

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 14 February 2022	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies and substitutions

(13.30)

2 Welsh Tax Acts etc. (Power to Modify) Bill – evidence session with the Minister for Finance and Local Government

(13.30–14.30)

(Pages 1 – 32)

Rebecca Evans MS, Minister for Finance and Local Government

Andrew Hewitt, Welsh Treasury

Anna Adams, Welsh Treasury

Lynsey Edwards, Legal Services, Welsh Government

Attached Documents:

LJC(6)–06–22 – Paper 1 – Briefing

LJC(6)–06–22 – Paper 2 – Letter from the Minister for Finance and Local Government, 14 December 2021

LJC(6)–06–22 – Paper 3 – Statement of policy intent

LJC(6)–06–22 – Paper 4 – Draft statement on retrospection

LJC(6)–06–22 – Paper 5 – Letter from the Minister for Finance and Local Government, 24 January 2022

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(14.30–14.35)

(Page 33)



Attached Documents:

LJC(6)-06-22 – Paper 6 – Statutory instruments with clear reports

Affirmative Resolution Instruments

3.1 SL(6)149 – The Eggs (Wales) Regulations 2022

[Regulations](#)

[Explanatory Memorandum](#)

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

(14.35–14.45)

Made Negative Resolution Instruments

4.1 SL(6)148 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2022

(Pages 34 – 37)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-06-22 – Paper 7 – Draft report

4.2 SL(6)150 – National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022

(Pages 38 – 40)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-06-22 – Paper 8 – Draft report

4.3 SL(6)152 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022

(Pages 41 – 43)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-06-22 – Paper 9 – Draft report

5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered
(14.45–14.55)

5.1 SL(6)118 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021

(Pages 44 – 49)

Attached Documents:

LJC(6)-06-22 – Paper 10 – Report

LJC(6)-06-22 – Paper 11 – Letter from the First Minister, 8 February 2022

6 Common frameworks
(14.55–15.00)

**6.1 Correspondence from the Minister for Finance and Local Government:
Common Framework for Public Procurement**

(Pages 50 – 51)

Attached Documents:

LJC(6)-06-22 – Paper 12 – Letter from the Minister for Finance and Local Government, 27 January 2022

7 Inter-Institutional Relations Agreement
(15.00–15.05)

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

(Pages 52 – 53)

Attached Documents:

LJC(6)-06-22 – Paper 13 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 9 February 2022

7.2 Correspondence from the Minister for Economy: Ministerial Forum for Trade

(Pages 54 – 55)

Attached Documents:

LJC(6)-06-22 – Paper 14 – Letter from the Minister for Economy, 9 February 2022

7.3 Correspondence from the Minister for Climate Change: UK and Devolved Administration COP26

(Page 56)

Attached Documents:

LJC(6)-06-22 – Paper 15 – Letter from the Minister for Climate Change, 9 February 2022

7.4 Correspondence from the Minister for Climate Change: Net Zero, Energy and Climate Change Inter-ministerial Group

(Pages 57 – 58)

Attached Documents:

LJC(6)-06-22 – Paper 16 – Letter from the Minister for Climate Change, 9 February 2022

8 Papers to note

(15.05–15.10)

8.1 Correspondence from the Minister for Education and Welsh Language: Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Professional Qualifications Bill

(Pages 59 – 61)

Attached Documents:

LJC(6)-06-22 – Paper 17 – Letter from the Minister for Education and Welsh Language, 10 February 2022

9 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting
(15.10)

10 Welsh Tax Acts etc. (Power to Modify) Bill – consideration of evidence
(15.10–15.30)

11 Consideration of international agreements
(15.30–15.40) (Pages 62 – 64)

Attached Documents:

LJC(6)-06-22 – Paper 18 – Briefing paper

12 Supplementary Legislative Consent Memorandum (Memorandum No.3) on the Building Safety Bill – consideration of legal advice note
(15.40–15.55) (Pages 65 – 75)

Attached Documents:

LJC(6)-06-22 – Paper 19 – Legal advice note

13 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Subsidy Control Bill – consideration of draft report
(15.55–16.15) (Pages 76 – 82)

Attached Documents:

LJC(6)-06-22 – Paper 20 – Draft report

Document is Restricted

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: MA/RE/4055/21

Peredur Owen Griffiths, MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
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14 December 2021

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

Following the introduction of the Welsh Tax Acts etc. (Power to Modify) Bill into the Senedd on 13 December, please find attached a copy of the statement of policy intent, and also a statement on the use of retrospective legislation. These documents are provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

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

Yours sincerely

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

CC: Chair of the Legislation, Justice and Constitution Committee

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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

Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”)

Policy intent for subordinate legislation to
be made under this Bill

December 2021

WELSH TAX ACTS ETC. (POWER TO MODIFY) BILL (“THE BILL”) POLICY INTENT FOR SUBORDINATE LEGISLATION

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers are empowered or required to make under the provisions of the Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with Chapter 5 of the Explanatory Memorandum and Explanatory Notes.

The Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”) provides the Welsh Ministers with a regulation making power (exercisable via either the draft or made affirmative procedure) to make changes to the Welsh Tax Acts where an external event occurs that impacts the devolved taxes and their associated revenues. The power may be used where the Welsh Ministers consider that it is necessary or appropriate to make changes in response to that event. The power may be used for the following purposes:

- to ensure that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations;
- to protect against tax avoidance in relation to landfill disposals tax and land transaction tax;
- to respond to changes to ‘predecessor’ UK taxes (that is, stamp duty land tax or landfill tax) which impacts or could impact the amount paid into the Welsh Consolidated Fund; and
- to respond to decisions of the courts/tribunals which affect or may affect the Welsh Tax Acts, or regulations made under them

This intervention is primarily needed to protect revenues available for essential Welsh public services. At present, for example, every time there is a UK budget cycle, the Welsh Government takes the risk that there may be a change which impacts on a devolved tax and has a direct budgetary impact on resources and which Welsh Ministers cannot react to in a timely manner. An intervention of this kind may also be appropriate where the Welsh Treasury and the Welsh Revenue Authority (WRA) need to promptly ‘close-down’ tax avoidance schemes or maintain compliance with international obligations.

The Bill also places a duty on the Welsh Ministers to publish a statement of their policy with respect to the exercise of the regulation making power to make regulations that have retrospective effect.

Section	Description	Policy intention
Section 1: Power to modify the Welsh Tax Acts		
Section 1(1a-d)	<p>The Welsh Ministers may, by regulations, modify the Welsh Tax Acts and regulations made under those Acts if they consider that the modifications are necessary or appropriate for or in connection with any of the following purposes:</p> <ul style="list-style-type: none"> a) ensuring that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations b) protecting against tax avoidance in relation to landfill disposals tax and land transaction tax; c) responding to a change to a predecessor tax which affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of Wales Act 2006 (c. 32); d) responding to a decision of any court or tribunal which affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under those Acts. 	<p>This power enables the Welsh Ministers to respond by regulations to a number of external circumstances that impact on Welsh devolved taxes.</p> <p>The exercise of the regulation making power is subject to purpose tests which are intended to constrain the use of the power. The purpose tests target those areas where it is anticipated that external events may require a response by the Welsh Ministers to protect Welsh Government revenues and taxpayers. The intended effect is as follows:</p> <ul style="list-style-type: none"> - Purpose (a) – the Welsh Ministers may wish to make changes at short notice in order to ensure that the devolved taxes are not imposed where this would result in non-compliance with certain international obligations such as, for example, where a new trade deal or double taxation agreement is concluded with another country which has implications for the devolved taxes. - Purpose (b) – the Welsh Ministers may make legislative changes to protect against avoidance activity that can then be stopped with immediate effect. This includes cases where the Welsh Revenue Authority and/or the Welsh Government consider that increased clarity in the legislation will put beyond doubt the intended application of

		<p>the legislative provisions, and potentially benefit taxpayers by stopping the promotion of avoidance opportunities that do not actually exist. Such action has been taken by the UK government to protect tax regimes and taxpayers in the past and the Welsh Ministers wish to be able to take similar action.</p> <ul style="list-style-type: none"> - Purpose (c) – the Welsh Ministers may make changes in response to changes made by the UK government to predecessor UK taxes which will affect the Welsh block grant adjustment and therefore the revenues available for essential public services. - Purpose (d) – the Welsh Ministers may make changes if a court or tribunal decision identified an issue that Welsh Ministers considered could benefit from legislative change (including decisions relating to the UK predecessor taxes, other taxes, or other laws that affect the devolved taxes), or to provide greater clarification of the law. <p>The Bill will permit the Welsh Ministers to make regulations using either the draft or made affirmative procedure. The Welsh Ministers will seek to use the draft affirmative procedure where possible, meaning the regulations can only come into effect once the Senedd has approved the making of them. The Welsh Ministers will use these regulations where there is less immediacy required and there is time for the Senedd to approve the</p>
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		<p>regulations before they are made.</p> <p>However, the Welsh Ministers may use the made affirmative procedure where they consider it necessary by reason of urgency (for example where the regulations will need to have effect immediately or shortly thereafter, and so before a draft affirmative set of regulations could be approved by the Senedd). This will ensure that changes may, where appropriate, come into force as soon as the regulations are made, whilst awaiting Senedd approval. That approval must be given within a maximum period of 60 Senedd calendar days, not including any period in which the Senedd is dissolved or is in recess for more than four days, to enable those regulations to remain in effect.</p>
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Statement of policy with respect to the exercise of the power to make retrospective legislation within the Welsh Tax Acts etc. (Power to Modify) Act 20XX

1. Background

General

1.1 The Welsh Tax Acts etc. (Power to Modify) Act 20XX (“the Act”) operates to enable changes to be made to the Welsh Tax Acts¹, by regulations where the Welsh Ministers consider that such changes are necessary or appropriate and where they are required to have effect immediately or shortly thereafter. Those changes will be permitted in order to respond to a number of external circumstances. In summary:

- i. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations;
- ii. to protect against tax avoidance in relation to devolved Welsh taxes;
- iii. to respond to changes made by the UK government to ‘predecessor’² UK taxes (that is, one where we have an equivalent devolved tax) which affect, or may affect the amount paid into the Welsh Consolidated Fund³, and
- iv. to respond to decisions of the courts/tribunals which affect or may affect the operation of the Welsh Tax Acts, or any regulations made under them.

1.2 The primary intended effect of the Act is to provide Welsh Ministers with a proportionate mechanism to protect Welsh tax revenues raised through devolved taxes, and to avoid adverse implications for businesses, the property market, and the environment.

1.3 The regulation making powers will not be used to achieve routine policy changes to the devolved taxes. For such changes the Welsh Government will use powers that already exist in the Welsh Tax Acts or, where necessary, primary legislation.

¹ “The Welsh Tax Acts” are defined as The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (‘the LTTA’), the Landfill Disposals Tax (Wales) Act 2017 (‘the LDT’) and the Tax Collection and Management (Wales) Act 2016 (the “TCMA”).

² ‘Predecessor taxes’ currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

³ Under section 118(1) Government of Wales Act 2006.

³ see section 2(1)(c) of the Act

2. The Statement - Retrospective Legislation

2.1 Changes to tax legislation will normally take effect no earlier than the date the regulations are made. However, a change which takes effect from a date earlier than the date of making will also be possible for regulations made using the Act⁴, although this is intended to be used in exceptional circumstances only. Consideration as to whether to make regulations which give retrospective effect will be decided on a case by case basis, depending upon the particular circumstances. In all such circumstances, however, the regulations will be subject to Senedd approval, be they subject to the draft or made affirmative procedure⁵.

2.2 Examples of situations where the Welsh Ministers may consider making regulations with retrospective effect include:

- where a change is made by the UK government that has immediate effect and provides a tax, and therefore commercial, advantage to entities liable to the predecessor tax,
- where a change is made by the UK government that has immediate effect and raises significant amounts of tax by a predecessor tax which will have a material effect on the block grant adjustment,
- where avoidance needs to be halted,
- where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted, and
- where regulations have been made using powers in the Act (either by draft or made affirmative procedure) and the Welsh Ministers wish to amend the effect of the regulations, so that the changes have effect from the same date that the original regulations had effect.

2.3 The Welsh Ministers will ensure that the regulations made will be proportionate and compatible with the European Convention on Human Rights⁶.

⁴ see section 2(1)(c) of the Act

⁵ Draft affirmative regulations must be laid in draft for at least 20 days before a Senedd vote can be held to approve them. Made affirmative regulations can come into force with immediate effect once made by the Welsh Ministers, approval by Senedd vote must be given within a maximum period of 60 days for those regulations to remain in effect.

⁶ "The Convention Rights" which have been incorporated into UK law via the Human Rights Act 1998.

3. Timing and Communication of Changes

3.1 Whilst the Welsh Ministers will usually seek to make tax announcements as part of the Draft Budget Statement where possible, it is necessary to recognise that the intended use of the power provided by the Act is to respond to external events. As a result, it is likely that the use of this power will fall outside the time period that would permit an announcement to be made as part of the Welsh Government's Draft Budget. Changes are therefore most likely to occur outside the first Draft Budget Statement. Where possible, the Welsh Government and the Welsh Revenue Authority will use their communication channels and known stakeholders to raise awareness of the changes in advance (in particular the Written Statement and the details or annexes contained therein).

4. Procedure

4.1 When bringing forward retrospective legislation it is the Welsh Ministers' intention to abide by the following procedure:

- the outline of the proposed changes will be precise and provided by means of the Written Statement,
- the Written Statement will state the procedure that will be used and that the regulations will be made as soon as possible in line with relevant procedure and Welsh Government policies,
- the Welsh Ministers will write to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee outlining the proposed changes and inviting the Committees to consider the purpose and effect of the retrospective legislation. Copies of the letters will be sent to the Llywydd, and
- The regulations will be published (and where appropriate made) as soon as possible.

4.2 Where it is possible to do so in the time allowed by individual circumstances, the Welsh Government will seek views on the effect of the regulations, either through a formal consultation where possible, or informally with trusted external interested parties. However, given the nature of the regulations, particularly in cases where amendments are required urgently it may not always be possible, for example where the risk of forestalling arises.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/0094/22

Peredur Owen Griffiths, MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
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24 January 2022

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

Dear Peredur,

Thank you for your recent letter following the Finance Committee's evidence session on 22 December 2021 in relation to the Welsh Tax Acts etc. (Power to Modify) Bill ("the Bill") in which you request information:

- To understand the potential costs involved in implementing any subordinate legislation arising from the Bill, such as updating systems, forms, guidance and communicating any changes; and
- The actual costs associated with implementing the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020.

As you are aware, this legislation aims to provide a mechanism to enable Welsh Ministers to respond to external events including those that impact on the Welsh budget – circumstances which are beyond our control. Without this legislation, we would still need to find a way to respond. In most scenarios, this would likely mean responding using emergency legislation or, where possible, our existing regulation making powers. The costs of implementation would be the same regardless of the legislative mechanism used to effect that change. The alternate would be to live with the impact of the external event, including potential reductions in Welsh budgets. The primary aim of this legislation is to protect Welsh revenues.

Without this Bill, we risk future financial costs if, for example, a new charge is introduced for stamp duty land tax and we are unable to respond quickly. Although this may not happen in the immediate future, it is certainly possible in the next few years as land transaction taxes are continuing to be lively.

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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.

Welsh Treasury officials, together with officials from the Welsh Revenue Authority (WRA), have considered the potential administrative costs of any future changes – which includes, for example, updating guidance and forms, testing or additional communications requirements. For most changes it is reasonable to assume that the costs will be met within existing budgets. However, the costs to the WRA will very much depend on the precise nature of the change that today cannot be predicted with any certainty and will need to be considered on a case-by-case basis.

In relation to the implementation of the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020, the WRA incurred costs of around £1,200 to implement the temporary rate changes to land transaction tax from 27 July 2020. This included a small fee paid to their IT supplier, however, the majority of the technical changes, including testing, was undertaken internally. This cost does not include a minimal cost to revert to the original LTT rates (effected on 1 July 2021) nor the cost of staff time used on the WRA communications and guidance updates as this was absorbed into business as usual activity. The changes were widely anticipated following my announcement on 14 July 2020 and therefore the requirements and costs of raising awareness were minimal.

The requirement to make changes to tax rates was anticipated in the design of the WRA tax management system, and systems built with the functionality that makes such changes relatively straightforward. This helped keep the costs low for the July 2020 changes.

I hope that this information helps the Finance Committee in their scrutiny of the Bill, but if there is any other information you require before my appearance before you again please do write to me.

Yours sincerely,



Rebecca Evans AS/MS

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

CC: Chair of the Legislation, Justice and Constitution Committee

Statutory Instruments with Clear Reports 14 February 2022

SL(6)149 – The Eggs (Wales) Regulations 2022

Procedure: Affirmative

These [Regulations](#) are made under section 50(3) of, and paragraph 16(1) of Schedule 5 to, the Agriculture Act 2020.

The Regulations amend retained EU law, namely Regulation (EC) No 589/2008 (“the Retained Regulation”), which makes provision for marketing standards for eggs. The Regulations enable marketing standards checks to continue to be undertaken on imported Class A eggs at the point of destination. Points of destination are locations such as egg packing centres and wholesale premises, where checks are undertaken by the Animal and Plant Health Agency (APHA) egg marketing inspectors, prior to release for retail sale or mass catering.

The amendment made by these Regulations is required as the Retained Regulation requires marketing standards checks to be carried out at Border Control Posts before customs clearance from 1 July 2022. As existing practice means inspectors and compliant enforcement procedures already exist at the point of destination (the packing centres and wholesale premises where eggs are checked prior to release for retail sale), the Explanatory Memorandum to the Regulations states that it is more efficient and practical to continue the checks at these locations. Continuing to undertake egg marketing checks at the point of destination such as egg packing centres and wholesale premises rather than at points of entry will allow these checks to use existing and established resources prior to the eggs reaching the market.

Parent Act: Agriculture Act 2020

Date Made:

Date Laid:

Coming into force date: 04 March 2022



Agenda Item 4.1

SL(6)148 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2022

Background and Purpose

These [Regulations](#) amend the following student support regulations:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2014;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017; and
- the Education (Student Support) (Wales) Regulations 2018.

Specifically, the amendments made by these Regulations:

- make individuals granted leave to enter or remain as a relevant Afghan citizen and certain family members under the immigration rules, the Afghan Relocations and Assistance Policy Scheme and the Afghan Citizens Relocation Scheme eligible for student support, home fee status and the tuition fee cap;
- extend eligibility to home fee status and the tuition fee cap to students from the Crown Dependencies studying higher education courses in Wales;
- increase the amount of undergraduate support (disabled student's grant, grants for dependents (including childcare grant) and maintenance loan);
- decrease the amount of tuition fee grant whilst increasing the amount of tuition fee loan for students who began their courses on or after 1 September 2012 but before 1 August 2018 so that overall tuition fee support is unchanged;
- ensure that students on the International Learning and Exchange programme will receive the same support as those on the Erasmus+ scheme and the Turing Scheme established by the Secretary of State for Education;
- remove references to the 'grace period' in relation to the EU Settlement Scheme in the undergraduate student support regulations; and
- make postgraduate social work students in receipt of a social work bursary eligible to apply for disabled student's grant where a course begins on or after 1 August 2022.

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 – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 18(b) attempts to amend regulation 27(9)(a) of the Education (Student Support) (Wales) Regulations 2017 by substituting the maximum amount of weekly childcare charges used to calculate the amount of childcare grant paid to an eligible student. The figure that these Regulations state should be substituted is “£138.31”, but the figure included in the Education (Student Support) (Wales) Regulations 2017 is “£138.81”.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Chapter 2 of Parts 2 and 4 amend student support regulations to provide for Afghan citizens granted leave to enter or remain in the United Kingdom to be treated as home students for the purpose of fees charged by higher education institutions. Chapter 2 of Parts 3 and 6 amend student support regulations to provide for the same Afghan citizens to be eligible for student support. The amendments also apply in relation to the partners and dependent children of those Afghan citizens.

The following definition of “partner” of a relevant Afghan citizen is included in the immigration rules:

“276BK1. For the purposes of rules 276BA1-276BS5 a partner of a relevant Afghan citizen, including where the relevant Afghan citizen has already been granted entry clearance, leave to enter or remain or indefinite leave to enter or remain, is a person who:

(i) is the relevant Afghan citizen’s spouse; or

(ii) is the relevant Afghan citizen’s civil partner; or

(iii) has been living together with the relevant Afghan citizen in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.



This definition applies in relation to the relevant provisions of the immigration rules (paragraph 276BA2, 276BS2, 276BJ2 and 276BO2) referred to in the amendments made by these Regulations.

Regulations 4(b), 7, 11(b) and 38(b) introduce four categories of relevant Afghan citizen that are within the scope of the relevant provisions. The fourth of these is a person granted:

"indefinite leave to enter or remain in the United Kingdom outside the immigration rules as the spouse, civil partner or dependent child of a person falling into paragraph (g) or dependent child of such a spouse or civil partner;"*

* "paragraph (g)" is replaced with "paragraph (c)" in regulation 7 and "paragraph (iii)" in relation to regulation 38(b).

The provision only applies to a spouse or civil partner and there is no reference to a person having similar status to paragraph 276BK1(iii) of the immigration rules (i.e., living together with the relevant Afghan citizen in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application). It is not clear from the Afghan Citizens Resettlement Scheme whether such a person would be eligible for indefinite leave to enter or remain in the United Kingdom.

Is it the policy intention that a person living together with a relevant Afghan citizen in a relationship akin to marriage or civil partnership for at least two years prior to the date of an application is outside of the scope where their partner has indefinite leave to enter or remain in the United Kingdom, outside the immigration rules on the basis of the Afghan Citizens Resettlement Scheme?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulation 39 amends Schedule 4 to the Education (Student Support) (Wales) Regulations 2018 by inserting a new paragraph 13F. Within new paragraph 13F(2) there is reference to "eligible student", whereas all other references within paragraph 13F(1) are to "eligible postgraduate student". Both defined terms are used in different contexts within the 2018 Regulations.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Committee notes that it previously reported on amendments to the Education (European University Institute) (Wales) Regulations 2014 made by the Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021.

The Committee's report on those 2021 Regulations identified a merits point in relation to the definition of "*person granted leave to remain as a protected partner*". A Government response was received in relation to that merits point on 3 December 2021. The response stated:



“The first sub-paragraph of the definition of “person granted leave to remain as a protected partner” should have included reference to paragraph 289D of the immigration rules. The Government will look to schedule an amendment in an appropriate future instrument.”

As these Regulations amend the Education (European University Institute) (Wales) Regulations 2014, they may have been an “appropriate future instrument” in which to bring forward the correction.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 37

Agenda Item 4.2

SL(6)150 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022

Background and Purpose

These [Regulations](#) amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the principal Regulations”).

The Principal Regulations allow Local Health Boards, NHS Trusts and NHS Foundation Trusts (as applicable) in Wales to make and recover charges for relevant healthcare services that are provided to overseas visitors not ordinarily resident in the United Kingdom (UK), unless the overseas visitor or the service they receive falls within a charging exemption.

These Regulations are being made to:

- ensure the Principal Regulations reflect the UK-Switzerland Convention on Social Security Coordination;
- include a new Regulation 4F which provides an exemption from charges for an overseas visitor who has paid the Immigration Health Surcharge (IHS) of the Immigration Act 2014, or where a person is exempt from paying the IHS or, in certain circumstances, where the Secretary of State has exercised discretion to reduce, refund or waive the IHS;
- include a new Regulation 4G which provides an exemption from charges for an overseas visitor who applied for leave to enter or remain in the United Kingdom before the requirement to pay the IHS came into force and who, consequently, will not have had an opportunity to pay the IHS until they next apply for leave to enter or remain in the United Kingdom;
- Include an exemption from charges for a child who is born in the United Kingdom to a parent who is exempt from charges by virtue of Regulation 4F or Regulation 4G, and the child is aged three months or less and has not left the United Kingdom since birth;
- update Schedule 1 to change the reference to coronavirus used at the time of the February 2020 amendment to the current confirmed name for the virus; and
- include technical amendments following previous updates to the Principal Regulations.



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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:-

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations include corrections previously highlighted by the Committee in relation to National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020 and 2021.

The detail of the technical changes are set out below which are contained in LJCC report SL(5)707 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and SL(5)780 and The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021.

The changes:

- amend Regulation 2(2)(h) which inserted a new definition of “relevant services”, referring to provisions in the National Health Service (Wales) Act 2006. The amendment replaces ‘primary ophthalmic services’ with ‘general ophthalmic services’, so it is aligned with the definition used in the 2006 Act.
- remove Sweden from Schedule 2 as the latter is covered by the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and therefore does not need to be separately listed in Schedule 2.
- remove Liechtenstein from Schedule 2 until new reciprocal healthcare agreements are put in place with this country by the UK Government.



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 40**

Legislation, Justice and Constitution Committee

SL(6)152 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022

Background and Purpose

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022 ([“the Regulations”](#)) are made by the Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 64(1), 64(2)(b), 66, 69 and 196(2) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Financial Assessment Regulations”).

The Charging Regulations govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the 2014 Act. The Financial Assessment Regulations set out the method by which local authorities must carry out an assessment of a person’s financial resources in order to determine a charge where appropriate. Both sets of regulations came into force on 6 April 2016.

The changes that amend the Charging Regulations will uplift from £33.00 a week to £35.00 a week the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pensions and welfare benefits.

The changes that amend the Financial Assessment Regulations will recognise a number of compensation schemes awarded to people who have been caused harm, abuse or injury and are to receive payments in recognition of their suffering. Schemes are typically new pieces of legislation introduced by other UK governments, or the Welsh Government. This will be achieved by amending Schedule 1 and Schedule 2 to the Financial Assessment Regulations to include payments made under:

- The Historical Institutional Abuse (Northern Ireland) Act 2019;
- The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
- The Victims Payment Regulations 2020; and



- Payments made under the payment scheme for former British child migrants established by the Secretary of State.

In addition, there are a number of infected blood and blood products compensation schemes applied to a person infected by contaminated blood products that need to be recognised under Schedule 1 and Schedule 2 of the Financial Assessment Regulations. An approved infected blood support scheme and the Scotland Infected Blood Support Scheme are already recognised under Schedule 1 and Schedule 2. The 2022 Regulations amend the Financial Assessment Regulations to also include the:

- Wales Infected Blood Support Scheme; and
- Northern Ireland Infected Blood Support Scheme.

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(i) – that there appears to be doubt as to whether it is intra vires.

The preamble to the Regulation sets out the 2014 Act enabling powers relied upon by the Welsh Ministers. However, it is unclear why section 64(2)(b) is included specifically, but not 64(2)(a). The former provision requires that regulations dealing with financial assessments must make provision for assessing capital, and the latter for assessing income. It is noted that regulation 3(a) of the Regulations amends Part 1 of Schedule 1 (sums to be disregarded in the calculation for income) to the Financial Assessment Regulations with regard income to be disregarded when carrying out a financial assessment. This being the case, it is unclear why regulation 64(2)(a) is not also cited as an enabling power, and whether its absence impacts vires in this regard.

Further, the Explanatory Memorandum, at paragraph 3, purports to quote the enabling powers in the Regulations. Whilst some are omitted, it also includes section 65 of the 2014 Act, which is not cited in the Regulations. This disparity between the Regulations and the Explanatory Memorandum is, in itself, potentially confusing to the citizen. But, further, Section 65 is a specific power to disapply the duty to carry out a financial assessment. This being the case, it is unclear why this enabling power is not included in the Regulations, and what impact this may have on vires, bearing in mind the changes made to the Financial



Assessment Regulations with regards the disregarding of payments under the specified compensation schemes when carrying out a financial assessment.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

It is noted that, according to the Regulatory Impact Assessment set out in Part 2 of the Explanatory Memorandum, the amendments made by the Regulations will result in a potential increase in charge income to local authorities in the sum of £1.9 million per annum.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

It is noted that the Explanatory Memorandum has not been laid in Welsh. The relevant Notice of Laying form states, "This document is laid in English only, in accordance with Standing Order 15.4, as it is not considered appropriate in the circumstances or reasonably practicable to lay it in English and Welsh." The Committee would welcome clarification on this reason, particularly whether a bilingual version has not been produced due to lack of resource.

Welsh Government response

A Welsh Government response is required in relation to the Technical and second Merits reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2022



Agenda Item 5.1

SL(6)118 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021

Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

[The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) \(No. 23\) Regulations 2021](#) (“the Regulations”) are made in exercise of the powers conferred by sections 45C(1) and (3)(c) and 45F(2) of the 1984 Act in response to the threat to public health which is posed by the incidence and spread of COVID-19.

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “principal Regulations”), with effect from 20 December 2021, to:

- list specifically allowing or requiring employees to work from home as a reasonable measure which employees may be required to take in accordance with the duty under Step 3 of regulation 16;
- place a new duty, under regulation 18B, on individuals to work, or provide voluntary or charitable services, from home where it is reasonably practicable for them to do so;
- create an offence under regulation 42A where a person, without reasonable excuse, contravenes the requirement in regulation 18B.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following four points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spread of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the state's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."



3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note there is no equality impact assessment for the Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of the Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

While it is noted that the Explanatory Memorandum states, “... *summary impact assessments are in preparation which will include impacts relating to working from home*”, it is unclear whether these will include an equality impact assessment and, in any event, they are not currently available to the citizen for the purpose of assessing the equalities impact of the new provisions being introduced by the Regulations.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Beyond the following statement, the Explanatory Memorandum does not set out or link to any specific evidence on which the Welsh Government relies when making provision under the Regulations:

“The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus, particularly the rapid rise in Omicron cases.”

We note, however, the following from the First Minister, Mark Drakeford MS’, written statement of 17 December 2021:

“At the last review of the coronavirus regulations on 9 December, I set out that we would move from a three-week to a one-week review to ensure we have the right measures in place to keep Wales safe in response to the emerging omicron variant.

This fast-moving, more transmissible variant is here in Wales and is spreading quickly.

.....

The number of confirmed cases of omicron infections is rising every day in Wales – and across the UK. By the end of the month omicron will likely become the dominant form of the virus. We are still learning about this new form of coronavirus. But all the information we have tells us we are facing a very serious situation.”

Bearing in mind the additional statutory duty the Regulations impose under new regulation 18B, particularly the creation of an offence in new regulation 42A, we would be grateful if the Welsh Government could set out the relevant evidence that supports the significant tightening of restriction around home working at this time.



Welsh Government response

A Welsh Government response is required in relation to points 3 and 4 above only.

Committee Consideration

The Committee considered the instrument at its meeting on 10 January 2022 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 47



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

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8 February 2022

Dear Chair,

I am writing in response to your letter of 21 January in relation to the Legislation, Justice and Constitution Committee's consideration of the Health Protection (Coronavirus Restrictions) (No.5) (Wales) (Amendment) (No.23) Regulations 2021 (the Regulations).

Equality impacts are covered in the Summary Impact Assessments (SIA) relating to changes in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the principal Regulations).

As part of the consideration of any tightening of protective measures, achieved via amending the principal Regulations, an SIA is carried out. There will be a new SIA when new measures are being introduced; where measures have been previously used, we review and potentially update the existing SIA.

When we relax protective measures, a new or updated assessment would be published if the impacts are different to those which have previously been identified. If the impacts are expected to be the same, the previously published impact assessment remains valid.

Every effort is made to publish SIAs as soon as practically possible after the amending Regulations have been made. But I hope you understand that given the fast-moving nature of the pandemic at times, the short timescales involved in making the amending Regulations and the longer quality assurance process and the complex and substantial nature of the material contained in the SIA, there can often be a delay between the publication of the amending Regulations and the SIA.

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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.

Officials are currently reviewing the SIA process for changes made to the principal Regulations and will take into account comments from the committee.

This review has already identified three SIAs which, although completed, have not yet been published. These SIAs are now going through final quality assurance and translation with a view to publishing in the coming weeks. The three SIAs relate to:

- 3 June 2021 review (including the allowing six individuals from six households to mix indoors; up to 30 people outdoors; an extension to 'extended households' and opening of ice rinks)
- 15 July 2021 review (including the rule of six to meet indoors in private dwellings, indoor events; ice rinks; night clubs and adult entertainment centres; residential visits and gathering outdoors)
- August 2021 – alert level zero baseline measures

I hope this is a useful explanation of the approach we are taking to capturing and publishing the impacts of the important steps we have taken, often at short notice, to respond to the pandemic.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD

Agenda Item 6.1

Rebecca Evans AM MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/RE/3862/21

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Huw Irranca-Davies MS
Chair
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27 January 2022

Dear Mark,

I am pleased to share with the Committee, the finalised provisional Common Framework for Public Procurement.

This Framework establishes common expectations around key areas of cooperation in public procurement in the context of the UK's departure from the EU. All four UK administrations agreed to work together to establish common approaches, known as Common Frameworks, in policy areas that were previously governed by EU law and which intersect with areas of devolved competence.

Officials in the Welsh Government, together with their counterparts across the UK, have been working jointly to develop this Framework to share with their respective scrutiny Committees for scrutiny.

I understand my counterparts across the devolved administrations will be taking similar steps to engage with their respective parliaments.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The document can be found at:

<https://www.gov.uk/government/publications/public-procurement-provisional-common-framework>

I look forward to hearing from you soon.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a small dot at the end.

Rebecca Evans AS/MS

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



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

Huw.Irranca-Davies@senedd.wales

9 February 2022

Dear Huw,

Further to my letter of 4 January, and in accordance with the inter-institutional relations agreement, a meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 31 January.

The meeting was attended by Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and the Islands, Scottish Government; Lorna Slater MSP (Chair), Minister for Green Skills, Circular Economy, and Biodiversity, Scottish Government; Edwin Poots MLA, Minister of Agriculture, Environment and Rural Affairs, Northern Ireland Executive; and George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, UK Government. Lord Malcom Offord, Parliamentary Under Secretary of State for Scotland and David TC Davies MP, Parliamentary Under Secretary of State for Wales were also in attendance.

At the meeting we discussed Scottish Government's request for an exclusion to the Internal Market Act for single use plastics where I pressed UK Government to provide a timetable for decisions on this matter. The Northern Ireland Executive gave a presentation on their consultation for their future agriculture policy.

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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.

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



Llywodraeth Cymru
Welsh Government

Supply chains and labour shortages within the EFRA sectors was discussed, where I reiterated my concerns about shortages in veterinary staff, in particular, those needed by APHA and for future border checks at Welsh ports and the Northern Ireland Protocol, where I pressed for clarity on whether interim measures at Irish-facing ports would be needed.

There were a number of areas of AOB items including an update on the publication timeline of Common Frameworks, the Dimpleby Report, RCVS proposals regarding veterinary reform, seed potatoes, and the Brexit Freedoms Bill. Both frameworks and the Brexit Freedoms Bill will be substantive items at the next IMG to be held on 21 March 2022.

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

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

Regards,

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

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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

Paul Davies MS
Chair of Economy, Trade, and Rural
Affairs Committee

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

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SeneddLJC@assembly.wales

9 February 2022

Dear Paul, Huw

I am writing further to my letter of 21 January and in accordance with the inter-institutional relations agreement, to inform you that I attended the Ministerial Forum for Trade on the 26 January.

The meeting was attended by Penny Mordaunt, Minister of State for Trade Policy; Ivan McKee, Scottish Minister for Business, Trade, Tourism and Enterprise; and Gordon Lyons, Northern Ireland Executive Minister for Economy.

During the meeting, we discussed ways of improving working arrangements following the review of intergovernmental relations (IGR). The forum's Terms of Reference (ToR) are currently under review and I highlighted the need for them to align with the IGR structure..

There was an update on the on-going Free Trade Agreement (FTAs) negotiations, including Canada and the United States. I raised the point that we still have concerns about the level of Tariff Rate Quotas (TRQs) granted in recent FTAs, as well as animal welfare standards, and I asked for clarification on how safeguards will protect Welsh industries. I reiterated that these concerns must be taken into account as future deals are negotiated.

The process for handling World Trade Organisation (WTO) trade disputes was also discussed during the meeting. It was agreed that discussions would continue to develop an approach that outlines how responsibility for any WTO trade dispute could be handled, in line with the UK's WTO and FTA obligations.

I will write to you again to inform you of the date of the next meeting.

Yours sincerely,

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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.

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Agenda Item 7.3

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



Llywodraeth Cymru
Welsh Government

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

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

9 February 2022

Dear Chairs,

I am writing in accordance with the inter-institutional relations agreement to let you know that a virtual meeting of the UK and Devolved Administration Cop26 meeting taking place on 9 February. I apologise for the short notice, the meeting was only confirmed this week.

I will be representing the Welsh Government. The meeting will focus on the ongoing work to meet COP26 goals and what is happening in the lead up to COP27, which will take place in November 2022.

The Group will publish a joint communique after the meeting. I will also publish a Written Statement.

Yours sincerely,

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

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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.

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

Agenda Item 7.4

Llywodraeth Cymru
Welsh Government

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

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

9 February 2022

Dear Chairs,

I am writing further to my letter of 14 January 2022, and in accordance with the inter-institutional relations agreement, to report on the latest meeting of the Net Zero, Energy and Climate Change Inter-ministerial Group on 17 January 2022, which was focused on a discussion of the UK Emissions Trading Scheme (UK ETS).

The meeting was attended by Michael Matheson MSP, Cabinet Secretary for Net Zero, Energy and Transport, Edwin Poots MLA, Minister of Agriculture, Environment and Rural Affairs, Greg Hands MP, Minister of State for Business, Energy and Clean Growth, and Lucy Frazer MP, Financial Secretary to the Treasury.

As the UK ETS Authority we discussed the triggering of the UK ETS Cost Containment Mechanism (CCM) at the start of January. The joint statement by the UK ETS Authority – made up of HMG, the Scottish Government, Welsh Government and Northern Ireland Executive – on the scheme's Cost Containment Mechanism (CCM) is available through the link below:

<https://www.gov.uk/government/publications/uk-emissions-trading-scheme-ets-authority-cost-containment-mechanism-decisions/uk-ets-authority-statement-cost-containment-mechanism-decision-january-2022>

We also discussed the forthcoming consultation on proposals to develop the UK ETS. I was pleased to hear that progress was being made by officials from HMG, the Scottish Government, Welsh Government and Northern Ireland Executive and I emphasised the need to consult as early as possible.

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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.

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

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

Agenda Item 8.1



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JMEWL/0491/22

Huw Irranca-Davies MS
Chair,
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

10 February 2022

Dear Huw,

Thank you for your letter of 28 January and for the Committee report on the Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Professional Qualifications Bill.

Once again, I thank the Committee for their detailed observations and for sharing the report. I am pleased to provide additional information as requested below.

I am coping this letter to Paul Davies MS, Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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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.

Recommendations

Recommendation 1. *While we welcome the Minister's action to seek an amendment to the Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the Government of Wales Act 2006, the Minister should, at the earliest opportunity and in advance of the Senedd's debate on a relevant consent motion, provide an update on any relevant action by, or discussions with, the UK Government on this specific matter.*

Response – Accept

On 12 October 2021 the UK Government made an offer to table an amendment to the Bill which would require the Secretary of State or Lord Chancellor to consult with Welsh Ministers before making legislation in areas of devolved responsibility.

I rejected this offer and made it clear that it was inadequate to address our concerns and failed to respect the devolution settlement. The consultation requirement did not give any assurance that the Secretary of State or Lord Chancellor could not or would not use the powers in the Bill to impose regulations on Wales, as the UK Government remained free to disregard any concerns or oppositions raised by the Welsh Ministers during consultation. My response also set out the Committee's concerns in relation to the combination of concurrent powers and Henry VIII powers in the Bill, and I asked the UK Government to table an amendment to ensure that the powers in the Bill could not be used by UK Ministers to make regulations that amend the Government of Wales Act 2006 (GOWA).

On 2 December the UK Government offered to table an amendment to the Bill to provide for a more detailed consultation procedure. However, this amendment again failed to respect the devolution settlement and meet our requirement that the UK Government obtain the consent of Welsh Ministers before making regulations in devolved areas.

On 9 December the UK Government made an offer to table an amendment to the Bill for a specific carve out from the Minister of the Crown consent requirements in paragraph 11 of Schedule 7B to GOWA. The amendment would have meant that the Secretary of State's consent was not needed for Senedd Cymru to be able to remove the concurrent powers that the Secretary of State and Lord Chancellor have under the Bill to make regulations that are within the legislative competence of the Senedd.

However, the UK Government made it clear that this amendment would be tabled only if I agreed to recommend the Senedd consents to the Bill.

Whilst the inclusion of this amendment was welcomed, my response to these offers was that I remained unable to recommend to the Senedd that consent is given to this Bill without a further amendment to require the UK Government to secure the consent of devolved governments before making regulations in devolved areas.

I met with UK Government Minister for Investment, Lord Grimstone, and Minister for Small Business, Consumers & Labour Markets and Minister for London, Paul Scully MP, on 6 January 2022 to further clarify my concerns, and to reiterate my position that the powers in this Bill should align with the devolution settlement. The UK Government subsequently

sought to provide reassurance by setting out some potential situations where they considered it may be appropriate to use the concurrent powers in the Bill to legislate on a UK-wide basis, including in devolved areas, but they failed to provide a detailed, evidence based analysis as to why those powers could not be made subject to a requirement to obtain consent from the Welsh Ministers.

Recommendation 2. *The Minister should, at the earliest opportunity and in advance of the Senedd's debate on a relevant consent motion, provide further information as to how and when the UK Government made its position clear in relation to clause 16(5) (previously clause 14(5)) and provide fuller detail on what the assurances are and how such assurances have assuaged the Minister's previous concerns*

Response – accept

In paragraph 6 of my [letter of 10 September 2021](#) to the Committee, I set out the UK Government's explanation of clause 14(5) (now 16(5)).

We were concerned an assumption had been made by the UK Government that UK Bills which confer regulation making powers on the Welsh Ministers should always be drafted in a way which ensures that the legislative competence of the Senedd and the executive competence of the Welsh Ministers align.

On 29 September the UK Government wrote to confirm their position that there are instances where executive and legislative competence do not align.

Whilst I am satisfied with this outcome, my concern overall remains that the concurrent powers in the Bill are unacceptable, for the reasons outlined above.

Agenda Item 11

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

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Agenda Item 13

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

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