

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 1 November 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Informal pre-meeting (13.00–13.30)

1 Introductions, apologies and substitutions

13.30

2 Evidence session with the President of Welsh Tribunals – Third Annual Report

13.30 – 14.30

(Pages 1 – 55)

Sir Wyn Williams, President of Welsh Tribunals

Rhian Davies Rees, Head of the Welsh Tribunals Unit

LJC(6)–11–21 – Briefing

LJC(6)–11–21 – Paper 1 – Third Annual Report

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

14.30 – 14.35

Made Negative Resolution Instruments

3.1 SL(6)065 – The Non-Domestic Rating (Miscellaneous Provisions) (No. 2) (Amendment) (Wales) Regulations 2021

(Pages 56 – 57)

LJC(6)–11–21 – Paper 2 – Draft report



[Regulations](#)

[Explanatory Memorandum](#)

4 Papers to note

14.35 – 14.45

4.1 Correspondence from the First Minister: Intergovernmental Meeting

(Pages 58 – 61)

LJC(6)–11–21 – Paper 3 – Letter from the First Minister, 28 October 2021

LJC(6)–11–21 – Paper 4 – Written statement by the First Minister, 28 October 2021

LJC(6)–11–21 – Paper 5 – Letter from the First Minister, 15 October 2021

4.2 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group for Elections and Registrations

(Page 62)

LJC(6)–11–21 – Paper 6 – Letter from the Counsel General and Minister for the Constitution, 15 October 2021

4.3 Correspondence from the Minister for Climate Change: The Phytosanitary Conditions (Amendment No 2) Regulations 2021

(Pages 63 – 64)

LJC(6)–11–21 – Paper 7 – Letter from the Minister for Climate Change, 15 October 2021

4.4 Correspondence from the Llywydd's Committee: Elections Bill

(Pages 65 – 66)

LJC(6)–11–21 – Paper 8 – Letter from the Llywydd's Committee to the Minister of State for Levelling Up & Equalities, 18 October 2021

4.5 Correspondence from the Remuneration Board: Public Service Pensions and Judicial Offices Bill

(Pages 67 – 69)

LJC(6)–11–21 – Paper 9 – Letter from the Remuneration Board to the Llywydd, 19 October 2021

**4.6 Correspondence from the Counsel General and Minister for the Constitution:
Follow up to evidence session on 20 September 2021**

(Pages 70 – 80)

LJC(6)–11–21– Paper 10 – Letter from the Counsel General and Minister for the Constitution, 22 October 2021

LJC(6)–11–21– Paper 11 – Letter to the Counsel General and Minister for the Constitution, 8 October 2021

4.7 Correspondence from the Minister for Climate Change: Environment Bill

(Page 81)

LJC(6)–11–21 – Paper 12 – Letter from the Minister for Climate Change to the Minister for Rural Affairs, North Wales and Trefnydd, 25 October 2021

4.8 Correspondence from the Minister for Finance and Local Government:

**SL(6)067 Representation of the People (Amendment) (Wales) (Coronavirus)
(No. 2) Regulations 2021**

(Pages 82 – 83)

LJC(6)–11–21 – Paper 13 – Letter from the Minister for Finance and Local Government, 26 October 2021

**4.9 Correspondence from the Counsel General and Minister for the Constitution:
Invitation to give evidence**

(Pages 84 – 85)

LJC(6)–11–21 – Paper 14 – Letter from the Counsel General and Minister for the Constitution, 28 October 2021

LJC(6)–11–21 – Paper 15 – Letter to the Counsel General and Minister for the Constitution, 22 October 2021

**5 Motion under Standing Order 17.42 to resolve to exclude the
public from the remainder of the meeting**

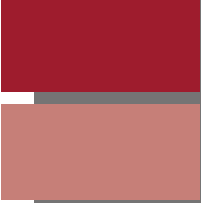
14.45

**6 Evidence session with the President of Welsh Tribunals –
consideration of evidence**

14.45 – 15.00

- 7 Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government**
15.00 – 15.10 (Pages 86 – 89)
LJC(6)11-21 – Paper 16 – Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government
- 8 Briefing note on international agreements**
15.10 – 15.20 (Pages 90 – 97)
LJC(6)-11-21 – Paper 17 – Briefing note
- 9 Monitoring Report**
15.20 – 15.30 (Pages 98 – 118)
LJC(6)-11-21 – Paper 18 – Draft Monitoring Report
- 10 Supplementary Legislative Consent Memorandum: Environment Bill**
15.30 – 15.40 (Pages 119 – 124)
LJC(6)-11-21 – Paper 19 – Supplementary Legislative Consent Memorandum: Environment Bill
LJC(6)-11-21 – Paper 20 – Letter from the Minister for Climate Change, 28 October 2021

Document is Restricted



President of Welsh Tribunals Third Annual Report 2020-2021

30 April 2021



Tribiwnlysoedd Cymru
Welsh Tribunals

Llywydd / President

Pack Page 40

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

1. Introduction

I began my Second Annual Report (published in June 2020 but substantially written in May) by explaining that the justice function in the UK was being transformed by the spread of Coronavirus. However, I did not foresee in May 2020 that what has become known as “the pandemic” would still be dominating how justice was being delivered throughout the UK one year on. Yet that is the reality and it seems clear that the delivery of the justice function will continue to be substantially affected by the pandemic over the coming months. That being so, it is inevitable that a substantial part of this report will focus upon how the Welsh Tribunals have dealt with the disruption inevitably brought about by the very serious threat posed to public health by Coronavirus and how they continue to adapt their practices and procedures to meet the needs of all users of the Tribunals, their members and the support staff.

In summary, however, the tribunal members and the staff of the Welsh Tribunals Unit have shown great resilience and flexibility throughout the last year. They all deserve a great deal of credit for their commitment, willingness to adapt to new ways of working and determination to ensure that the work of the Welsh Tribunals has run as smoothly as possible.

My first Annual Report provided a good deal of explanatory material about the Wales Act 2017, the office of President of Welsh Tribunals and the processes by which members of the Tribunals are recruited and appointed. I hope I can be forgiven for assuming that those who will read this Report are now fully familiar with the salient parts of the Act, the office of President of Welsh Tribunals and the processes by which members of the Welsh Tribunals are recruited and appointed. I will not repeat what I wrote in my first report.

This could have been my last annual report. My letter of appointment as President of Welsh Tribunals specifies that my term of office expires on 13 August 2021. That was always something of an anomaly since the statutory retirement age for judges in Wales and England is 70 and I reached that milestone on 31 March 2021. However, exercising the powers conferred upon him by section 26 Judicial Pensions and Retirement Act 1993, the Lord Chief Justice extended my appointment to 31 March 2022. The Lord Chief Justice took that step after first consulting the First Minister for Wales and the Lord Chancellor. I was pleased to accept the offer of an extension to my term and I am grateful for the support which I have received from the Lord Chief Justice, the First Minister and the Lord Chancellor throughout my term of office. One result of my extension is that there will be another annual report for me to write next year!

I am sure that readers of this report will be familiar with the tribunals which are known collectively as “the Welsh Tribunals”. For the avoidance of any doubt, however, I set them out as they are referred to in the Wales Act, together with the acronyms that are often used for shorthand identification of each tribunal.

Section 59 of the Wales Act 2017 defines the phrase ‘Welsh Tribunal’ to mean:

- (a) the Agricultural Land Tribunal for Wales/Tribiwnlys Tir Amaethyddol Cymru (“ALTW”);
- (b) the Mental Health Review Tribunal for Wales (“MHRTW”);
- (c) a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal) (“RPTW”);
- (d) the Special Educational Needs Tribunal for Wales/Tribiwnlys Anghenion Addysgol Arbennig Cymru (“SENTW”);

- (e) a tribunal constituted in accordance with Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27);
- (f) a tribunal drawn from the Adjudication Panel for Wales/Panel Dyfarnu Cymru (“APW”);
- (g) the Welsh Language Tribunal/Tribiwnlys y Gymraeg (“WLT”).

The Welsh Tribunals are administered by the Welsh Tribunals Unit (WTU) which is part of the civil service supporting the Welsh Government but which strives to be and appear to be as independent of Government as is practicable.

The form of this report will be similar to that of last year. I will first provide factual information (an update) about numbers of cases, recruitment and appointments, cross-ticketing as between Welsh Tribunals and with English Tribunals, Practice Directions, my engagements, the working arrangements and budget of the Welsh Tribunals Unit and the use of the Welsh language within the Tribunals. I will next deal with the Commission on Justice in Wales and the Law Commission’s project on Welsh Tribunals. I will then provide my assessment of the effect of the pandemic on the work of the Welsh Tribunals before, finally, indicating my priorities for 2021/22.

2. Updates on previous Annual Reports

The number of applications received by the Welsh Tribunals in the last financial year is set out in the Table below.

Table 1: Number of applications per tribunals with percentage increase/decrease

Tribunal	Financial Year 2018-2019	Financial Year 2019-2020	Financial Year 2020-2021	% increase/ decrease	Applications processed in Welsh
ALTW	29	22	13	-41	0
MHRTW	2046	*1943	1790	-8	7
RPT	176	112	106	-5	0
SENTW	139	172	116	-34	1
APW	2	2	4	+100	0
WLT	3	16	13	-35	12

*Historically MHRTW data for annual reports was exported from a number of sources (Manual and electronic). In 2019-20 the data for applications and referrals received have been taken from the MHRTW CRM records management system removing the risk of any human error. This change in reporting methods has created the appearance of a decrease in applications and referrals for MHRTW but the probability is that had the same methodology been adopted in previous years the applications and referrals would have been of a similar order to those of recent years.

Further information about the nature of the work undertaken and the membership of each tribunal is set out in each of their annual reports. All such reports are published on the website of each tribunal.

There were no cross-ticketing exercises during the course of the year i.e. no member of a Welsh Tribunal were authorised to sit in a different Welsh Tribunal and no members of Welsh Tribunals were authorised to sit in the English Tribunals or vice versa. There were, however, a numbers of new appointments to the Welsh Tribunals. Three persons were appointed to ALT, namely two deputy chairs and one lay member. Five lay members were also appointed to SENTW. All of these appointments were made following competitions organised by the Judicial Appointments Commission. Competitions were also launched by the Commission to recruit legal members of RPTW and legal, medical and lay members of MHRTW. These recruitment exercises were not complete by 30 April 2021. The Presidents of both tribunals reported that substantial numbers of candidates put themselves forward for appointment.

It is worth noting that all legal appointments to the Welsh Tribunals are open to legal practitioners who practise in England as well as Wales. Essentially, that is because all legal practitioners in Wales and England are qualified to practice in both countries.

During the course of the year four Practice Directions (PDs) were approved by the First Minister pursuant to section 61 Wales Act 2017. Each of the four PDs were issued jointly by the President of the Tribunal concerned and me.

In October 2020 the President of MHRTW and I jointly issued a PD which extended the operational period of a PD we had issued in April 2020 by 6 months i.e. until April 2021. The PD issued in April 2020 had been issued primarily to complement rule changes which had been made to cater for possible changes in working practices arising as a consequence of the pandemic. In October 2020 we extended its operation for a period of 6 months given that there was then a very serious increase in the number of cases of Coronavirus. The PD expired in April 2021; we decided against a further extension of its provisions for reasons which are set out below in Section 4.

In June 2020 the President of SENTW and I issued a PD which was specified to subsist for 6 months. This PD was not issued as a direct consequence of the pandemic; it was issued to facilitate the work of the Tribunal in managing evidence adduced before it. In December 2020 we reviewed the operation of the PD in the light of representations received from local education authorities. On 11 December 2020 we issued a revised PD again specifying that it would subsist for a period of 6 months and that it would be reviewed towards the end of that period.

In June 2020 the President of RPTW and I issued a PD to subsist for a period of 6 months. This PD was issued to combat the challenges faced by the Tribunal as a consequences of the pandemic. It was extended for a further six month period following a review and it will be further reviewed following the expiry of that period.

Throughout the year I have attended many meetings of bodies of which I am a member (all held remotely). By virtue of my Presidency of Welsh Tribunals, I am a member of the Tribunal Judiciary Executive Board, the Administrative Justice Council and the Welsh Committee of the Judges' Council which is chaired by the Lord Chief Justice.

The Tribunal Judiciary Executive Board has judicial representation from all the constituent parts of the United Kingdom and is made up exclusively of judges. It is a very significant forum for judicial decision making in relation to the processes to be adopted within all the tribunals of

the UK. It provided an invaluable forum for discussions about working practices which should be adopted by Tribunals so as to take account of the restrictions imposed to combat the effect of the pandemic.

The Administrative Justice Council is also a UK body. It has a wide membership consisting of judges, academic lawyers, academics in fields related to justice and administrators. The head of the Welsh Tribunals Unit, a representative of the Public Service Ombudsman for Wales and I are regular attenders at Council meetings. The Council provides a forum for detailed discussions upon topics of interest relating to the workings of tribunals as well as providing detailed insight into substantive legal issues which arise within the tribunals.

The Welsh Committee of the Judges' Council is an advisory body which informs the Lord Chief Justice upon issues which relate to Wales. Its membership comprises judges at all levels from lay magistrates to Lord Lloyd-Jones in the Supreme Court. Obviously much of its time is taken up with matters arising in the courts and tribunals of England and Wales which are administered by HMCTS but the Committee receives a report from me at every meeting about all important matters relating to Welsh Tribunals which sometimes provokes considerable debate.

Each of these bodies meet quarterly and membership of each of these bodies ensures that the President of Welsh Tribunals is very well placed to keep abreast of all important developments in the tribunals which exist in all four countries of the UK.

As and when necessary I consult with the Presiding Judges of Wales. Earlier this year, for example, I consulted with them upon succession planning for the office of President of Welsh Tribunals and whether or not I should accept the offer of an extension to my term of office.

Throughout the year I have chaired quarterly meetings of the judicial leads of the Welsh Tribunals. These meetings were always intended to provide the opportunity for discussing matters of concern to the judicial leads of individual tribunals and/or matters which concern all the tribunals. I have no doubt that they have succeeded in fulfilling that goal. The meetings also provide the opportunity for direct contact between the judicial leads as a group and senior members of the WTU. When invited I have also attended meetings and training days organised by individual tribunals.

On 13 July 2020 I appeared as witness before the Legislation, Justice and Constitution Committee of the Senedd. I was asked many detailed and thought provoking questions. My answers to the various questions are, of course, a matter of public record. I am grateful to the Committee for the opportunity of appearing before them and I firmly believe that the President of Welsh Tribunals should appear at appropriate intervals to expand upon and clarify the Annual Report as well as to answer other questions relevant to the work of the tribunals.

Some months after my appearance before the Committee my Second Annual Report was the subject of a debate in a plenary session of the Senedd. This inaugural event was, without doubt, something of a milestone. Not surprisingly, the contributions of members were not narrowly confined to the four corners of my report. The debate ranged far and wide over matters relating to justice in Wales.

My annual meeting with the First Minister took place on 6 October 2020. As in previous years the First Minister was accompanied by the Counsel General and his private secretary; I was accompanied by the Deputy Director – Constitution and Welsh Tribunals and the head of WTU.

Not surprisingly, much of the conversation was taken up with the effect of the pandemic on the work of the tribunals. However, we also discussed the possibility of appointing full time salaried legal members of MHRTW, the Commission for Justice in Wales, the Law Commission project on Welsh Tribunals, the role of the President of Welsh Tribunals and succession planning in respect of that office.

I am very pleased to report that following our meeting the First Minister approved, in principle, the appointment of two salaried legal members of MHRTW in addition to the President of that tribunal (who is also a salaried member) and that the Lord Chancellor, as the appointing authority, has also approved the appointment of two salaried legal members in addition to the President. The President of MHRTW and I intend that, if at all possible, the recruitment process for the appointment of those salaried members will begin in the financial year 2021/2022.

Finally, I should record that I have had frequent discussions with the head of the WTU, more occasional discussions with other civil servants and, as and when necessary, meetings with the two Welsh Government lawyers who have been given the specific role of providing legal advice to me, the WTU and, if necessary, the individual tribunals.

Since the start of the financial year the WTU staff have been working from home in line with Welsh government guidelines. Small numbers of staff were made key workers in order to access and deal with post at the offices as and when necessary. While a great deal of the work of the Tribunals can be conducted electronically hard copies of some documents are still sent to offices. I am extremely grateful to the individuals who have worked so flexibly with the aim of ensuring that all tribunal services were maintained despite the difficult circumstances prevailing. The WTU was quick off the mark to find alternative hearing methods rather than face to face hearings when the restrictions were put in place last March, as I described in my second Annual Report.

WTU staff based at offices in Llandrindod Wells were due to be relocated in refurbished offices within the existing Powys County Council building by the end of 2020. Due to the challenges posed by restrictions this has been delayed to July 2021.

The current office space occupied by WTU is used as the headquarters of SENTW, ALTW and APW and has a room of sufficient size so as to enable it to be used as a hearing room. The new accommodation will not have a dedicated hearing room but, in any event, it would not be appropriate to conduct hearings in a building which is owned and, in part, occupied by Powys County Council given that it can sometimes be involved as a party in individual cases.

The new accommodation will provide meeting rooms that can be used by tribunal members for meetings and training events and it has appropriate space for the staff of WTU. Once the move is complete, cases brought before SENTW, ALTW and APW which require face to face hearings will be heard in locations which best meets the needs of the parties and tribunal members.

The budget for WTU is set by Welsh Government.

In the financial year 2020/2021 the allocation to WTU was £4,148,000.00. The budget makes provision for both tribunal and administrative running costs.

Total spend for the year was £3,565,246.00.

The underspend in this financial year is unprecedented during my tenure. Hitherto, there has been a significant overspend in each financial year. The reduced spending in 2020/21 was almost exclusively the result of the switch from face-to-face to remote hearings. There were no costs associated with hiring suitable hearing rooms; there were very little travelling expenses to be paid out to tribunal members and staff.

Strict financial management during the early months of the financial year enabled the return of significant funds to Central finance early in 2021.

All the Tribunals continue to offer a full Welsh language service to their users in accordance with duties imposed by the compliance notices issued by the Welsh Language Commissioner in relation to Welsh Language standards.

Whilst APW is not subject to the standards, it operates in line with the other tribunals and treats the Welsh language no less favourably than English. In each of my earlier reports I predicted that it was likely that APW would be made subject to the standards but that has not yet happened. Nonetheless, it is still expected that this will occur in the near future.

The uptake of the Welsh language service remains very low. Table 1 above shows that during 2020/21 the Welsh language was used in 20 cases across all Welsh Tribunals.

3. Commission on Justice in Wales and Law Commission project on Welsh Tribunals

In last year's annual report I drew attention to three recommendations of the Commission on Justice in Wales which were directly related to the Welsh Tribunals, the office of President of Welsh Tribunals and the administrative support provided to the Tribunals and the President by WTU. The reader will probably be aware that I was one of the Commissioners. For ease of reference I set out those recommendations again together with my updated comments.

Recommendation 22 provides that "Courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales".

Although the report does not say so expressly, it is implicit in this recommendation that it can be achieved only if there is substantial devolution of the justice function to Wales. As such, substantial legislation by the UK Parliament would be necessary to implement this recommendation. I am not aware of anything which would suggest that at the present time such legislation is contemplated by the UK Parliament.

Recommendation 25 provides that "All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh Tribunals should be brought under the supervision of the President."

Recommendation 27 provides that "The Welsh Tribunals Unit should have a structural independence and the Welsh Tribunals should be used for dispute resolution relating to future Welsh legislation.

These two reforms may also involve some legislation by the UK Parliament or, at the very least, amendment to legislation already enacted by the UK Parliament. Any such new legislation and such amendments to existing legislation as would be necessary to implement the recommendations would have as their aim the facilitation of the work of institutions already in existence and which operate exclusively in Wales. That said, I am in no position to judge whether there would be opposition to the necessary legislation within the UK Parliament or from others and it would not be appropriate for me to speculate upon such matters. There is no indication that the UK Parliament is contemplating legislation relating to these matters in the near future, so far as I am aware.

However, recommendation 25 and the first part of recommendation 27 are very much within the scope of the Law Commission project on Welsh Tribunals which was commissioned by the Welsh Government and which has now been gestating over a period approaching one year.

It is clear from the Consultation paper published by the Law Commission in December 2020 that the Commission has made a detailed assessment of a number of existing bodies within Wales so as to reach a conclusion about whether they should or should not be categorised as a tribunal and, if so, whether or not they should be added to the list of Welsh Tribunals within the Wales Act 2017 and/or made subject to the supervision of President of Welsh Tribunals. The Commission recommends, provisionally, that the existing Welsh Tribunals should be consolidated into a First-Tier Tribunal and that that the Valuation Tribunal for Wales should be part of the First Tier. Additionally the Commission provisionally recommends that the jurisdiction of school exclusion appeal panels should be amalgamated into SENTW.

The Commission's consultation paper has also assessed the need for the WTU to become structurally independent from Welsh Government. Provisionally, the Commission recommends that the WTU should become a non-ministerial department. If such a recommendation is maintained in the Law Commission's final report and, thereafter, implemented, there can be no doubt that WTU would become structurally independent from Welsh Government as envisaged by the Commission on Justice in Wales. The reasoning of the Law Commission in support of this recommendation is, in my opinion, compelling and I have made no secret of my view that such development would be of substantial benefit to the operation and independence of Welsh Tribunals.

In last year's report I wrote that aspects of recommendations 25 and 27 had the potential to increase the work of some of the Welsh Tribunals very substantially. That is so, in particular, by reason of that part of recommendation 27 which is to the effect that the tribunals should become the forum for dispute resolution in relation to future Welsh legislation. I remain very much of that view. The Senedd has legislative competence in the fields of health, education, housing and agriculture. If all disputes arising from future legislation in these areas of the law are to be determined by the Welsh Tribunals there is bound to be a sharp increase in the work load of the tribunals with obvious implications for the budget and the staff structure of the Welsh Tribunals Unit.

I also expressed the view in last year's report that the implementation of recommendations 25 and 27 would transform the role of President of Welsh Tribunals. I need not dwell any further upon whether that would be the effect of the recommendations of the Commission on Justice because, in its consultation paper, the Law Commission has made a number of recommendations on a provisional basis which, if implemented, would, without doubt, increase the work load of the President very substantially. The Law Commission recommends provisionally the President becomes the appointing authority for all members of Welsh Tribunals which are currently within the Act and for the members of other public bodies which may become tribunals within the Act, that he/she becomes the disciplinary authority for those members, that he/she has a role in allocating the categories of work to the various Chambers of a newly created First Tier Tribunal structure in Wales and that he/she chairs a newly created and independent WTU and a Wales Tribunal Rule Committee.

The Law Commission also recommends, provisionally, two specific judicial roles for the President of Welsh Tribunals. First, it suggests that he/she should be entitled to sit in any of the Welsh Tribunals. While it has always been my view (and that of the Lord Chief Justice) that the President was entitled to sit in the Tribunals there is no express statutory provision to that effect. Second, the Law Commission suggests that if a separate Welsh Appeal Tribunal is created in which all the appeals from Welsh Tribunals would be heard the President should be a member of that Appeal Tribunal.

I support all the provisional recommendations made by the Law Commission in respect of the office of President of Welsh Tribunals.

The statutory basis for the office of President of Welsh Tribunals is to be found in section 60 of the Wales Act 2017. It should be noted that the section provides, expressly, that the President is “not a devolved Welsh authority for the purposes of the Government of Wales Act 2006”. No doubt there is potential for a debate as to which legislative body (the Senedd or the UK Parliament) should bring forward any legislation relating to the office of President which may be necessary to give effect to the final recommendations made by the Law Commission. There is a degree of urgency in resolving this issue since, in my view, the scope of the office of President is a crucial component to be taken into account when planning for and recruiting my successor.

Currently there are two routes to appointment as President of Welsh Tribunals.

Route 1 envisages the President being appointed by the Lord Chief Justice from serving or retired members of the senior judiciary of England and Wales. The Lord Chief Justice is empowered to appoint the President from this potential pool following “expressions of interest” and after consulting the First Minister and the Lord Chancellor.

If no person emerges from this process or if the Lord Chief Justice decides against using this process he would make an appointment following consultation with the First Minister and Lord Chancellor and a competition run by the Judicial Appointments Commission (route 2).

Paragraph 3 of Schedule 5 to the Wales Act 2017 provides that a person is eligible for selection if he/she has been qualified as a barrister or solicitor for at least 7 years. There is nothing unusual about this provision; the same minimum criteria are used for appointments to the High Court and many other judicial posts. However, these criteria are the minimum required.

In practice, I would expect that the aim of any recruitment campaign would be to identify high calibre applicants. There must be a strong argument for describing the office so as to attract candidates who would have the attributes necessary for appointment to the High Court but who have decided, for whatever reason, that they do not wish to compete for a full time salaried judicial role.

Even allowing for the increased workload should the provisional recommendations of the Law Commission come to fruition, it is very likely that the President of Welsh Tribunals will not be a salaried full time appointment for many years to come; it will very likely be fee paid for many years. Accordingly, the office of President may be attractive to those who have been appointed Deputy High Court Judges or those who aspire to that position.

Clearly, if Route 2 is used as the means for appointing my successor considerable thought will be necessary in determining appropriate additional criteria for selection if there is to be a wide and diverse pool of candidates of the required ability.

To give some guide as to the demands of the role at the moment, as a retired High Court Judge, I am obliged under the 2017 Act to devote the equivalent of 20 working days per annum to the Presidency as a minimum and, in practice to date, I have found it necessary to devote about the equivalent of 25 to 30 days per year to the role (although the work to be performed is spread in such a way that I am engaged for some parts of days most weeks). If all the provisional recommendations of the Law Commission are adopted, the role of the President would be expanded very substantially. In my view, the work load of the President would very likely double.

4. The Impact of Coronavirus

The Welsh Tribunals have come to terms with disruption to normal working practices on an unprecedented scale. The lock down imposed by the Welsh Government on 23 March 2020 effectively ruled out traditional hearings at which the tribunal members and the parties gathered together in one room. Between 23 March 2020 and 30 April 2021 no such hearings took place; rather the work undertaken by the tribunals has been done either by reference to written evidence and written submissions alone or by “remote” hearings.

The number of cases considered by ALTW in the year 2020/21 fell markedly as is clear from Table 1 above. It is not possible to provide an unequivocal explanation for this decrease in work load but it is reasonable to infer that the pandemic has been a major factor in the diminution in work. Preliminary hearings and approval hearings have been possible by telephone conference and more recently by video conferencing. However, substantive hearings which have also necessitated site inspections have been difficult to arrange. Of the 13 applications received by ALT in 2020/21, five related to tenancy succession on death, one related to tenancy succession on retirement, five were concerned with Notices to quit and there were two land drainage cases. The ALT training day took place by video conferencing.

The work of RPTW was also disrupted in the weeks immediately after the first lock down in March 2020. Site visits have a part to play in some of the decisions made by this Tribunal and in many of the cases in which site visits were necessary it was extremely difficult if not impossible to observe social distancing regulations. However, RPTW was very quick to conduct its hearings by remote means. It held its first hearing by video conferencing in May 2020 and it has developed its ability to conduct all kinds of cases by such means throughout the year. The President and I jointly issued a PD in June 2020 which had the effect of facilitating the use of remote hearings; this was needed because this tribunal operates under three sets of procedural rules and clarity was essential to make clear that each set of procedural rules permitted the use of remote hearings. RPTW has been very successful in adapting its procedure so as to facilitate remote hearings – not least by adopting rigorous case management with a view to narrowing the issues to be determined as early in the proceedings as possible.

The work load of RPTW has essentially remained constant as between 2019/20 and 2020/21. All its members, supporting staff and users are to be congratulated on dealing with such a volume of work during such challenging times. It is also worth noting that RPTW has been able to organise two online training conferences for its members (held in December 2020 and March 2021).

APW traditionally has a very small numbers of cases. As it happens it dealt with one more case during 2020/21 than in the previous year. The disruption to this tribunal was substantially minimised because the governing rules of the tribunal permits some decisions to be made after consideration of written evidence and written submissions and I am informed by the President of APW that all four cases determined by APW were dealt with on the basis of written material. That is not to say that APW was not equipped to deal with remote hearings. The members received appropriate training soon after the lock down in March 2020 had been announced and remote hearings would have taken place throughout the year had the parties requested the same.

The case load of WLT diminished to an extent during 2020/21.

It is difficult to offer a reason but it is unlikely to have been due to the effects of the pandemic.

Over the years since its coming into existence the case numbers in this tribunal have fluctuated substantially and it is more probable than not that there will continue to be a fluctuation in numbers.

The rules governing WLT permit remote hearings and determinations on the basis of written material. Of the seven appeals considered in 2020/21 three appeals were rejected, two were allowed and two were not resolved in that year. All the appeals were determined by reference to written submissions.

SENTW deals with cases which are primarily focussed upon the educational needs of vulnerable children. As soon as traditional face-to-face hearings ceased it began exploring the best ways of dealing with cases remotely. Its members received appropriate training and espoused remote hearings with enthusiasm. The President has consistently reported that hearings by video conferencing have proved to be a great success. A constant theme has been that the parents of children with special educational needs positively prefer hearings by remote means since they are, in the main, able to participate from their own homes and, in consequence, feel more relaxed and better able to participate. All the members of the tribunal and the staff which support them are to be congratulated for the flexibility and commitment shown in developing alternative methods of working.

Table 1 shows that there was a substantial decrease in the number of cases dealt with in 2020/21 compared to 2019/20 although the number of cases dealt with in 2020/21 was much closer to the numbers dealt with in 2017/18 and 2018/19 (albeit lower than both those years). I do not have the evidential base to determine whether the pandemic has caused or contributed to the fall in numbers of cases in 2020/21 but, in my view, some research in relation to this issue is justified given the clear need to ensure that the education of vulnerable children is not compromised. I will be asking the President of SENTW and the Head of WTU to organise the necessary work.

MHRTW has, by far, the largest numbers of cases of any Welsh Tribunal. Most of the cases before the tribunal which require a hearing have traditionally taken place at hospital. Since the lockdown was imposed in March 2020 no face-to-face hearings at hospitals have been possible with the consequence that the Tribunal has had to adapt to remote hearings. Over the course of the year all cases requiring a hearing have been conducted over the telephone. In the early days of the spread of Coronavirus and, in particular, as the first lockdown approached there was a genuine concern that MHRTW would be unable to deal with a case load approaching 2000 cases per annum. In consequence there was a need for urgent decisions about whether the procedural rules governing MHRTW were in need of amendment.

Although MHRTW is a Welsh Tribunal under the Wales Act 2017 it was created many years ago by legislation enacted by the UK Parliament. Over the years the procedural rules applicable in England which govern the equivalent body to MHRTW have diverged from the rules which govern MHRTW.

In summary, the rules in England have provided for much greater flexibility in the process of decision making. So, for example, for some years in England it has been possible to constitute a tribunal by one or two members (as opposed to three) in order to make decisions in certain types of cases whereas in Wales that has not been possible.

Further, the tribunal in England has had the ability to decide cases by reference to written material alone if certain criteria are met whereas that has not been the case in Wales. Once it became known that the UK Parliament intended to enact the Coronavirus Act 2020 strenuous efforts were made to ensure that the legislation included provisions specific to MHRTW to ensure that it could work as flexibly as its English counterpart.

No doubt through a great deal of hard work on the part of many people and, further, through co-operative working between civil servants in Wales and England suitable provisions were drafted specific to MHRTW and incorporated into the Act.

As a consequence MHRTW was enabled to work as flexibly as its English counterpart for so long as it was thought appropriate by legislators.

I wholeheartedly supported the rule changes in Wales (as did the President of MHRTW) and with the First Minister's approval the President of MHRTW and I were able to issue, jointly, a Practice Direction relating to the work of MHRTW, so as to supplement the rule changes in Wales.

As time went by, however, the rule changes and the PD were the subject of criticism from some of the lawyers who practise in the field of mental health. Further, the rule changes were the subject of criticism by the Equality, Local Government and Communities Committee of the Senedd in its report entitled "Into sharp relief: inequality and the pandemic". There were concerns that the protections afforded to patients by decisions being taken by three members (as opposed to a lesser number) and following oral hearings were being eroded.

I understand why these concerns were expressed. Nevertheless, in the early days of the pandemic and when social distancing rules were at their most restrictive as cases of Coronavirus reached their peaks there was a real risk that assembling three members for every hearing (albeit conducted remotely) would prove impossible to achieve for lack of the necessary numbers of members who were ready, willing and able to work throughout the pandemic.

The whole point of the rule changes was to prevent a situation developing in which some cases were simply not heard at all as might have been the case if members of MHRTW themselves became ill either with Coronavirus or other ailments. A significant number of the most experienced members of MHRTW are aged over 60 and prior to vaccination were themselves at risk of significant illness should they contract Coronavirus.

As it happens it has never been necessary to reduce the number of members hearing a case from the full complement of three. Further, it has never been necessary to determine a case by reference only to written material. The Tribunal has delivered a full programme of hearings in every category of case with a fully constituted panel and without any undue delay or backlog of hearings. That this has been possible is to the great credit of the members of MHRTW and the staff that has provided unstinting support.

Upon the expiry of the PD which had been extended for a period of six months from October 2020 the President of MHRTW and I decided that it would not be further extended. That was possible because of the falling numbers of persons suffering from Coronavirus and, as I have said, the commitment of the members of the Tribunal and the support staff. At the time of writing I do not expect that the PD will be revived although it should be noted that the provisions within the Coronavirus Act 2020 referred to above have not been repealed and so could be invoked if the need arose.

As Table 1 demonstrates the Tribunal has received a large number of cases during the year (albeit the numbers are reduced in comparison with previous years). MHRTW has sought to understand why the number of cases received in 2020/21 has reduced by about 8%.

The fall in numbers is explained in the main by a fall in the number of applications made by or in relation to patients in the community.

Given the social distancing restrictions in operation over much of the year it seems to me that there is likely to be a direct link between the reduced number of “community cases” and the pandemic. I have seen no evidence which suggests that the fall in the number of cases has been substantially caused or contributed to by the fact that hearings have, of necessity, been conducted remotely.

That is not to say that there has been no expressions of disquiet about remote hearings. As I explained above, MHRTW has conducted hearings throughout the year by telephone.

There has always been some pressure from some patients and their lawyers to conduct hearings by video conferencing. The President of MHRTW and her team of deputies has kept this possibility under review for some months and I understand that trialling of video conferencing hearings will begin shortly, if they have not already begun by the date of publication of this report.

The logistical difficulties of conducting hearings by video conferencing should not, however, be underestimated. Not all hospitals in which patients are detained are equipped for such hearings. Not all patients would welcome video conference hearings. There is a need, so far as is reasonable and proportionate, for consistency of treatment of patients in the way that hearings are conducted.

No doubt, once some hearings have taken place by video conferencing, MHRTW will undertake a detailed assessment of the circumstances in which different forms of remote hearings can be deployed. I will give MHRTW my full support in reaching appropriate conclusions.

I do not pretend that the challenges posed by the pandemic have been overcome in all instances without disruption. I am quite prepared to accept that there will have been instances in which cases may not have run as smoothly as they would have done had traditional face-to-face hearings been available.

Nonetheless I can say with a good deal of confidence that the flexibility which all the tribunals have shown in adapting their ways of working during this most difficult of times has been crucial in ensuring that the tribunals have operated efficiently and expeditiously and in accordance with the overarching aim of delivering justice to all participants.

5. Priorities for 2021/22

First and foremost there will be the need to assess and evaluate how the tribunals should operate from the time that the pandemic comes to an end. I have a statutory duty under the Wales Act 2017 to devise innovative methods of resolving disputes which are brought before the tribunals and, without doubt, the pandemic has forced the judicial leads of the tribunals and me to think about ways of working which were unimaginable to most tribunal users prior to March 2020.

A crucial issue for detailed consideration is the extent to which remote hearings are retained once traditional face-to-face hearings become possible. There can be no doubt that remote hearings are likely to prove less costly to organise. There can be no doubt, too, that some users of the tribunals feel far more comfortable participating from their own home or other familiar surroundings than is the case when they are in a more formal setting.

However, the overarching object of each tribunal is to deliver justice and there can be no doubt, in my opinion, that traditional face-to-face hearings are a better model for achieving justice when there are contentious and crucial factual issues in dispute which are dependent for their resolution upon oral sworn evidence from witnesses. There may also be circumstances which are particular to individual tribunals which make face-to-face hearings either necessary or, at least, very desirable.

Over the course of the coming months the judicial leads and I will be making an In-depth assessment of the current procedural rules governing each tribunal and what should be done to develop criteria by which decisions are made as to whether remote or face-to-face hearings are held. In this respect we will be very much assisted by emerging detailed research which has been undertaken upon the use of remote hearings during the pandemic. Just as I was completing this report the Legal Education Foundation published the results of its research into remote hearings during the early months of the pandemic. I could not do justice to an erudite, detailed and lengthy report by attempting a summary in an annual report. This research, and other similar reports, however, will be the foundation stones for the work of tribunals in the years to come.

I have three other important priorities. First, to respond appropriately to the final recommendations about Welsh Tribunals which are likely to be published by the Law Commission in the autumn, in particular those relating to the office of President of Welsh Tribunals and the status of the WTU. Second, to provide assistance, if required, in relation to the transition from SENTW to “the Education Tribunal” which will happen later this year by virtue of legislation made in Wales entitled the Additional Learning Needs and Education Tribunal (Wales) Act 2018. Third, if required, to assist in devising criteria for appointment of salaried legal members of MHRTW.

The office of President of Welsh Tribunals has proved to be more demanding than I envisaged when I took office in the autumn of 2017. I believe that would have been so even without the intervention of the pandemic. However, it has been an honour to have been involved in the very early stages of a project to develop Welsh Tribunals as bodies for dispute resolution which are truly fit for purpose in the second decade of the Twenty First Century.



Sir Wyn Williams
President of Welsh Tribunals

Agenda Item 3.1

SL(6)065 - The Non-Domestic Rating (Miscellaneous Provisions) (No. 2) (Amendment) (Wales) Regulations 2021

Background and Purpose

Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 (“the **1988 Act**”) provides that the rateable value of a non-domestic property (hereditament) is taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to be let from year to year, subject to specified assumptions.

In those cases where there is no available information on the general rental market, and profit and loss cannot be used as an indication of rental value, the rateable value of a non-domestic hereditament is instead ascertained by ‘decapitalising’ the estimated total capital value of the hereditament. The relevant decapitalisation rates are prescribed in regulation 2 of the Non-Domestic Rating (Miscellaneous Provisions) (No. 2) Regulations 1989 (“the **1989 Regulations**”).

These [Regulations](#) amend, with effect from 9 November 2021, the decapitalisation rates for non-domestic rating lists compiled on or after 1 April 2023.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form of meaning needs further explanation.

Regulation 2(2) of the subject Regulations amends regulation 2(1G) of the 1989 Regulations so that it refers to a non-domestic rating list in Wales “compiled on 1 April 2021”.

The Welsh Government is asked to clarify the purpose of this drafting given that the effect of section 54A of the 1988 Act (as amended) is to require the non-domestic lists referred to in



sections 41 and 52 of that Act to be compiled in Wales on 1 April 2017, on 1 April 2023 and on 1 April in every fifth year afterwards.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

19 October 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 57



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

28 October 2021

Dear Huw,

Inter-Institutional Relations Agreement: Intergovernmental Meeting

Further to my letter of 15 October regarding the inter-institutional relations agreement and the meeting on 18 October of the UK Government's Prime Minister and First Ministers of the devolved governments, I wish to inform you I have today issued a Written Ministerial Statement summarising the outcomes of the meeting.

It has been published at: [Written Statement: Intergovernmental Meeting \(28 October 2021\) | GOV.WALES](#)

Yours sincerely,

MARK DRAKEFORD

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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.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Intergovernmental Meeting**

DATE **28 October 2021**

BY **Rt Hon Mark Drakeford MS, First Minister**

The Minister for Health and Social Services and I represented the Welsh Government at a four-nations intergovernmental meeting on 18 October, chaired by the UK Government's Prime Minister, to discuss our shared challenges on Covid in context of wider winter pressures, and the UN Climate Change Conference in Glasgow.

A communique was published following the meeting:

<https://www.gov.uk/government/publications/prime-minister-led-engagement-with-the-devolved-administrations>

At the outset, the Prime Minister spoke about the tragic death of Sir David Amess. I echoed the sentiments expressed by the Prime Minister and during the course of the meeting we observed a minute's silence.

During the agenda item on shared Covid challenges, I mentioned ongoing economic impacts and implications of supply chain shortages, noting impacts on sectors in Wales including the steel industry. I also highlighted labour shortages in the social care sector, and asked that social care workers should be added to the shortage occupation list to help address recruitment difficulties, noting that in the long-term, the governments will need to work together on recruitment and retention in the NHS and in social care. I called for ongoing four-nations collaboration on vaccines and testing, and that surveillance measures for returning travellers continue to be vital to protect Wales.

I pressed the Prime Minister for a guarantee the UK-wide Covid public inquiry would examine the actions of the Welsh Government and the experiences of the people of Wales. In response, the Prime Minister confirmed there will be a proper Welsh dimension to the inquiry and spoke of the importance of the inquiry to the whole of the UK. I also received assurances that Welsh Ministers will be consulted on the terms of reference for the inquiry. As I have made clear, the inquiry must take account of the actions taken in Wales and

provide proper investigation to offer the answers that families are entitled to have about the way that decisions were made on their behalf.

In relation to the item on COP26, in the context of a changing climate, I called on the UK Government through its forthcoming Comprehensive Spending Review to provide additional funding to deal with the pre-devolution legacy of coal tips and to ensure they are safe as we face increasing extreme weather as a result of climate change. It is now a critical issue with a tragic history which poses real risks – which climate change is exacerbating – for people and communities across Wales. Those communities whose efforts created huge wealth and economic benefit to the UK in centuries past have a right to look to the UK for long-term funding to deal with these sites.



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

SeneddLJC@senedd.wales

15 October 2021

Dear Huw,

Inter-Institutional Relations Agreement: Intergovernmental Meeting

I am writing in accordance with the inter-institutional relations agreement to notify you of a meeting on 18 October of the UK Government's Prime Minister and First Ministers of the devolved governments. In this virtual meeting we will discuss intergovernmental relations, shared challenges on Covid in context of wider winter pressures, and the UN Climate Change Conference in Glasgow. I will provide an update after the meeting.

Yours sincerely,

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.

Agenda Item 4.2

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref 2021/11/04 IGR

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

SeneddLJC@senedd.wales

15 October 2021

Dear Huw

I wrote to you in September notifying the Committee of the postponement of the Inter-Ministerial Group for Elections and Registration on 29 September, in accordance with the inter-institutional relations agreement. The meeting has now been rescheduled for Thursday 4 November.

I will write again following the meeting.

Yours sincerely

Mick Antoniw AS/MS
Gwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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

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

huw.Irranca-Davies@senedd.wales

15 October 2021

Dear Huw

The Phytosanitary Conditions (Amendment No 2) Regulations 2021

The Secretary of State proposes to make the above named Statutory Instrument (SI) under powers conferred by Articles 5(3), 30(1), 37(5), 40(3), 41(3), 42(3), 72(3) and 105(6) of Regulation (EU) 2016/2031 of the European Parliament and the Council on protective measures against pests of plants. The SI is to apply to England, Scotland and Wales and its purpose is to protect biosecurity and support trade between Great Britain (“GB”) and relevant third countries by introducing further protective measures for at-risk plant goods.

The SI amends Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 to:

- Introduce GB-wide measures against the import of host plants and other relevant regulated goods for certain pests. These measures apply to specific third countries that pose an unacceptable level of risk to GB.
- Deregulate pests which have been assessed as being of no biosecurity risk to GB, as their continued regulation is no longer technically unjustified.

I am writing to let you know I gave my consent to the Secretary of State to the application of this SI to Wales. I understand the SI will be laid before the Houses of Parliament on 21 October and will be subject to the negative procedure.

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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.

In circumstances when we are required to consider and amend legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that, if appropriate, we permit the UK Government to legislate on our behalf. Should consent be withheld, these corrections will need to be made through legislation made by the Welsh Government. There is insufficient time and resources to be able to draft and lay such regulations at the same time as the UK Government and delay would present a risk to our biosecurity.

I am copying this letter to the Counsel General and Minister for the Constitution, the Minister for Rural Affairs and North Wales, and Trefnydd, and the Chairs of the Climate Change, Environment, and Infrastructure Committee and the Economy, Trade, and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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

Kemi Badenoch MP
Minister of State for Levelling Up & Equalities
UK Government
Cabinet Office
70 Whitehall
London
SW1A 2AS

Your reference: MC2021/14148

Dyddiad | Date: 18 October 2021

Pwnc | Subject: The Elections Bill

Dear Minister of State for Levelling Up & Equalities,

I write in response to a letter dated 5 July from the former Minister of State for the Constitution and Devolution (as the then Minister in Charge of the Elections Bill) seeking views on the UK Government's Elections Bill.¹

As identified in the Explanatory Notes to the Elections Bill, various provisions in the bill relate to matters that are devolved to the Senedd. The Senedd is yet to consider whether to provide consent for such provisions, but its decision will be communicated to the UK Parliament in the usual way, and this correspondence does not pre-empt that consideration.

Notwithstanding this decision on consent, the view of the Llywydd's Committee is that the Elections Bill should be amended to require that the Llywydd's Committee to be consulted if the UK Government intends to issue Strategy and Policy Statements which relate to the exercise of the Electoral Commission's devolved Welsh functions. This would provide for parity with the UK Government's required consultation and engagement with the Speaker's Committee.

In accordance with the provisions in Schedule 1 to the Political Parties, Elections and Referendums Act 2000 (PPERA 2000) it is for the Senedd to consider "*the [Electoral] Commission's aims and objectives for the exercise of the Commission's functions in relation to devolved Welsh elections and devolved Welsh referendums*"², by way of the Llywydd's Committee's consideration of five-year plans submitted to it by the Electoral Commission. If the Llywydd's Committee is not satisfied that a five-year plan is consistent with the economical, efficient and effective discharge by the Commission of their functions in relation to devolved

¹ The letter was originally addressed to the Llywydd of the Senedd, Elin Jones MS. As it is the Llywydd's Committee to which the Electoral Commission is accountable, the Minister's letter was forwarded to the Committee for consideration.

² Paragraph 16B(2) to Schedule 1 of the Political Parties, Elections and Referendums Act 2000



Welsh elections and devolved Welsh referendums, the Llywydd's Committee must make such modifications to the plan as it considers appropriate for the purpose of achieving that consistency.

The Elections Bill as drafted includes provisions to allow the UK Government to issue Strategy and Policy Statements which may relate to the exercise of the Electoral Commission's devolved Welsh functions. This power appears to create the risk of a conflict with the Llywydd's Committee's responsibilities in relation to the Electoral Commission's five-year plans. It would therefore be appropriate for Section 4C(2) of the Bill to be amended to require that the Secretary of State consults with the Llywydd's Committee before issuing any such Statements rather than the Welsh Ministers.

Providing for the Llywydd's Committee to be consulted would provide for parity between its treatment and that provided to the House of Commons' Speaker's Committee and Public Administration and Constitutional Affairs Committee, and would reflect the accountability of the Electoral Commission to the Llywydd's Committee.

I look forward to receiving your response. This letter has been copied to:

- the Chair of the Senedd's Legislation, Justice and Constitution Committee;
- the Chair of the Senedd's Local Government and Housing Committee;
- the Counsel General for Wales;
- the Welsh Government Minister for Finance and Local Government; and
- the House of Commons' Speaker's Committee.

Yours sincerely



David Rees MS

Chair, Llywydd's Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Cc:

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

John Griffiths MS, Chair, Local Government and Housing Committee

Mick Antoniw MS, Counsel General for Wales

Rebecca Evans MS, Minister for Finance and Local Government

Sir Lindsay Hoyle MP, Speaker, Speaker's Committee on the Electoral Commission



To: Elin Jones MS
Llywydd and Chair of the Senedd Commission

19 October 2021

Annwyl Lywydd,

The Public Service Pensions and Judicial Offices Bill (the Bill) was introduced to the UK Parliament in July 2021 and makes provision about public service pension schemes. In August 2021, the Counsel General laid a legislative consent memorandum before the Senedd on the basis that a number of the Bill's provisions are within the legislative competence of the Senedd.

While legislation on occupational and personal pension schemes is reserved to the UK Parliament,¹ there is a specific exemption that enables the Senedd to legislate for the pension scheme for Members of the Senedd. However, the function of approving changes to this devolved pension scheme remains with HM Treasury.² While the Bill does not currently propose to change this function of HM Treasury, I understand that discussions have taken place between the Welsh and UK Governments in relation to this matter, and that the UK Government intends to bring forward amendments to the Bill to remove the approval function from HM Treasury.

Following correspondence between the Counsel General and the then Chief Secretary to the Treasury (extract annexed), HM Treasury officials have been in contact with the secretariat of the Independent Remuneration Board of the Senedd as a result of proposals to amend the pension scheme rules for Members of the Senedd. Given that the Board is responsible for determining the Members' pension scheme rules, the Board's secretariat has been approached to confirm who should be invited to engage in dialogue with HM Treasury officials.

¹ Paragraph 134 of Schedule 7A to the Government of Wales Act 2006.

² Section 30 of the Public Service Pensions Act 2013.

The Board is of the view that the question of how the function should be exercised in future relates to the constitutional framework within which the Board operates. The Board therefore does not believe it to be appropriate for it to take a view on any legislative policy decisions about whether or not this function should be transferred or removed altogether.

However, the Board is content to express its views to HM Treasury, via its secretariat, on the technical workability of a proposed amendment and any legal implications which would need to be considered in forming policy advice on the matter. It is content for these discussions between officials to proceed on the basis that these are without prejudice to the Senedd Commission or Senedd's view on the matter.

Any discussions would be solely related to the impact in relation to the Members of the Senedd pension scheme.

Please do let me know if you wish to discuss this matter further.

Yours sincerely,



Dr Elizabeth Haywood

Chair, Independent Remuneration Board of the Senedd

cc Mick Antoniw AS/MS, Counsel General and Minister for the Constitution

Jenny Rathbone MS, Chair, Equality and Social Justice Committee

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

Peredur Owen Griffiths MS, Chair, Finance Committee

The Rt Hon Simon Clarke MP, Chief Secretary to the Treasury, UK Government

Jill Youds, Chair, Pension Board for the Members of the Senedd Pension Scheme

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

Annex

Extract from correspondence from Mick Antoniw AS/MS, Counsel General and Minister for the Constitution, to Rt Hon Steve Barclay MP, then Chief Secretary to the Treasury, regarding the Public Service Pensions and Judicial Offices Bill, 11 August 2021

"I note that the Bill as introduced does not make provision in relation to the pension scheme for members of the Senedd. In the context of that scheme, I note the proposed amendments to the Bill to introduce measures removing the requirement for HM Treasury consent to matters within the Senedd's legislative competence. Legislation governing Senedd members' pensions is taken forward in Wales by the Senedd Commission, and so UK Government officials should liaise with officials from the Commission on the potential effect and drafting of any amendments. It would then also be for the Commission to advise Members on the impact of those amendments. However, it remains the responsibility of a member of the Welsh Government to lay any Legislative Consent Motions that are required, and so on that basis and subject to the relevant provisions being made available to my officials and those in the Commission, I will consider laying a supplementary Legislative Consent Memorandum before the Senedd. I therefore hope that all necessary officials can liaise as amendments are prepared and before they are taken forward."

Agenda Item 4.6

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref CG/10056/21

Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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CF99 1SN

22 October 2021

Dear Huw,

Thank you for your letter of 8 October 2021 regarding my appearance at your Committee on 20 September 2021.

I am writing to provide you with more detail on the matters you highlighted.

My responses can be found in Annex A.

Yours sincerely,

Mick Antoniw AS/MS

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

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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

- 1. You confirmed that you and your officials were working on a strategy for the Welsh Government's legislative programme "setting out the guiding principles for legislation that is coming through, so that we have a consistency of approach". Please can you provide more information about this strategy and confirm when it is likely to be finalised and published?**

Our general principle, when it comes to legislation, remains that we should legislate in the Senedd in devolved areas. However finite time and resources mean we should also be open to taking a pragmatic approach to using UK Parliamentary legislation to achieve our objectives where the opportunity to do so arises. We have agreed a set of principles to guide decision making in relation to UK Parliamentary Bills. These principles are attached at Annex B.

The final decision on recommending consent to a UK Bill typically involves consideration of a range of constitutional, policy, political and other factors, which can sometimes conflict. Consequently, whilst the principles will provide the basis for such decisions, we must recognise they will be applied in the context of often complex and fluid negotiations and it will sometimes be necessary to consider the possibility of concessions in order to secure our policy objectives.

- 2. Is the Welsh Government taking any steps to pursue more fundamental changes in the Sewel Convention?**

Our position on the Sewel Convention remains as set out in *Reforming our Union*, republished earlier this year. We also anticipate the issue will be considered as part of the work of the constitutional commission currently being established.

- 3. Please can you provide details of the criteria you are using in this Senedd to determine whether it would be acceptable to use a UK Government Bill to take forward Welsh Government policy?**

As outlined in response to Question 1, the criteria for determining whether to use a UK Government Bill to take forward Welsh Government policy are set out at Annex B.

- 4. Can you confirm how many UK Bills will be subject to Welsh Government legislative consent memoranda in the foreseeable future which are in addition to those UK Bills for which memoranda have already laid before the Senedd?**

Decisions on whether UK Parliamentary Bills will be subject to a legislative consent memoranda are taken on an individual basis once we have received a copies of the proposed legislation. Consequently it is not possible to confirm how many Bills, in addition to those for which LCMs have already been laid, will require one. We will continue to comply with Standing Orders and notify the Senedd as the Bills are presented to Parliament.

- 5. You referred to quadrilateral Ministerial meetings to discuss intergovernmental relations and common frameworks. Will you ensure that the Senedd is notified of all such meetings wherever reasonably possible, in accordance with the Inter-Institutional Relations Agreement?**

The Welsh Government will continue to operate in line with the Inter-Institutional Relations Agreement (IIRA). In correspondence with the LJC Committee, and in a recent statement in Plenary, the First Minister confirmed our commitment to strengthen transparency and

accountability for inter-governmental relations. We will continue to update and report to the Senedd on our relations, engagement and joint working with other governments in the UK as well as with British-Irish Council member administrations. The First Minister has also agreed with you, as Chair of the Committee, to renew the IIRA for the sixth Senedd, and our officials are working on this.

6. Can you confirm that the Welsh Government has not implemented any internal processes to assess the impact of the [United Kingdom Internal Market Act 2020] on legislation which may fall within its scope?

The Welsh Government has not implemented a standardised process exclusively to assess the impact of the United Kingdom Internal Market Act 2020. However, as part of the policy formulation process, a range of considerations are taken into account, and that Act may be one such consideration depending upon the subject matter in question.

The Office for the Internal Market is tasked with independently advising the Welsh Government, the other Devolved Governments and the UK Government on how specific laws, rules and regulations impact on the UK Internal Market and will report on how it is working.

7. Does the Welsh Government intend on notifying the Senedd of:

- i. its own legislation which may fall within the scope of the Internal Market Act; or**
- ii. legislation made or passed in another legislature which may consequently bring Welsh legislation within the scope of the Internal Market Act?**

If the Welsh Government develops legislation the Senedd will be informed.

When the UK Government introduces a Bill, that Bill is thoroughly scrutinised as part of the LCM process. However, there are no plans to scrutinise the legislation of Scotland or Northern Ireland in this way. That said, if we do become aware of legislation introduced or made in another legislature that may bring Welsh legislation within the scope of the United Kingdom Internal Market Act 2020, then we would be able to bring this to the attention of the Senedd.

8. Is the Welsh Government proceeding with its legislative programme on the basis that the practical effect of Welsh laws within the scope of the Internal Market are not impacted and undermined, as argued in its grounds for judicial review?

The Welsh Government's position is that the Act has not altered the devolution settlement. Indeed, that is what we have submitted as part of the Judicial Review challenging the United Kingdom Internal Market Act 2020, which is now at appeal stage in the Court of Appeal. We confirm that the Welsh Government is proceeding with its legislative programme on that basis. We look forward to testing these issues before the Court of Appeal on 18 January.

9. Within its competence, can you confirm it is the Welsh Government's intention to keep pace with EU law?

- i. If the intention is to keep pace, can you confirm:**
 - (a) what processes the Welsh Government has in place to monitor developments in EU law and on what basis, and**
 - (b) whether the Welsh Government will seek executive powers to keep pace with EU law, along the lines of the powers envisaged by the Welsh Government in the Law Derived from the European Union (Wales) Bill?**

ii. How will the Welsh Government decide whether or not it will align with EU standards?

Members who served in the Fifth Senedd may recall that the Welsh Government decided not to ask the Senedd for powers to keep pace with EU law. This was for several reasons. Ministers were concerned that such wide powers would not be acceptable to the Senedd. They considered that there were existing powers to keep pace, for example with technical modifications to EU tertiary legislation, and they noted that, for more significant EU legislation, the legislative process in the EU would provide more than enough time to enable a Bill to be introduced and passed by the Senedd if that was considered necessary.

There is not a central mechanism to monitor differences between EU and Welsh law. This is the responsibility of individual portfolio Ministers and their departments, who engage with stakeholders as part of their own policy and legislative programmes.

The Welsh Government will continue to engage through the Common Frameworks programme, which is the preferred mechanism for all nations of the United Kingdom to discuss and agree divergent policy in line with devolved competence.

10. On non-regression, you stated that there has been disagreement between the Welsh and UK Governments over maintaining standards and the extent to which standards will be protected, particularly in the areas of food, environment and agriculture. Can you provide more information as to these discussions and provide the latest position?

The Welsh Government has voiced its concerns that any move by the UK Government to reduce standards will meet strong opposition. The Welsh Government has no plans to roll back on current standards and intends to maintain these and in some cases consider where enhancements may be appropriate in line with Welsh Government policy.

11. Can you provide further information on:

- i. what processes the Welsh Government has put in place to assess whether legislation it is making does not regress from standards in place at the end of the transition period?**
- ii. Are there any areas where the Welsh Government has concerns that legislation made by UK Ministers has led to regression and what action, if any, has it taken in these instances?**

The Welsh Government has made clear our policy intention is not to lower any current standards and is to maintain the high standards consumers have come to expect.

We are not aware of any live scenarios where legislation made by UK Ministers has led to regression of standards. However, we monitor movements by the UK Government or associated bodies to regulate for lowering of standards and will strongly oppose any moves in this direction.

12. Can you set out your understanding of the relationship between legislative competence and the Withdrawal Agreement?

Your letter refers to section 7A of the European Union (Withdrawal) Act 2018 (general implementation of remainder of withdrawal agreement) and the effect on the Senedd's legislative competence of this being a "protected enactment".

A provision is outside the Senedd's legislative competence if it breaches any of the restrictions in Part 1 of Schedule 7B to the Government of Wales Act 2006, having regard to any exception in Part 2 of that Schedule from those restrictions.

Paragraph 5 of Schedule 7B states that a provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of any of the provisions listed in the table set out in paragraph 5(1) of the Schedule. This includes the whole of the European Union (Withdrawal) Act 2018, other than any excluded provision. Section 7A of the 2018 Act is not on the list of excluded provisions in paragraph 5(1A) of the Schedule and is therefore a "protected enactment" for the purposes of paragraph 5 of Schedule 7B.

13. You confirmed your understanding that a justice 'data dashboard' has been established. Is this in a form that can be shared with the Senedd?

We will provide the Committee with PDF versions of the dashboard as soon as possible to provide an example of the development and the range of data available within them. But it is important to note that the Crime and Justice Dashboards are at a developmental stage and changes may be made following feedback from users. We will be working to publish these dashboards formally but currently they are work in progress, with the eventual content to be confirmed.

In light of that, we would welcome any feedback from the Committee on the content. The data in the Dashboards include a wide range of data drawn from a variety of sources, including the Ministry of Justice, the Home Office, HM Prison and Probation Service, the Higher Education Statistics Agency, the Youth Justice Board for England and Wales and the Youth Custody Service; but they remain limited to what is available elsewhere, and we continue to pursue the case for the availability of fuller and more useful disaggregated data on justice in Wales from the Ministry of Justice.

Within the Welsh Government the Dashboards are interactive to allow for their fuller use but at this stage, due to commitments made to some data providers, we are not able to make the full interactive dashboard available externally.

14. A forward work programme for the Cabinet Sub-Committee on Justice was agreed at its July meeting. Please can you share this with the Committee?

Work is continuing to finalise the work programme, which will need to take account of the final recommendations of the Law Commission's project on the devolved tribunals that is expected to be published shortly. We intend to publish our justice work programme once it has been finalised.

Annex B: Welsh Government's principles for UK Bills

- Recommending consent for devolved provisions in UK Bills should clearly align with the First Minister's principles:
 1. We follow the principle that primary legislation in devolved areas should be enacted by the Senedd. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which would be within the Senedd's legislative competence is sought for Wales in UK Parliament Bills, with the consent of the Senedd. Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.
 2. Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the legislative competence of the Senedd through the legislative consent process. It can be a matter of practical good government for such provisions to be included in a UK Bill.
 3. Examples of situations where such an approach would be appropriate could include:
 - when the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Senedd;
 - where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument;
 - where the devolved provisions in question are minor or technical and non-contentious;
 - where the UK Bill covers both devolved and reserved matters and the UK Parliament route must be taken in order to achieve the policy objective;
 - where the legislative competence of the Senedd and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through a Senedd Act, given the limits on the Senedd's legislative competence.
 4. Finally, it would be most unwise for the Welsh Government to adopt a self-denying ordinance in such circumstances.
- Delegated powers, including Henry VIII powers, in UK Bills in devolved areas should be conferred on the Welsh Ministers alone.
- UK Bills should not create concurrent powers.
- UK Parliament Bills should either protect or enhance the existing devolution settlement, rather than introducing new reservations.
- UK Ministers must confirm in writing how they will meet new costs falling to the Welsh Government or devolved Welsh authorities.

- The Welsh Government must have an equal status to the UK Government's in governance of cross-border bodies with devolved functions which are established in UK Bills.
- Non-legislative intergovernmental agreements, such as Memorandums of Understanding and despatch box commitments, accompanying Bills should be avoided as they only bind the current UK Government to an extent, and they do not bind future UK Governments.

Mick Antoniw MS

Counsel General and Minister for the Constitution

8 October 2021

Dear Mick

Follow up to evidence session on 20 September 2021

Thank you for attending our Committee meeting on 20 September 2021. We were grateful for the opportunity to have such a broad-ranging discussion at this early point in the Sixth Senedd, and we look forward to further engagement.

Following the session, we have identified a number of matters that we would like to pursue with you in more detail. These are set out below:

1. You confirmed that you and your officials were working on a strategy for the Welsh Government's legislative programme "setting out the guiding principles for legislation that is coming through, so that we have a consistency of approach". Please can you provide more information about this strategy and confirm when it is likely to be finalised and published?
2. You said that the Welsh Government's strategy for resolving its concerns with the Sewel Convention were meetings at official and Ministerial level and, in future, using the dispute resolution mechanism arising from the Inter-governmental relations review. Is the Welsh Government taking any steps to pursue more fundamental changes to the Sewel Convention?
3. The criteria for determining whether it would be acceptable to use a UK Government Bill to take forward Welsh Government policy appear to have changed. In August 2020, our predecessor Committee was told that one criterion was that "there is no time available for similar provisions to be brought forward" in the Senedd. Given that we are at the start of the Sixth Senedd and there is plenty of time for Welsh Government Bills to be brought forward, this criterion would no longer appear to apply. Please can you provide details of the criteria you

are using in this Senedd to determine whether it would be acceptable to use a UK Government Bill to take forward Welsh Government policy?

4. You referred to '30 or so' planned UK Government Bills during the evidence session. In Plenary on 21 September, you [said](#) that 32 UK 'items of legislation' were expected. Can you confirm how many UK Bills will be subject to Welsh Government legislative consent memoranda in the foreseeable future which are in addition to those UK Bills for which memoranda have already laid before the Senedd?
5. You referred to quadrilateral Ministerial meetings to discuss intergovernmental relations and common frameworks. Will you ensure that the Senedd is notified of all such meetings wherever reasonably possible, in accordance with the Inter-Institutional Relations Agreement?
6. You [confirmed](#) that the Welsh Government does "not have regard to the *Internal Market Act 2020* in terms of [its] legislation", does not believe that the Act "lawfully restricts what [it] can do" and that the Welsh Government is operating "in the way we always have done". Can you confirm that the Welsh Government has not implemented any internal processes to assess the impact of the Act on legislation which may fall within its scope?
7. Does the Welsh Government intend on notifying the Senedd of:
 - i. its own legislation which may fall within the scope of the Internal Market Act; or
 - ii. legislation made or passed in another legislature which may consequently bring Welsh legislation within the scope of the Internal Market Act?
8. The Welsh Government's [grounds for judicial review](#) argue that the Internal Market Act should not be interpreted as limiting the practical effect of devolved legislation. Otherwise, it argues, that the Act would have the implicit effect of rendering devolved areas such as food and environmental standards "completely inoperable" and is tantamount to re-reserving those areas. Is the Welsh Government proceeding with its legislative programme on the basis that the practical effect of Welsh laws within the scope of the Internal Market are not impacted and undermined, as argued in its grounds for judicial review?
9. You stated that the Welsh Government's decision on whether or not to align or diverge from EU law is primarily determined by whether the Welsh Government has competence. Within its competence, can you confirm it is the Welsh Government's intention to keep pace with EU law?
 - i. If the intention is to keep pace, can you confirm: (a) what processes the Welsh Government has in place to monitor developments in EU law and on what basis, and (b) whether the Welsh Government will seek executive powers to keep pace with EU



law, along the lines of the powers envisaged by the Welsh Government in the Law Derived from the European Union (Wales) Bill?

- ii. How will the Welsh Government decide whether or not it will align with EU standards?
10. On non-regression, you stated that there has been disagreement between the Welsh and UK Governments over maintaining standards and the extent to which standards will be protected, particularly in the areas of food, environment and agriculture. Can you provide more information as to these discussions and provide the latest position?
 11. You also stated that each Welsh Government department has carried out analyses for every piece of legislation on what the implications are of non-regression - of "what is happening legislatively, what the implications might be for Wales, what impact it may have in terms of devolved responsibilities, and so on". Can you provide further information on:
 - i. what processes the Welsh Government has put in place to assess whether legislation it is making does not regress from standards in place at the end of the transition period?
 - ii. Are there any areas where the Welsh Government has concerns that legislation made by UK Ministers has led to regression and what action, if any, has it taken in these instances?
 12. Section 108A of the *Government of Wales Act 2006* used to say that Senedd Acts had to be compatible with EU law. After exiting the EU, that limit on Senedd legislative competence was removed. However, section 108A has not been amended to say that Senedd Acts now have to be compatible with the Withdrawal Agreement. Instead, the *European Union (Withdrawal) Act 2018* (including section 7A of that Act, which gives effect to the Withdrawal Agreement) has been included as a "protected enactment". Can you set out your understanding of the relationship between legislative competence and the Withdrawal Agreement?
 13. You [confirmed](#) your understanding that a justice 'data dashboard' has been established. Is this in a form that can be shared with the Senedd?
 14. You [outlined](#) the Welsh Government's priorities for justice in the sixth Senedd. A forward work programme for the [Cabinet Sub-Committee on Justice](#) was agreed at its July meeting. Please can you share this with the Committee?

We would be grateful to receive your replies to the above points at your earliest convenience.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



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



Llywodraeth Cymru
Welsh Government

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

25 October 2021

Dear Trefnydd,

On 28 September, the Senedd debated and passed the Legislative Consent Motion in relation to the UK Environment Bill. The motion included consideration of clause 56 and schedule 9 to provide the Welsh Ministers with powers to charge for single use plastic items.

I have requested, and the Secretary of State for Environment, Food and Rural Affairs has agreed, to introduce an amendment, within the current legislative process, to clause 56 and schedule 9 of the Environment Bill in respect of powers to charge for single use plastic items. The amendment will ensure Welsh Ministers will have the same powers as the Secretary of State, to charge for all single use items, regardless of their material.

This amendment would make provision in relation to Wales for a purpose within the legislative competence of the Senedd. I would ordinarily lay a Supplementary Memorandum but unfortunately as the Bill is now in the consideration of amendments stage and the Committees and Senedd are in recess this week, there is not enough time to facilitate a Senedd debate ahead of the Bill receiving Royal Assent. I am therefore writing to inform you of the change in this area.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and the Climate Change, Economy and Infrastructure Committee.

Yours sincerely

A handwritten signature in blue ink that reads 'Julie James' in a cursive script.

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.



Llywodraeth Cymru
Welsh Government

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

26 October 2021

Dear Huw,

I am writing to you in relation to the Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021.

These Regulations amend the Representation of the People (England and Wales) (Coronavirus) Regulations 2001 to extend a rule introduced earlier this year which provides electors at a local government by-election who are unable to attend a polling station in person, as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus, an emergency proxy vote without medical attestation. This means that those people required to self-isolate the days before, or the day of the election, are still able to exercise their democratic rights while self-isolating.

As currently drafted, the rule will not apply on or after 5 November 2021, which is the last date on which a notice of a local government by-election may be given. However, the by-election itself may take place after this date and the current Regulations do not allow for the non-medically attested proxy vote to be available to anyone self-isolating after the 5 November.

Given the current rising number of Covid-19 cases it has become necessary for us to extend the rule to allow those self-isolating on and after the 5 November 2021 to take part in any scheduled local government by-election.

My officials have recently been made aware of three by-elections, scheduled for 11, 18 and 25 November. So that these provisions are in place for the first of those by-elections, I am asking you to consider the Regulations to an expedited timetable and report on them in time

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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.

for a plenary debate on 9 November 2021.

I would like to thank the Committee in advance for their assistance in providing for continued support for self-isolating voters wishing to exercise the democratic rights.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Agenda Item 4.9

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

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

28 October 2021

Dear Huw

Invitation to give evidence: The Codes of Welsh law programme and proposals for the accessibility of Welsh law

Thank you for your letter of 22 October 2021. I am pleased to accept your invitation to attend the meeting of the Legislation, Justice and Constitution Committee at 1:30-2:30 p.m. on Monday 29 November, to discuss the programme and the wider proposals for increasing the accessibility of Welsh law.

Yours sincerely,

Mick Antoniw AS/MS

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

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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.

Mick Antoniw MS

Counsel General and Minister for the Constitution

22 October 2021

Dear Mick

Invitation to give evidence: The Codes of Welsh law programme and proposals for the accessibility of Welsh law

We noted your announcement on 21 September 2021 of the Welsh Government's first programme to improve the accessibility of modern Welsh law, as required by the *Legislation (Wales) Act 2019*.

In responding to your statement in Plenary, you will recall that I said the Legislation, Justice and Constitution Committee intended to monitor the implementation of the programme and we would like to begin by exploring the programme in more detail with you. We would also welcome the opportunity to discuss your proposals for the accessibility of Welsh law more broadly. For this purpose, we would like to invite you to attend our meeting on Monday 29 November (1.30-2.30pm).

We anticipate that the meeting will take place remotely, via Zoom.

I would be grateful if you could confirm, at your earliest convenience, whether you will be able to attend.

Yours sincerely,



Huw Irranca-Davies

Chair

Agenda Item 7

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

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Agenda Item 8

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

Document is Restricted

Agenda Item 9

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

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SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.3)

Environment Bill

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Environment Bill (“the Bill”) was introduced in the House of Commons on 30 January 2020. On 26 February 2021 the Bill was made subject to a motion to carry the Bill over into the next UK Parliamentary session which commenced on 11 May 2021. The Bill was reintroduced to the UK Parliament on 26 May 2021, when House of Commons Report Stage and Third Reading concluded. On 20 October the Bill entered ping-pong stage.
3. The Bill as amended at House of Lords Committee stage can be found at: [newbook.book \(parliament.uk\)](http://newbook.book.parliament.uk). The clause references in this memorandum reflect the clause numbering in this version of the Bill unless otherwise specified.

Policy Objectives

4. The UK Government’s stated policy objectives for this Bill are to provide a legal framework for environmental governance and to make provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.

Summary of the Bill

5. The Bill is sponsored by the Department for Environment, Food and Rural Affairs (DEFRA).
6. The Bill makes provisions about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
7. The clauses with particular relevance to matters within the legislative competence of the Senedd are:
 - Part 1 – Environmental Governance - Clause 21 (Statements about Bills containing new environmental law) and Clause 47 (Meaning of environmental law) in so far as it relates to clause 21.

- Part 3 – Waste and Resource Efficiency – clauses 51 and 52 (Producer Responsibility) and Schedules; clauses 53 – 56 (Resource efficiency), clause 59 (Electronic waste tracking: Great Britain), clause 61 (Hazardous waste England and Wales), clause 64 (Regulations under the Environmental Protection Act 1990), clause 65 (Powers to make charging schemes), clause 67 (Enforcement powers), clause 69 (Littering enforcement), clause 70 (Fixed Penalty notices), clause 71 (Regulation of polluting activities)
- Part 4 – Air quality and Environmental recall – clause 73 (Local air quality management framework), clause 74 (Smoke control areas: amendments of the Clean Air Act 1993)
- Part 5 – Water – clauses 80 and 81 (plans and proposals), clause 86 (Authority’s power to require information), clause 88 (Electronic service of documents), clause 90 (Water quality: powers of Secretary of State), clause 91 (Water quality: powers of Welsh Ministers), clause 94 (Water quality: interpretation), clauses 96 – 98 (Land drainage),
- Part 6 – Nature and Biodiversity – clause 119 (Use of forest risk commodities in commercial activity),
- Part 8 – Miscellaneous and General Provisions – Clause 143 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation)

Update on position since the publication of the last Legislative Consent Memorandum.

8. Since the laying of the last Supplementary Legislative Consent Memorandum (“Memorandum No 2”) on the Bill on 3 September 2021, the Senedd voted on 28 September to agree consent. Since the Consent Debate, the Welsh Government has sought and the UK Government has agreed an amendment for a purpose within the legislative competence of the Senedd. The proposed amendment relates to clause 56 *Charges for single use plastic items* and schedule 9.

Amendment to Clause 56 – Charges for single use plastic items

9. The Environment Bill, as introduced, included provision to enable charges to be applied to single-use plastic items. This provision applied to England, Wales and Northern Ireland. The clause was included in the Legislative Consent Memorandum laid before the Senedd on 18 June.
10. On 20 October, the UK Government proposed an amendment to Clause 56 to allow for charges to be applied to any single use item, regardless of material, at the point of sale in England. The intention was to extend the current regulation making powers available to the Secretary of State under section 77 and schedule 6 of the Climate Change Act 2008 (CCA 2008) (charging sellers of goods for the supply of single use carrier bags).
11. The single use carrier bag charge is an example of how a levy applied at the point of sale can help drive positive behaviour change and raise awareness of an items’ environmental impact. Due to its success, the Welsh Government has

continued to support the introduction of as broad a charging power as possible, recognising such a legislative tool can help incentivise the shift away from single use items towards more reusable and sustainable alternatives. This is why our Circular Economy Strategy, *Beyond Recycling*, includes a commitment to phase out unnecessary single-use items. This includes a key action to develop options for a tax or charge on disposable plastic cups and food containers in Wales.

12. The Secretary of State for Environment, Food and Rural Affairs has agreed to my request to introduce an amendment, within the current legislative process, to clause 56 of and Schedule 9 to the Environment Bill in respect of powers to charge for single use items, regardless of material. The amendment will ensure Welsh Ministers will have the same powers as the Secretary of State, to charge for all single use items.
13. Clause 56 confers powers on the relevant national authority to make regulations about charges for single use items. Such regulations are subject to the affirmative procedure within the Senedd where they are the first set of such regulations made by the Welsh Ministers, where the regulations contain provision about charging for a new item, where the regulations contain provisions imposing or providing for the imposition of new civil sanctions, or where the regulations increase the maximum amount of a monetary penalty or change the basis on which it is to be determined. Otherwise such regulations would be subject to the negative procedure.
14. As this clause makes provision for waste and environmental protection, a purpose within the legislative competence of the Senedd, it is the Welsh Government's view that consent is required. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

Financial Implications

15. There are no additional financial implications for the Welsh Government or the Senedd as a result of taking these amendments to the bill.

Conclusion

16. I am content to endorse the proposed amendments to the UK Environment Bill.
17. The Legislative Consent Memorandum (Memorandum No. 1) outlined the Welsh Government's view that the Bill is an appropriate vehicle to take forward initiatives requiring a joined up approach. The amendments to the provisions highlighted above are an extension of the provisions already agreed by the Senedd and provide a legislative vehicle to allow the Welsh Government to progress policy on phasing out the use of single use items as stipulated in *Beyond Recycling*. The Welsh Government's view is the provisions remain relevant provision for the purposes of SO29 and require the legislative consent of the Senedd.

Julie James MS
Minister for Climate Change
28 October 2021



Chairs of the Climate Change, Environment and Infrastructure
and Legislation, Justice and Constitutional Committees.

28 October 2021

Dear Chairs,

On 21 October the UK Government tabled an amendment to clause 56 and schedule 9 - Charges for single use plastic items, of the UK Environment Bill. The amendment expanded the scope of the charging powers to include all items, regardless of what material they were made from. Due to the lateness of the amendment, the power was to apply only to England, meaning Wales's power would have remained constrained to cover plastic single use items only. We were not given prior notice of the amendment.

This would have curtailed Welsh Minister's ability to act in such an important area relative to England. Whilst I understand the UK Government had originally considered extending this power to other materials during the early drafting stages, a position supported by the Welsh Government, it was not included in the Bill as introduced due to the tight timescale required to develop the Bill and lack of wider evidence. This position was maintained throughout the Parliamentary scrutiny process and similar amendments were rejected. Indeed, we were informed as recently as August, following an amendment tabled in the House of Lords to extend the charge, this position would remain unchanged.

Despite the inadequate notice for the amendment, we have continued to work collaboratively with the UK Government on the Environment Bill. Once I was aware of this of this change in position, I wrote to the Rt Hon George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, seeking an urgent amendment to ensure this important change was extended to Wales. I am pleased to advise the request was agreed.

Reducing the use and availability of unnecessary single-use items and the negative impacts they have on our environment is a top priority for the Welsh Government and Welsh Ministers require powers that allow us to take action on this important matter. A broader charging power will provide a strong disincentive to producing single use products. It also allows us to meet our commitment in Beyond Recycling, our Circular Economy Strategy, to phase out unnecessary single-use items in Wales.

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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.

On 25 October I issued a Written Statement informing Members of the Senedd of the Secretary of State's agreement to table an amendment. I also explained that, due to the lateness of the amendment, there was insufficient time to facilitate a usual Senedd debate.

I can now confirm that in this unusual situation our intention is to bring forward a debate on 2 November. We have laid a supplementary Legislative Consent Memorandum and motion to give effect to that intention, subject to the Business Committee agreeing not to refer the sLCM for scrutiny and the Senedd agreeing to suspend the relevant Standing Orders to allow the legislative consent motion to be debated without due notice. I appreciate that this solution is far from ideal, but I wanted to demonstrate the Welsh Ministers' commitment to the Sewel Convention by providing the Senedd an opportunity to consider, scrutinise and vote on the new provisions.

I am sure you agree this is a positive step towards tackling commonly littered single use items.

Yours sincerely



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