote", particularly when they concern priorities for the Welsh Government, e.g. animal welfare, nondomestic rating, protection from sex-based harassment in public?.**

The Welsh Government operates within the established legislative and Standing Order arrangements. It is entirely appropriate for the Government to take decisions and make recommendations to the Senedd on what it considers to be sensible and advantageous for Wales. It is then entirely open for Members and Committees to present their own positions, including through the legislative consent process.

**Question 8: How will Senedd reform impact the volume of the Bills the Welsh Government would be able to bring forward in future?**

**Question 9: What preparations is the Welsh Government making to increase its legislative capacity for the Seventh Senedd?**

The increase in the size of the Senedd and potential increase in the number of Ministers will inevitably have implications for the Welsh Government's own ways of working, including its administration and delivery in response to increased scrutiny.

The extent of the impact will depend on a number of decisions that can only be taken after the legislation is passed and in preparation for the next Senedd.

**Question 10: The Committee considers non-trade international agreements, for which you frequently provide us with additional information. In your view, how are the intergovernmental mechanisms operating in the context of the development of international agreements? Are there any changes you would like to see?**

International Agreements are signed across a range of policy areas, led by different UK government departments. Given the diverse nature of the agreements, to my knowledge, there is no single mechanism that creates arrangements for engagement between the UK government and the devolved governments with each lead UK department engaging with their devolved counterpart at a time and frequency of their choosing. Nor is there a central mechanism for us to understand the agreements that are being negotiated.

There are areas of good practice. For example, the Department for Business and Trade (DBT) engages with devolved governments on Trade Policy and during the negotiation of trade deals. This engagement is, in our experience, mostly positive. There is engagement at a Ministerial level, through the Trade IMG, and officials have regular contact. Early and frequent engagement has led to constructive discussions with some positive outcomes and concessions for Wales. This model is sometimes tested, particularly as negotiations edge towards endgame, where some more direct intervention is required. It is also important to note that not all of our requests have been considered during FTA negotiations but, on the whole, the model used is a positive one.

At a more strategic level, this is an area where I would look for improvements. Fundamentally, devolved governments must be fully engaged in the negotiation of any international agreement, especially those that could impact on devolved areas of policy, with engagement as early in that process as possible. There should be greater consistency in how UK government departments, including DBT, work with the devolved governments when negotiating any international agreement, and that levels of engagement should align with the expected levels of good practice.

**Question 11: In the evidence session we discussed the Welsh Government's relationship with the EU and would be grateful if you could set out the Welsh Government's strategic priorities for its relationship with the EU including in relation to the implementation and review of the TCA. (RoP 98- 105).**

The economic relationship between Wales and the EU is vital to us and should be enabled and enhanced by the political relationship between the UK and the EU. As I explained in my session with the Committee on 18 September, the focus and foundation of any developments of the relationship with the EU should be around recreating an economic relationship that works for both sides. The immediate focus is to ensure that the existing arrangements set out in the Trade & Co-operation Agreement work as effectively as possible, and that UK Government fully engages the Welsh Government in ensuring that, building on the Inter-Ministerial Group on UK-EU Relations. The longer-term and fuller development of a deeper economic relationship, based on a better political co-operation between the UK and the EU, will realistically only be able to take place after both the European Parliament elections and the appointment of a new European Commission in mid-2024, and after the next UK general election. I believe that there is scope to do that. As Welsh Government we will press and support the UK Government to prioritise this and to maximise the potential of the UK-EU relationship for the benefit of the people of Wales and of the rest of the UK.

**Northern Ireland Executive and UK Government Dispute Resolution:**

The Northern Ireland Finance Minister last year referred an issue which had arisen between the Northern Ireland Executive and the UK Government to the dispute resolution process. At this time the issue has not proceeded through the full dispute resolution process in the absence of Ministers in the Northern Ireland Executive.

Rt Hon Mark Drakeford MS,  
First Minister of Wales

29 September 2023

Dear Mark,

Legislation, Justice and Constitution Committee, 18 September 2023

Thank you again for attending our meeting on 18 September 2023. We are grateful for the time you gave over to the Committee.

As noted at the end of the meeting, there are a series of questions we wished to ask you but for which time did not allow. We would also like to follow-up on a number of matters which were discussed during the meeting. As such, we would welcome a response to the questions in the Annex by 17 October 2023.

Yours sincerely,



Huw Irranca-Davies  
Chair



## Approach to legislating / legislative programme

In your evidence session you stated:

*"...where I don't have the same anxieties, is when a UK piece of legislation is brought forward where the Welsh Government believe that this would allow us to legislate more quickly and more effectively than if we were to wait for an opportunity of a Welsh-only Bill in front of the Senedd to come forward. I think those occasions are relatively rare, but they've always been there; we've used those opportunities through the whole of the period. Now, they're generally the ones where we are able to spot those opportunities earlier.*

*I should say this very clearly to the committee: the Welsh Government doesn't go looking for these opportunities ... we are always reacting to whatever they [UK Government] decide to do. But sometimes, in the things they decide to do, there will be an opportunity that would benefit people in Wales, and where the prospects of a Bill coming in front of the Senedd are reasonably remote. In those circumstances, I don't think we should deny ourselves that opportunity because we somehow have a belief in principle that the only time legislation should ever be made for Wales is in Wales. When we do those things, it's likely to be that there will be the longest period for the Senedd to express a view, so I think that the democratic deficit and oversight anxieties are less." [RoP, paragraphs 47-48].*

Bills that would appear to fit into this category cover policy on the environment, leasehold reform, building safety, animal welfare (UK Bill not being pursued), protection from sex-based harassment in public, procurement, levelling up and regeneration, and non-domestic rating.

**Question 1:** We acknowledge your comment that the Welsh Government does not go "looking for opportunities" to use UK Bills and that you are reacting to UK Government decisions. Nevertheless, that reaction does appear to involve spotting opportunities for using UK Bills.

- We note your comments at paragraph 70 of the Record of Proceedings. However, once the UK Government's legislative programme is published, please can you set out how this is considered in determining your overall legislative approach: your legislative programme for the Senedd, or adaptations to it, including for future years and the opportunity provided to make law outside of Wales?
- The Welsh Government is intending to bring forward at least 8 Bills this year. What is the maximum number of Bills the Welsh Government could bring forward in an annual programme and why were there so few in the first two years?

**Question 2:** The Counsel General wrote to us on 1 March 2022 and 4 August 2022 about the Welsh Government's approach to using UK Bills to legislate in devolved areas. In the August letter he said: "In those instances where we have sought provision, or where we are minded to agree to provision in UK Bills, I am committed to ensuring the Senedd remains informed at the earliest meaningful opportunity, rather than include information in the annual legislative statement." Please would you

make a commitment that the Welsh Ministers will inform the Senedd as soon as possible that they have either sought provision in a UK Bill or are minded to accept the offer from the UK Government of the inclusion of devolved provision in a UK Bill? We acknowledge that this need not be in the form of a legislative consent memorandum, and could precede the formal legislative consent process.

**Question 3:** You will know that we monitor and scrutinise intergovernmental relations. For that reason, we are interested in who initiates contact regarding the use of UK Bills for legislating in devolved areas.

- Once you have spotted an opportunity to use a UK Bill, does the relevant Minister contact their counterpart to initiate discussions?
- How does the Welsh Government go about requesting provisions in UK Bills (for example as happened with the Non Domestic Rating Bill)?
- How does the UK Government invite you to include provisions in UK Bills?

**Question 4:** When Ministers are making decisions on whether to recommend to the Senedd that it should consent to the use of a UK Bill, can you set out the criteria that are used to decide whether using a UK Bill to make legislation in a devolved area is more “sensible and advantageous” than passing legislation in the Senedd?

**Question 5:** Who in the Welsh Government makes the decision on whether to recommend to the Senedd that it should consent to provisions being made in devolved areas in UK Bills? Do you have oversight of final decisions?

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**Question 7:** In your evidence you said that, when speaking about the UK Government legislating, “sometimes, in the things they decide to do, there will be an opportunity that would benefit people in Wales, and where the prospects of a Bill coming in front of the Senedd are reasonably remote.”

- Why do you consider it appropriate that the initial decision of what would benefit the people of Wales should rest solely with the Welsh Government and accordingly deny the Senedd a role until the end of the process, when all it has is a take or leave it vote?
- Using a UK Bill to legislate for Wales in devolved areas means by-passing detailed Senedd scrutiny. Why is denying the Senedd its proper law-making role, including the decision on whether to delegate regulation-making powers to the Welsh Ministers, appropriate and how could that be regarded as “sensible and advantageous”?
- Why would the prospects of a Bill coming in front of the Senedd be “reasonably remote”, particularly when they concern priorities for the Welsh Government, e.g. animal welfare, non-domestic rating, protection from sex-based harassment in public?.

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