

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Committee Room 4	P Gareth Williams
Meeting date: 7 March 2022	Committee Clerk
Meeting time: 14.00	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(14.00)

2 Common frameworks

(14.00–14.15)

(Pages 1 – 13)

Attached Documents:

LJC(6)–08–22 – Paper 1 – Letter from the Counsel General and Minister for the Constitution, 2 March 2022

LJC(6)–08–22 – Paper 2 – Letter to the Counsel General and Minister for the Constitution, 15 February 2022

2.1 Provisional agricultural support common framework

(Pages 14 – 15)

Attached Documents:

LJC(6)–08–22 – Paper 3 – Letter from the Chair of the Common Frameworks Scrutiny Committee, 9 February 2022

2.2 Provisional fisheries management and support common framework

(Pages 16 – 19)

Attached Documents:

LJC(6)–08–22 – Paper 4 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 17 February 2022



LJC(6)-08-22 – Paper 5 – Letter from the Chair of the Common Frameworks Scrutiny Committee, 2 March 2022

2.3 Provisional ozone depleting substances and fluorinated greenhouse gases common framework

(Page 20)

Attached Documents:

LJC(6)-08-22 – Paper 6 – Letter from the Minister for Climate Change, 21 February 2022

2.4 Provisional animal health common framework

(Pages 21 – 23)

Attached Documents:

LJC(6)-08-22 – Paper 7 – Letter from the Chair of the Common Frameworks Scrutiny Committee, 23 February 2022

3 Inter-Institutional Relations Agreement

(14.15–14.20)

3.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Consenting to regulations

(Pages 24 – 25)

Attached Documents:

LJC(6)-08-22 – Paper 8 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 2 March 2022

4 Papers to note

(14.20–14.30)

4.1 Correspondence from the Minister for Health and Social Services: Supplementary Legislative Consent Memoranda (Memoranda No. 2 and No. 3) on the Health and Care Bill

(Pages 26 – 33)

Attached Documents:

LJC(6)-08-22 – Paper 9 – Letter from the Minister for Health and Social Services, 28 February 2022

LJC(6)-08-22 – Paper 10 – Letter to the Minister for Health and Social Services, 21 February 2022

LJC(6)-08-22 – Paper 11 – Letter from the Minister for Health and Social Services, 15 February 2022

**4.2 Correspondence from the Counsel General and Minister for the Constitution:
Welsh Government’s draft budget 2022–23**

(Pages 34 – 45)

Attached Documents:

LJC(6)-08-22 – Paper 12 – Letter from the Counsel General and Minister for the Constitution, 28 February 2022

LJC(6)-08-22 – Paper 13 – Letter to the First Minister and the Counsel General and Minister for the Constitution, 28 January 2022

4.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Llywydd: Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill

(Pages 46 – 47)

Attached Documents:

LJC(6)-08-22 – Paper 14 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 28 February 2022

**4.4 Correspondence from the Counsel General and Minister for the Constitution:
Legislative Consent Memorandums and future workload**

(Pages 48 – 54)

Attached Documents:

LJC(6)-08-22 – Paper 15 – Letter from the Counsel General and Minister for the Constitution, 1 March 2022

LJC(6)-08-22 – Paper 16 – Letter to the Counsel General and Minister for the Constitution, 15 February 2022

**4.5 Correspondence from the Chief Executive and Clerk of the Senedd:
Appropriate terminology to describe people from minority ethnic
backgrounds**

(Pages 55 – 56)

Attached Documents:

LJC(6)–08–22 – Paper 17 – Letter from the Chief Executive and Clerk of the Senedd, 2 March 2022

**4.6 Correspondence from the Minister for Education and Welsh Language:
Tertiary Education and Research (Wales) Bill**

(Page 57)

Attached Documents:

LJC(6)–08–22 – Paper 18 – Letter from the Minister for Education and Welsh Language, 2 March 2022

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

(14.30)

**6 Supplementary Legislative Consent Memorandum (Memorandum
No.4) on the Building Safety Bill – consideration of legal advice
note**

(14.30–14.45)

(Pages 58 – 62)

[Supplementary Legislative Consent Memorandum \(Memorandum No.4\) on the Building Safety Bill](#)

Attached Documents:

LJC(6)–08–22 – Paper 19 – Legal advice note

7 Consideration of international agreements

(14.45–14.50)

(Pages 63 – 65)

Attached Documents:

LJC(6)–08–22 – Paper 20 – Briefing paper

8 Common frameworks programme – discussion

(14.50–15.05)

9 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Commercial Rent (Coronavirus) Bill

(15.05–15.10)

(Pages 66 – 75)

[Legislative Consent: The Commercial Rent \(Coronavirus\) Bill](#)

Attached Documents:

LJC(6)-08-22 – Paper 21 – Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Commercial Rent (Coronavirus) Bill



02 March 2022

Dear Huw,

Thank you for your letter of 16 February in relation to the Common Frameworks programme. I set out my response to your questions below, accompanied by extracts from your letter, in italics, as required in order to provide context.

- 1. We consider it a significant step forward for transparency that most provisional common frameworks have now been published. Could you confirm if you expect that all common frameworks will be published at least in provisional form by the time of the dissolution of the Northern Ireland Assembly, with the exception of the frameworks for recognition of professional qualifications and services?**

Officials continue to work to advance these outstanding Frameworks to the position that they may be published for scrutiny. This remains a challenging deadline, however, particularly for the ETS and Resources and Waste frameworks.

Transparency and accountability

'We asked you about ensuring that the Senedd and stakeholders can understand common frameworks and their impact on Welsh Government decision-making. We very much welcome your positive responses on:

- notifying the Senedd when legislation relates to a common framework; ▪ notifying the Senedd when a common framework dispute is escalated to Ministers;*
- notifying the Senedd and stakeholders when a common framework is reviewed, and considering their recommendations before the review process concludes; and*
- publishing annual reports on all individual common frameworks.'*

- 2. Could you confirm that the Welsh Ministers will abide by these commitments, and set out in writing the processes that you will follow?**

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

I confirm that the Welsh Ministers will abide by these commitments to notify the Senedd and that the relevant Committees will be notified by letter on such occasions. The exact format of the annual reporting mechanism is currently being worked through at an official level.

'We also asked about meeting your commitment in the Inter-institutional Relations Agreement to "maintain a dedicated page of its website providing all relevant formal intergovernmental agreements, common frameworks, concordats, memorandums or other resolutions that the Welsh Government has in place with the UK Government." You explained that finalised frameworks would be published on the Welsh Government website.'

- 3. Given that common frameworks have now been in operation for over a year, we consider this insufficiently transparent. We believe that such a page should be set up as soon as possible, even if you consider it expedient to provide links to the UK Government website until frameworks are finalised. Could you confirm the date when you expect this to become available?**

A [Constitutional Affairs and Intergovernmental Relations](#) webpage exists on the Welsh Government website. The current plan is to add Common Frameworks to this website when the majority have been finalised. Officials are currently working to establish a timescale for adding the current links to the frameworks to the website in the interim. I commit to updating the Committee when this has taken place.

Making decisions and resolving disputes

'We discussed how the four governments will make decisions and resolve disputes through common frameworks. Common frameworks do not generally provide for stakeholders to be routinely involved in intergovernmental decision-making processes.'

- 4. Could you explain the reasons for this approach? How you will keep stakeholders routinely informed of intergovernmental discussions through common frameworks?**

Stakeholders will continue to be consulted on developments in policy in the usual way. The Welsh Government commits to notifying stakeholders of the upcoming review points of Common Frameworks and of any recommendations by the Senedd.

- 5. Some common frameworks provide for the making of legislation or policy to be postponed until the four governments have agreed on how to proceed. What risks have you identified with this approach?**

We regard this as being a sensible position given the benefits of a four government approach in considering and potentially implementing policy in these areas.

- 6. Have any Welsh Government policies or initiatives been delayed because of the common frameworks process?**

I am not aware of any delay and would be surprised if it had occurred as the processes of the Common Frameworks are now an intrinsic part of how policy is developed in the areas where they apply.

Cross-cutting issues

'We discussed the intergovernmental agreement on the process for agreeing exclusions from the Internal Market Act in common framework areas and the agreement of standard

text for common frameworks on international obligations and UK-EU agreements. We would be grateful for further information about how these processes will work in practice.'

UK Internal Market Act

7. Is the Welsh Government seeking, or does it plan to seek, any exclusions through the process for agreeing exclusions from the Internal Market Act in common framework areas?

No exclusions have yet been sought by the Welsh Government but all exclusions would have to follow the process as published in December.

8. Does the Welsh Government support the Scottish Government's request for an exclusion from the Act for single use plastics legislation?

Yes, the Welsh Government supports the Scottish Government in the request for an exclusion from the Act for single use plastics legislation.

9. What principles or evidence would the Welsh Government rely on if it sought an exclusion?

Exclusions would be developed through the Common Frameworks process with the party or parties seeking an exclusion providing an evidence base for group members, usually according to the criteria relating to policy development in these areas.

10. Would the Welsh Government be likely to seek broad exclusions of whole policy areas, or exclusions of specific items of legislation?

It is too early on comment on this. The approach taken will be specific to each framework.

11. At what point in policy development or the legislative process would the Welsh Government seek an exclusion?

This will vary from framework to framework.

12. Is the Welsh Government content to notify the Senedd and stakeholders when it seeks an exclusion?

I would expect portfolio Ministers to inform committees, and stakeholders as appropriate, of exclusions in the same way they would of any significant policy development.

13. Do you consider that finalised frameworks should make reference to the exclusions process?

It is not the current intention that the frameworks should reference the exclusions process.

Subsidy Control Bill

14. What concerns, if any, do you have about the impact of the UK Subsidy Control Bill on any common frameworks?

One of the key concerns the Welsh Government has raised in relation to the Subsidy Control Bill is the lack of clarity and detail on the face of the Bill. Many of the provisions are subject to change through the use of secondary legislation and much of the main detail of how the Bill will work in practice will be contained within secondary legislation and guidance.

It is therefore difficult at this stage to have a clear idea of what possible impact the Bill will have on any common frameworks.

Professional Qualifications Bill

15. Do you have any concerns about the impact of the Professional Qualifications Bill on any common frameworks?

We are working to establish the impact, if any, of the Professional Qualifications Bill on the Mutual Recognition of Professional Qualifications Common Framework.

International obligations

16. You stated that the UK faces difficulties regarding international obligations. Could you give details of any difficulties you have identified arising from international obligations, particularly in devolved areas or in areas that affect Wales?

In terms of any of new international obligations that arise from the implementation of the Free Trade Agreements being negotiated by the UK Government, Welsh Government officials are not aware of any difficulties arising from the deals signed to date. However, as new negotiations take place over time it is possible that we will need to implement obligations which do not necessarily align with our domestic policy ambitions. Officials are engaging with the UK Government to ensure that our views on negotiations are clear and to try and avoid a situation where a trade deal places an obligation on us which we cannot, or do not wish to, implement.

17. The agreed text on international obligations for common frameworks suggests that frameworks will be based on an updated International Relations Concordat following the conclusion of the Intergovernmental Relations Review. Are there plans to update this concordat, and do you consider that there are any risks if an updated concordat is not agreed?

In January 2022, the Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms which emerged from the joint IGR Review as the basis for the conduct of intergovernmental relations. While the reform package does not entirely replace the existing Memorandum of Understanding on Devolution, it is anticipated this will become a largely dormant document. In future, we hope that the Review and the package of reforms will be codified in a new MoU and, if all governments agree, underpinned in statute. For the time being, international policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the parties will automatically use any updated IR Concordat, and the wider outcomes of the joint IGR Review, as the basis for such international considerations.

18. The agreed text on international obligations states that the governments will consider “any implications stemming from international trade which have a direct bearing on the operation of the common framework”. Do you consider that this gives the Welsh Government adequate involvement in the negotiation of international trade agreements in common framework areas?

We would expect Common Frameworks policy teams in the Welsh Government to promote Welsh interests in these areas through the frameworks groups. The development of frameworks has increased the scope for interaction between the relevant policy teams of the four governments.

UK-EU obligations

19. Agreed text in some common frameworks describes provision for Welsh Government attendance at meetings established by the UK-EU Trade and Cooperation Agreement's institutional framework. How will you ensure that Welsh Government policy teams in common framework areas coordinate with Welsh Government representatives at UK-EU meetings?

Common Frameworks were not intended to provide enhanced engagement on matters relating to the Trade and Cooperation Agreement, and the governance structures within it. That is not their purpose. However, engagement with the UK Government in relation to the Specialised Committees which are established by the TCA, is generally good. That said, the fact that Common Frameworks are supporting improved intergovernmental relations should help to embed the generally good engagement we have seen on TCA governance matters so far.

Policy teams and Welsh Government representatives work closely together in the preparation for specialised committees and working groups. This will include liaison on suggested agenda items, and input into the positions the UK Government proposes to take on the issues being covered at the meetings. Where policy teams wish to attend the meetings, we work with the UK Government to facilitate this. In some cases, it is expected to be Welsh Government representatives who attend the committees – so, for example, representatives from Welsh Government's fisheries policy team, in line with the Fisheries Framework, should expect to attend the committee on fisheries, where an item concerns implementation in an area of devolved competence. In the case of fisheries, it is largely devolved across the UK.

20. Agreed text on the Northern Ireland Protocol indicates that if the law in a common framework area changes in Northern Ireland by virtue of the Protocol, the four governments will consider the implications of that change in Great Britain and whether to take action. At what point in the EU legislative process will the four governments do this?

We would look at individual cases and make a judgement closer to the time, working closely with our partners in England and Scotland.

21. Some stakeholders in Northern Ireland have raised concerns about the limited extent to which common frameworks are taking account of cross-border links on the island of Ireland. What consideration are the Welsh Ministers giving to this issue in deciding whether to approve common frameworks?

The frameworks are drafted and agreed on a four-nation basis with sensitivity to the issues affecting Northern Ireland. No framework can be published without clearance from NIE Ministers. In the case of final frameworks, clearance must be obtained from both the NIE First Minister and deputy First Minister.

Changes to the status of retained EU law

22. You set out your initial response to the UK Government’s announcement of plans to legislate on the status of retained EU law. What is your assessment of the extent to which changing the legal status of the body of retained EU law within devolved competence is devolved?

In the absence of more detail as to what retained EU law remains on the statute book and the detail of what the UK Government is proposing it is difficult to assess the impact on devolved competence. We would anticipate the review of retained EU law being relevant in a number of devolved areas, most notably environment and rural affairs.

However, we are mindful that there is a general restriction within paragraph 5 of schedule 7B of the Government of Wales Act 2006. This prevents a provision of an Act of the Senedd from making modifications to the European Union (Withdrawal) Act 2018, which incorporated EU law as it stood on 31 December 2020 into UK law as retained EU law and sets out its current status.

23. Do you think that the status of that law needs to be changed? If so, why and how should it be changed? If not, why not?

While it is acknowledged that the current status of retained EU law is complicated as are some of the distinctions as set out within the European Union (Withdrawal) Act 2018, in the absence of more detail as to what the UK Government is proposing it is difficult to assess any potential impact of the status review and the approach that we might wish to adopt. However, how the UK Government proposes to treat or categorise retained EU law and the implications for Wales will be of significant interest. We will continue to closely monitor the situation and provide the Senedd with regular updates on any new information.

24. The UK Government has set out plans to enable retained EU law to be amended more quickly. Could you confirm that any such changes in common framework areas will be managed through common frameworks?

Where there is any proposed change to a piece of retained EU law, and the subject of that retained EU law is covered by a framework, we would expect the common framework process to apply.

Future divergence from EU law

‘You said that the Welsh Government should hold EU standards as a minimum and that the Welsh Government intends to maintain and improve upon standards. You also confirmed that the Welsh Government will not be keeping pace with planned changes to EU law on blood, tissues and cells because a joint UK approach is preferred. In correspondence with us in November, you said that the Welsh Government does not have a “central mechanism” to monitor differences between EU and Welsh law.’

25. Without a central mechanism, how is the Welsh Government monitoring EU law to learn about and understand differences that may develop between Welsh and EU law?

In areas covered by Common Frameworks and through involvement in negotiations with the EU under the Trade and Cooperation Agreement, Welsh Government officials work closely with their counterparts in the other Governments of the UK and share information, including on relevant developments in EU law and the implications of the Northern Ireland Protocol.

26. What assessment have you made of the risks of involuntary or ‘passive’ divergence developing between EU law and Welsh law?

We are still at an early stage of this process of potential divergence and information is being developed along the lines of the previous answer.

27. On what basis do you assess whether a joint approach with other parts of the UK, keeping pace with EU law, or distinct Welsh legislation would be preferable?

This will vary from framework to framework.

28. How will your approach differ in different areas, for example Welsh Government priority areas or areas subject to the Trade and Cooperation Agreement’s level playing field provisions?

A bespoke approach will be required depending on the context and priorities of each framework area.

29. Do you think there are any risks that making decisions jointly through common frameworks could impede Welsh Government ambitions to improve upon standards?

Please see the answer to question five.

Yours sincerely,

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

Mick Antoniw AS/MS

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

Mick Antoniw MS
Counsel General and Minister for the Constitution

15 February 2022

Dear Mick

Common frameworks and retained EU law: request for further information

We would like to thank you and your officials for your oral evidence to the Committee on 31 January 2022.

We note you agreed to write on the divergence between Welsh law and EU law, and how you and the Welsh Government would see these matters being managed and, where necessary, what public scrutiny and public information is to be made available.

Within your anticipated correspondence, we would also be grateful if you could provide further information in relation to the following matters.

Progress of the common frameworks programme

In correspondence with us in November 2021, you said it would be 'hugely desirable' for common frameworks to be scrutinised and finalised by the time of the dissolution of the Northern Ireland Assembly. Due to delays in the publication of frameworks, this timeline is no longer realistic. We welcome your continued commitment to not finalising common frameworks until committees have had the opportunity to carry out scrutiny.

1. We consider it a significant step forward for transparency that most provisional common frameworks have now been published. Could you confirm if you expect that all common frameworks will be published at least in provisional form by the time of the dissolution of the Northern Ireland Assembly, with the exception of the frameworks for recognition of professional qualifications and services?

Transparency and accountability

We asked you about ensuring that the Senedd and stakeholders can understand common frameworks and their impact on Welsh Government decision-making.

We very much welcome your positive responses on:

- notifying the Senedd when legislation relates to a common framework;
 - notifying the Senedd when a common framework dispute is escalated to Ministers;
 - notifying the Senedd and stakeholders when a common framework is reviewed, and considering their recommendations before the review process concludes; and
 - publishing annual reports on all individual common frameworks.
2. Could you confirm that the Welsh Ministers will abide by these commitments, and set out in writing the processes that you will follow?

We also asked about meeting your commitment in the Inter-institutional Relations Agreement to “maintain a dedicated page of its website providing all relevant formal intergovernmental agreements, common frameworks, concordats, memorandums or other resolutions that the Welsh Government has in place with the UK Government.” You explained that finalised frameworks would be published on the Welsh Government website.

3. Given that common frameworks have now been in operation for over a year, we consider this insufficiently transparent. We believe that such a page should be set up as soon as possible, even if you consider it expedient to provide links to the UK Government website until frameworks are finalised. Could you confirm the date when you expect this to become available?

Making decisions and resolving disputes

We discussed how the four governments will make decisions and resolve disputes through common frameworks.

4. Common frameworks do not generally provide for stakeholders to be routinely involved in intergovernmental decision-making processes. Could you explain the reasons for this approach? How you will keep stakeholders routinely informed of intergovernmental discussions through common frameworks?
5. Some common frameworks provide for the making of legislation or policy to be postponed until the four governments have agreed on how to proceed. What risks have you identified with this approach?
6. Have any Welsh Government policies or initiatives been delayed because of the common frameworks process?

Cross-cutting issues

We discussed the intergovernmental agreement on the process for agreeing exclusions from the Internal Market Act in common framework areas and the agreement of standard text for common frameworks on international obligations and UK-EU agreements. We would be grateful for further information about how these processes will work in practice.

UK Internal Market Act

7. Is the Welsh Government seeking, or does it plan to seek, any exclusions through the process for agreeing exclusions from the Internal Market Act in common framework areas?
8. Does the Welsh Government support the Scottish Government's request for an exclusion from the Act for single use plastics legislation?
9. What principles or evidence would the Welsh Government rely on if it sought an exclusion?
10. Would the Welsh Government be likely to seek broad exclusions of whole policy areas, or exclusions of specific items of legislation?
11. At what point in policy development or the legislative process would the Welsh Government seek an exclusion?
12. Is the Welsh Government content to notify the Senedd and stakeholders when it seeks an exclusion?
13. Do you consider that finalised frameworks should make reference to the exclusions process?

Subsidy Control Bill

14. What concerns, if any, do you have about the impact of the UK Subsidy Control Bill on any common frameworks?

Professional Qualifications Bill

15. Do you have any concerns about the impact of the Professional Qualifications Bill on any common frameworks?

International obligations

16. You stated that the UK faces difficulties regarding international obligations. Could you give details of any difficulties you have identified arising from international obligations, particularly in devolved areas or in areas that affect Wales?
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the common framework". Do you consider that this gives the Welsh Government adequate involvement in the negotiation of international trade agreements in common framework areas?

UK-EU obligations

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21. Some stakeholders in Northern Ireland have raised concerns about the limited extent to which common frameworks are taking account of cross-border links on the island of Ireland. What consideration are the Welsh Ministers giving to this issue in deciding whether to approve common frameworks?

Changes to the status of retained EU law

You set out your initial response to the UK Government's announcement of plans to legislate on the status of retained EU law.

22. What is your assessment of the extent to which changing the legal status of the body of retained EU law within devolved competence is devolved?
23. Do you think that the status of that law needs to be changed? If so, why and how should it be changed? If not, why not?
24. The UK Government has set out plans to enable retained EU law to be amended more quickly. Could you confirm that any such changes in common framework areas will be managed through common frameworks?

Future divergence from EU law

You said that the Welsh Government should hold EU standards as a minimum and that the Welsh Government intends to maintain and improve upon standards. You also confirmed that the Welsh Government will not be keeping pace with planned changes to EU law on blood, tissues and cells because a joint UK approach is preferred. In correspondence with us in November, you said that the Welsh Government does not have a "central mechanism" to monitor differences between EU and Welsh law.

25. Without a central mechanism, how is the Welsh Government monitoring EU law to learn about and understand differences that may develop between Welsh and EU law?

26. What assessment have you made of the risks of involuntary or 'passive' divergence developing between EU law and Welsh law?
27. On what basis do you assess whether a joint approach with other parts of the UK, keeping pace with EU law, or distinct Welsh legislation would be preferable?
28. How will your approach differ in different areas, for example Welsh Government priority areas or areas subject to the Trade and Cooperation Agreement's level playing field provisions?
29. Do you think there are any risks that making decisions jointly through common frameworks could impede Welsh Government ambitions to improve upon standards?

We would be grateful to receive a response to these questions by 1 March.

Yours sincerely,

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

Huw Irranca-Davies
Chair

Agenda Item 2.1



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

hlcommonframeworks@parliament.uk

9 February 2022

The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
Department for Environment Food & Rural Affairs
Seacole Building
2 Marsham St
London
SW1P 4DF

Dear George,

Thank you for the Agricultural Support Provisional Framework that was published on 3 February and considered by the Committee on 8 February. We appreciate this framework being privately shared with our secretariat before its publication so we could prepare for scrutiny in a timely fashion. We note this to be a highly complex framework which covers a significant and evolving policy area. Whilst I want to confirm the Committee's intention to produce recommendations for this framework, there are several areas where we would first appreciate greater clarity.

We were concerned to notice several contradictions within the framework regarding the roles and operation of the various working groups referenced. In [previous correspondence](#) with you, we were told that the PCG would convene every three months, an idea supported on p25. However, Annex B states the PCG will "normally meet every month". Can you clarify how often will the PCG meet? On p25 we read that "The MMG will be supported by a standing DEFRA secretariat and the PCG will be supported by a rotating secretariat". Yet in Annex B, we read that the PCG will be "supported by a standing DEFRA secretariat". Can you confirm which group will be supported by a standing DEFRA secretariat, and which one will be supported by a rotating secretariat?

In [previous correspondence](#) with you, we were told that "The MMG and PCG work together to aid policy coordination and collaboration" but the framework does not outline this role. Could you clarify how the PCG and MMG will work together?

In Annex C, it sets out that one of the roles of the MMG is to provide a "platform for Policy Leads to consider UK MMG evidence at the separate UK Agriculture Market Policy Group (UKAMPG)". The Committee were unable to find any information on its existence. Could you provide further detail on this group?

On p22 it states that that the PCG will have "engagement with the industry via the proposed 'Farming Conference UK' or other working groups." The Committee were unable to find any information on this proposed group. Could you provide further detail on this group?

The Committee were unclear what the difference is between the senior officials on the PCG and the SOPB. Could you explain the difference?

We were also unclear how often reviews of the framework will take place after the first review. We read that "Further reviews will continue to take place annually at which point it can then be

reviewed every three years”. Does this mean reviews take place annually or only once every three years? Additionally, we were unclear as to who is responsible for conducting these reviews. Please could you provide further detail?

We are also increasingly concerned about the impact of the Subsidy Control Bill currently progressing through Parliament and its interaction with common frameworks. While we acknowledge Subsidy Control is a reserved area, powers and requirements within the Bill could have implications for agricultural policy across the UK. Within the Bill, we note that there are powers under which the Secretary of State can refer subsidies or subsidy schemes made by the devolved Governments to the Competition and Markets Authority (CMA) which could potentially have the effect of overriding the devolved governments when it comes to proposing subsidies (clauses 52 and 60). We are therefore concerned about how provisions in the Bill can be harmonised with the explicit equality of the Parties provided for in the framework in respect of agricultural support. Our concern not only relates to the provisions to which we have referred but also to clause 10(5) (streamlined subsidy schemes), clause 70(5) (standing before Competition and Markets Tribunal) and schedule 3 (review by the High Court or Court of Session for compliance with subsidy control principles of primary legislation of the devolved Parliaments which makes provision for subsidies or subsidy schemes).

We would therefore be grateful if you could first clarify which devolved areas covered by the scope of this framework could be impacted by the Subsidy Control Bill? Second, can you also clarify what would happen if the CMA or Competition Appeal Tribunal, High Court or Court of Session made a different decision on subsidies to one proposed or agreed within the framework?

In order to facilitate swift scrutiny of this framework, we ask that you respond within 5 working days.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee



Llywodraeth Cymru
Welsh Government

MA/LG/0454/22

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

Paul.Davies@senedd.wales

17 February 2022

Dear Paul,

In my letter to you on 4th February, I stated I would inform the Committee when documentation for the two unpublished frameworks within my portfolio was available for consideration.

I can confirm the Framework Outline Agreement and Concordat for the [Fisheries Management and Support framework](#) has now been published.

I will write to the Committee again to confirm when the documentation for the remaining framework in my portfolio, Zootechnical, is available for consideration.

I am copying this letter to Huw Irranca-Davies, Chair of the Senedd Legislation, Justice and Constitution 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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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.



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

hlcommonframeworks@parliament.uk

2 March 2022

The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
Department for Environment Food & Rural Affairs
Seacole Building
2 Marsham St
London
SW1P 4DF

Dear George,

Thank you for the Fisheries Management and Support Provisional Framework that was published on 17 February and considered by the Committee on 1 March. We appreciate this framework being privately shared with our secretariat before its publication so we could prepare for scrutiny in a timely fashion. We note that this was a clearly drafted framework, and that it is only one part of a wider network of legislative and non-legislative arrangements that make up the wider UK Fisheries Framework. We also welcome the acknowledgement of the principle that fisheries management is a devolved area in this common framework and the accompanying Memorandum of Understanding (FFMoU). However, we agree that a wider UK approach is also needed so the UK can adhere to its international obligations. Whilst I want to confirm the Committee's intention to produce a full set of recommendations, there are a few areas where further clarity is required to assist with our scrutiny.

We would appreciate some detail on why a common framework was considered necessary to add to the package of the wider UK Fisheries Framework. This is especially the case considering the multiple layers, and complexity, of the arrangements already in place. When the Committee considered the Frameworks Analysis 2021 report, a common reason cited for why officials assessed that common frameworks would not be needed in certain devolved areas with a previous EU intersect was that there were already "existing intergovernmental arrangements in place to ensure coherence and manage risk of divergence."¹ Considering this common framework is part of a complex network of arrangements that establish a wider UK fisheries management regime, including the Fisheries Act 2020, the Joint Fisheries Statement (JFS), and the FFMoU, it could be considered that these qualify as sufficient intergovernmental arrangements to manage any risk of divergence.

¹ Page 15, [Frameworks Analysis 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Could you explain why officials assessed that a common framework was additionally necessary for this policy area?

Regarding the working groups cited in the framework, we note that the text is not definite in stating what type of group would be required. The framework's text states that senior official discussion would take place via the Senior Steering Group (SSG) "or a similar forum". It would be helpful to get confirmation on what forum is currently being used as we understand the common frameworks are currently in operation.

It also refers to two levels of senior official working groups, including the SSG "or a similar forum", as well as another group of senior officials to which matters can be escalated: the Senior Officials Programme Board (SOPB). It is not clear what the difference is between these two levels of senior official working groups. Could you clarify what the difference is?

We also note that the framework states the FFMoU will be regularly reviewed, but that "it is not considered necessary to review the FOA in itself as the framework documents themselves are actively managed and have robust and dynamic review processes." However, we consider that as the FOA is also a component of the Common Frameworks Programme, its operation should also be kept under review and amended if necessary, as part of any ongoing evaluation of the Programme. Could you provide any further rationale for why it has been decided that reviewing the FOA itself is not necessary?

We again also note with concern the absence of any reference to the UK Internal Market Act's exclusions process. However, we acknowledge we are following up on this issue in separate correspondence with your department.

We again note the reference in this provisional framework to engagement with the Crown Dependencies. As asked in our recent letter on the Animal Health and Welfare Provisional Framework, we are unclear why they are referenced in your department's frameworks when they have not been included in others we have considered to date. Can you set out their role in relation to the Common Frameworks Programme, and why they are mentioned in this framework and others?

From recent correspondence with yourself, you are also aware that the Committee is scrutinising how the Subsidy Control Bill could interact with common frameworks. We understand that the devolved administrations have withheld granting legislative consent to the Bill. This is also of particular concern to us given the Bill has clear implications for the policy area covered by this framework, and considering the future Operational Agreement (OA) on Subsidies Grants and Future Funding. We note that page 37 of the provisional framework states that "The OA on funding will take full account of the Devolution Settlements and set out how the fisheries policy authorities will work together on the division and allocation of subsidies and grants in the UK." Considering the devolved administrations have withheld legislative consent to the Subsidy Control Bill because they believe it has concerning implications for devolved areas, can you clarify how you envision reconciling this commitment within the OA with the Bill? What are the implications of the Bill for the Subsidies Grants and Future Funding OA? Can you also provide detail on any discussions concerning the Subsidy Control Bill taking place within the framework?

It would also be helpful to get an update on a publication date for these OAs.

In order to facilitate the swift scrutiny of this framework, we ask that you respond within 5 working days.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee

Agenda Item 2.3

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



Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair,
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

21 February 2022

Dear Llyr Gruffydd MS

In my letter to you on 4th February, I stated I would inform the Committee when the documentation for the three unpublished frameworks within my portfolio was available for consideration.

I can confirm the Framework Outline Agreement and Concordat for the [Ozone Depleting Substances \(ODS\) and Fluorinated Greenhouse Gases \(F-Gases\)](#) has now been published.

I will write to the Committee again to confirm when the documentation for the two remaining frameworks, Resources and Waste and UK Emissions Trading Scheme, is available for consideration.

I am copying this letter to Huw Irranca-Davies, Chair of the Senedd Legislation, Justice and Constitution Committee.

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.

Agenda Item 2.4



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

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hlcommonframeworks@parliament.uk

23 February 2022

The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
Department for Environment Food & Rural Affairs
Seacole Building
2 Marsham St
London
SW1P 4DF

Dear George,

Thank you for the Animal Health and Welfare Provisional Framework that was published on 3 February and considered by the Committee on 22 February. We appreciate this framework being privately shared with our secretariat before its publication so we could prepare for scrutiny in a timely fashion. We note this is a highly complex framework which contains a substantial amount of detail about various groups involved in its operation. Whilst I want to confirm the Committee's intention to produce recommendations on this framework, there are several areas where we would first appreciate greater clarity. Given the high sensitivity and significance of the areas of policy that are covered by this framework, you will, I am sure, understand the Committee's concerns.

In our scrutiny of this framework, we have noticed several errors and inconsistencies in the text. Following our initial scrutiny of the Agricultural Support Provisional Framework, we now have serious concerns regarding the quality control of your department's frameworks. Some of these we have highlighted in this letter. This is also manifest in the fact that the framework is extremely difficult to read. Acronyms are used excessively to the point it makes the text challenging to follow. There are also instances where it is suggested that care has not been taken to fully proofread the framework. For example, on p56 it states that the SOPB is "set out at Annex 5.1 below", but this is not the case. On p24, we are also told the dispute process is outlined in figure 2, but no diagram is labelled figure 2. We are therefore concerned that not enough care has been taken to ensure the frameworks were of a high enough quality before they were published. Could you outline what quality control measures are in place before the publishing of your department's frameworks?

We were also concerned about the lack of information in the framework about discussion groups, especially in contrast to the extensive information given about decision-making groups. Could you provide more information on the role and operation of the Chief Veterinary Officers (CVOs), Veterinary Risk Group (VRG), Outbreak Readiness Board (ORB), and Disease Emergency Response Committee (DERC)? Could you also outline who these groups report to?

We were unclear whether the CVOs are a decision-making or a discussion group. In Annex 2, the CVOs are listed as a “Discussion fora”. Yet on p32, the CVOs are listed alongside the decision-making groups. Could you clarify what type of group the CVO is?

We were also not clear on the ORB. On p20 we read that an existing discussion group is the “Outbreak Readiness Board (ORB)” which is overseen by the ADPG (p60). Yet on p59 the “Operational Readiness Board (ORB)” are mentioned, whose chair sits on the ADPG. Annex 2 also lists the “Operational Readiness Board” as a discussion group. Are there two discussion groups with the acronym ‘ORB’? If there are, what is the difference between these groups?

We read in the framework that the AAHPG, ADPG and TBLG can all “schedule additional meetings or consider relevant issues through a written procedure.” However, this written procedure is not outlined in the framework. Could you outline the procedure?

In the terms of reference of the AAHPG, ADPG and SOPB, there is no mention of who takes the role of the chair. Could you clarify who takes this role?

In Annex 6.3 we read that the “TBLG does not report to the Senior Officials Programme Board (SOPB). However, any dispute that is being escalated to Ministerial level should first be discussed by the SOPB”. Could you outline what this means in practice? How can the TBLG simultaneously not report to the SOPB and be required to report to them in the dispute resolution process?

On p22, we read that decision-making groups may commission work where required to help inform their decision making. However, “The scope and who is involved in that work should be decided at a joint decision-making group or between all four CVOs”. Could you clarify who the joint decision-making group is?

Could you clarify the membership of the SOPB? In the section that supposedly lists members, we read “Membership of the EU Exit Programme Board comprises of the following...” Who is the EU Exit Programme Board?

The SOPB’s terms of reference refer several times to “operational readiness projects” carried out by sub-groups. Could you clarify who carries out operational readiness projects, and what their purpose is?

On p71 we learn that the AAHPG “will present papers to the APG (Animal policy group), which is attended by CVOs, DCVOs and other senior officials from the four UK nations”. However, no further information about this Animal Policy Group is provided. Could you provide more information about this group?

We were not clear on the role the UK Office for SPS Trade Assurance plays in the framework. For example, on p26 we read “The UK Office for SPS Trade Assurance ... will not have a substantial role in the Framework”. A mere three pages later, we read “The UK Office for SPS Trade Assurance will play a key role within the AHW Framework governance arrangements.” Could you please clarify what role the Office will play in the framework? Furthermore, p26 indicates that although the Office will have little to do with the framework, “its co-ordination and Secretariat functions will ensure that the Parties work

effectively together to meet our international obligations.” Could you clarify what its secretariat functions are?

On p34, we read that “There is an option for an independent review panel to be brought in to review the Framework if one or more Parties wishes to trigger a review. The appointed reviewer would collectively agree a body to undertake this review”. This seems to contradict with p23 where the “ADPG would collectively agree a body and the impartiality level to undertake this review”. Could you clarify who decides which body will undertake a review? Additionally, p23 asserts that after the first review, “the frequency of reviews should be proposed by ADPG to the relevant decision-makers”. Could you clarify who the relevant decision-makers are?

We were not clear on who requests to amend the framework should be directed to. P23 states that “Requests to amend any element of the Framework should be raised to the ADPG”, but p34 seems to contradict this by saying “requests to amend any element of the Framework should be raised to the appointed reviewer”, which could be the ADPG or an independent reviewer. Could you clarify who requests should be raised to?

Furthermore, it is our understanding that the Crown Dependencies are engaged with this common framework as the UK government acts on their behalf when signing up to international agreements. This fact seems likely to apply to many DEFRA frameworks which include within their scope international obligations and treaties. Could you confirm if the Crown Dependencies interact with frameworks across your portfolio? Could you identify these frameworks?

We were therefore concerned that the framework clearly anticipates that the Crown Dependencies have a relationship to the framework, but that this relationship has not been clearly thought out: “Further consideration will need to be given to the Crown Dependencies and the extent to which they might have a connection to the Framework arrangements.” Could you please provide more detail on how, and why, the Crown Dependencies might have a connection to the framework? Why do no working groups have members representing the Crown Dependencies?

Finally, in addition to the many issues we have identified as likely to cause confusion and indeed contradiction, we also remain very concerned to see that the UK Internal Market Act and the Process for agreeing exclusions is not referenced in the provisional framework. However, we acknowledge that correspondence on this issue with you remains ongoing.

In order to facilitate the swift scrutiny of this framework, we ask that you respond within 5 working days.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/0218/22

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

Huw.irranca-davies@senedd.wales

2 March 2022

Dear Huw,

I am writing to inform you of my approval being granted for a Statutory Instrument being made by the UK Government which contains elements within the competence of Welsh Ministers.

The Agriculture and Horticulture Development Board (Amendment Order 2022) will make changes to the Agriculture and Horticulture Development Board Order 2008, a UK wide SI, following a UK wide consultation with industry and stakeholders.

I am agreeing, in this case, to give approval to Victoria Prentis, the Minister for Farming, Fisheries and Food to make changes to The Agriculture and Horticulture Development Board Order 2008. The Agriculture and Horticulture Development Board was established by the 2008 Order under powers provided in the Natural Environment and Rural Communities Act 2006 (the NERC Act).

This instrument amends the 2008 Order and is made by the Secretary of State under powers conferred by sections 87(1)(a), 88 and 97(1) of, and paragraphs 5 and 6 of Schedule 10 to, the Natural Environment and Rural Communities Act 2006 with the approval of Welsh Ministers.

Section 87 of the NERC Act provides the "appropriate authority" with the power to make an Order which establishes a body for a purpose or purposes falling within section 88 (Permissible purposes of boards) and to assign to it a function or functions falling within section 89 (Permissible functions of boards).

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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.

The “appropriate authority” is defined in section 96(1) of the NERC Act, in relation to the matters mentioned in subsection 96(2), the SoS acting with the approval of the National Assembly for Wales, the Scottish Ministers or (as the case may be) the relevant Northern Ireland department. For current purposes, the matters are “exercising other powers in relation to a cross-border function of a board”.

The period for which I am giving approval is limited to the passage of the Regulations.

Under Section 96(1) of the NERC Act, the Welsh Ministers are the “appropriate authority” and have the power to legislate in relation to matters concerning Wales. However, as the proposed amendments will affect the cross-border functions of AHDB, the SoS (with the approval of the Devolved Governments) is the appropriate authority. The Welsh Ministers are not, under the powers contained in the NERC Act, able to make an SI of this nature.

Wales’ interests remain protected with the passage of the Order which requires the approval of Welsh Ministers.

Welsh Government officials discussed and refined the 2022 Amendment Order with counterparts in DEFRA, the Scottish Government and DAERA, including the development of the consultation document and the responses which have shaped the content of the Order. The UK Government continue to recognise the areas in which the Order applies to Wales as within the competence of Welsh Ministers. DEFRA officials have been aware of the need to seek the approval of Welsh Ministers for the 2022 Amendment Order and have fully engaged with officials as the Order has been drafted and reflected comments within the Order.

I am copying this letter to the Economy, Trade, and Rural Affairs Committee for their information.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

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

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

By email: SeneddHealth@senedd.wales

28 February 2022

Dear Huw,

Thank you for your letter of 21 February regarding the Supplementary Legislative Consent Memoranda (Memoranda No. 2 and No. 3) (the SLCMs) on the Health and Care Bill (the Bill) and my response of 15 February to your Committee's report of 14 February.

You have raised two issues which I will address in turn below.

Firstly, the provision in the Bill to provide the Welsh Ministers with a regulation making power to bring into force the amendments to section 88 of the 2006 Act referred to in Memorandum No. 2. I apologise if my letter of 15 February was not sufficiently clear in this regard. The letter more correctly should have stated that as per the Legislative Consent Motion, the consent of the Senedd was being sought in relation **to provisions in the Health and Care Bill in so far as they fall within the legislative competence of the Senedd**, rather than consent to the Bill in its entirety. I apologise for any confusion from this. However it is still the case that the consent of the Senedd was being sought to the provisions collectively, as is usually the case for Legislative Consent Motions, and I do not agree there was any ambiguity as to what the Senedd was being asked to give consent to.

Secondly, you have asked for further information regarding my view that clauses in the Bill, which provide the Secretary of State with powers to amend Senedd legislation which is consequential upon provisions of the Bill, presents a minor constitutional risk. Specifically, around my decision not to pursue an amendment to the Bill to carve out the Government of Wales Act 2006 from any consequential amendments made by the Secretary of State under these powers.

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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.

As you are aware, the decision to recommend Senedd consent with regard to these provisions was taken following much consideration. The conclusion I reached that the provisions represented a minor constitutional risk, as set out in Memorandum No. 3 and my letter of 14 February, is based on discussions with the UK Government about the intended use of the powers, the sight of examples of the likely usage of the powers and the Despatch Box Statement made in the House of Lords on 9 February by Lord Kamall. The UK Government has specifically confirmed that it has no plan to use the powers, which are consequential on the Bill, to amend the Government of Wales Act 2006. The Welsh Government accepts the commitments given by the UK Government.

I would again reiterate that this is not solely the practice of the UK Government. We have made similar provision in Senedd Acts to make consequential amendments to UK Government legislation.

Taken together these are the factors on which I reached my conclusion and my decision not to pursue an amendment to the Bill in this regard.

I am copying this letter to the Llywydd, the First Minister, the Counsel General and Minister for the Constitution and to Russell George MS, Chair of the Health and Social Care Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Eluned Morgan MS

Minister for Health and Social Services

21 February 2022

Dear Eluned

Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Health and Care Bill – response to Committee's report

Thank you again for providing a formal written response to our report on the Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Health and Care Bill on the morning of Tuesday 15 February, in advance of the Senedd's consideration of a legislative consent motion for the Bill that same afternoon.

There is one matter of particular importance raised in your written response which requires urgent attention. In your response to recommendation 4 in our report on Memoranda No's 2 and 3 (which asked you to explain why you were not seeking the Senedd's consent for clause 153 of the Bill), you said:

"The Committee will be aware that the consent of the Senedd is being sought to the Bill in its entirety and not on a clause by clause basis."

This is not the position as set out in the three memoranda you have laid before the Senedd in relation to the Bill, and on which basis the consent of the Senedd was sought – and granted – on 15 February.

The vast majority of the Bill – a Bill which spans over 170 clauses and almost 20 Schedules – does not make provision within a devolved purpose (or include provision which modifies the competence of the Senedd).

I note that the wording of the motion agreed by the Senedd referred to “provisions in the Health and Care Bill in so far as they fall within the legislative competence of the Senedd”. The motion also references the three memoranda which you have laid for this Bill.

The Senedd must be made fully aware of what a Welsh Government Minister is asking it to consent to. Given that the correspondence to my Committee is at odds with the memoranda, on this occasion, there is now a worrying and unwelcome ambiguity as to what you have asked of, and recommended to, the Senedd. This is a serious matter, which requires urgent clarification.

Therefore, I would be grateful to receive a response from you which addresses and clarifies your position by Monday 28 February. Given the potential significance of the matter, I am copying the letter to the Llywydd.

I also take the opportunity to remind you of the request I made during the Plenary debate on the consent motion for the Bill, that you write to us to provide a fuller explanation of the “minor constitutional risk” of which you spoke in Memorandum No. 3. We would also be grateful to understand more regarding your decision not to pursue an amendment to the Bill so that its powers cannot be used by UK Ministers to make regulations that amend the *Government of Wales Act 2006*.

The Committee will fully consider your response to our report at our next meeting, and we may write to you further at that point should we wish to follow-up on any other matters.

I am also copying the letter to the First Minister, and to the Counsel General and Minister for the Constitution.

Yours sincerely,

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

Huw Irranca-Davies

Chair



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

By email: SeneddHealth@senedd.wales

15 February 2022

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee's report laid on 14 February on the Supplementary Legislative Consent Memoranda (Memoranda No. 2 and No. 3) (the SLCMs) on the Health and Care Bill (the Bill).

I note the Committee's comments on the Bill and the SLCMs laid on 17 December 2021 and 28 January 2022 respectively.

Please find my responses to your specific recommendations below.

Recommendation 1 - Clause 87 (formerly Clause 85) (Medicines information systems)

Recommendation 1

The Minister should, before or during the debate on the relevant consent motion, provide an update to the Senedd on progress being made by the Welsh and UK Governments to finalise the Memorandum of Understanding concerning Medicines Information Systems, and confirm whether it will be in place before the relevant provisions in the Bill (if and once enacted) come into force.

Response

The Committee can be assured that the Memorandum of Understanding in relation to Medicines Information Systems is being progressed. The UK Government has stated that it will do its best to have the Memorandum in place before the provisions come into effect, but at the very latest in advance of drafting of regulations.

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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 2 and 3 - Clauses 149, 144 and 91 (formerly clauses 89, 125 and 130): Consequential Amendments to Senedd Legislation

Recommendation 2

The Minister, should in advance of the Senedd's debate on the relevant legislative consent motion, explain and quantify the risk she describes in paragraph 33 of Memorandum No 3.

Response

These clauses provide the Secretary of State with the power, by regulations, to make provision which is consequential on the Bill. This includes provision that amends, repeals, revokes or otherwise modifies provision made by, or under, an Act or Measure of the Senedd.

As set out in my letter to the Committee of 3 February, and the SLCM (No. 3), I and my officials have met with Edward Argar MP, the Minister of State for Health, and his officials on a number of occasions to discuss these provisions. The UK Government is of the view that these are standard clauses and I reiterate it is the case that Wales similarly takes powers in Senedd Acts to make consequential amendments to UK Government legislation.

UK Government officials have provided examples of how these powers may be used – the amendments likely would be of a minor nature, for example the changing of the name of an English organisation which is referred to in Senedd legislation where a transfer of functions has occurred. They have also specifically confirmed that they do not plan to use the powers in clause 149 to amend the Government of Wales Act 2006. The Minister of State for Health has, through Lord Kamall, also now made the Dispatch Box Statement in relation to clauses 91 and 149, on how these powers might be used. The Statement was made in the House of Lords on 9 February. As advised in my previous response, the UK Government has not identified clause 144 as requiring the legislative consent of the Senedd and therefore would not have been included in the Dispatch Box Statement.

On the basis of all the assurances given by the UK Government and the Statement, I am of the view that the risk to Senedd legislation presented by the provisions is minor and recommend Senedd consent to clauses 91, 144 and 149 should be given.

Recommendation 3

The Minister should 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, in advance of the Senedd's debate on the relevant consent motion, confirm that she has sought such an amendment and provide an update to the Senedd on the latest position

Response

As I have set out above in my response to the Committee's Recommendation No 2, I have discussed these provisions with UK Government at length and am satisfied with all the assurances provided by the UK Government. Consequently I have not approached the UK Government to request that such an amendment be made.

Recommendation 4 - Clauses 135 and 153 – Community Pharmacies

Recommendation 4

The Minister should, in advance of the Senedd's debate on the relevant consent motion, explain in full why she is not seeking the Senedd's consent for clause 153 of the Bill.

Response

I would assure the Committee that Senedd consent is being sought to all the clauses in the Bill that impact on devolved competence. In SLCM (No. 2), I included a section on the clause about Reimbursement to Community Pharmacies and within that section the amendments to clause 153 (now clause 169) which provide the Welsh Ministers with the regulation making powers on commencement of the clause were referred to (paragraph 47). In paragraph 53 of the SLCM (No 2), I stated that the amendments referred to in the preceding paragraphs fell within the legislative competence of the Senedd as the purpose of the amendments related to devolved matters.

The relevant provisions in clause 153 (now clause 169) do not do anything substantive other than allow the Welsh Ministers to commence provisions which Senedd consent is already sought on in the SLCM (No 2). Therefore whilst the wording could possibly have been clearer, the relevant provision within that clause is linked to the substantive provision in the clause on Reimbursement to Community Pharmacies.

In SLCM (No. 2) I stated that I was content with clause 135. The Committee will be aware that the consent of the Senedd is being sought to the Bill in its entirety and not on a clause by clause basis. I consider therefore that clause 153 (now clause 169) has been included and that the consent of the Senedd is being sought for it.

With regard to the Committee's point in the report about the regulations to commence the clause on Reimbursement to Community Pharmacies being subject to no legislative procedure, I would advise that this is standard practice for commencement orders and the regulation making power only enables the Welsh Ministers to commence substantive provisions (or make related transitional or saving provision in connection with commencement).

Recommendations 5, 6, 7 and 8 – Clause 136 – International Healthcare Agreements

Recommendation 5

In the absence of amendments being tabled to the face of the Bill in line with recommendation 5 in our first report, we believe that the Secretary of State should make information publicly available regarding the broad tests and criteria that will be used in determining what is an 'exceptional circumstance' for the purpose of clause 136. The Minister should pursue this matter directly with the Secretary of State

Response

As set out in my letter to the Committee of 3 February, it is my view that it is not appropriate to put a clear and proportionate test on the face of the Bill for what would qualify as an 'exceptional circumstance' for the purposes of the amount or type of healthcare that can be funded outside of an international healthcare agreement as this could have a detrimental or limiting impact to provide support when needed.

I note the request of Committee that the Secretary of State should make information publicly available regarding the broad tests and criteria that will be used in determining

what is an 'exceptional circumstance' for the purpose of clause 136. I will explore this with UK Government.

Recommendation 6

The Minister should work proactively with the UK Government and other devolved governments to ensure that the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation is updated as soon as possible to reflect the new intergovernmental relations arrangements (including dispute resolution processes) agreed and announced on 13 January 2022.

Response

My officials have already advised their counterparts in the Department of Health and Social Care of the need to do this and there is full acceptance and commitment to do so.

Recommendation 7

Further to recommendation 6, the Minister must provide to the Senedd the updated version of the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation as soon as it is agreed and finalised.

Response

I will provide the Senedd with the updated version of the reciprocal healthcare Memorandum of Understanding as soon as it is amended and agreed by all four nations.

Recommendation 8

As the Committee responsible for the scrutiny of non-trade international agreements, the Minister should commit to notify us of any forthcoming international agreements which will fall within the remit of the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation.

Response

I am happy to notify Committee of any such agreements at such point in the negotiation process when this information can be made public.

I am copying this letter to Russell George MS, Chair of the Health and Social Care Committee.

Yours sincerely



Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



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

28 February 2022

Dear Huw,

Thank you for your letter of 28 January to both me and the First Minister setting out the outcome of the Committee's scrutiny of the Welsh Government's draft budget for 2022-23 as it relates to justice and legislative activities. I am responding on our joint behalf.

At the outset, I would like to thank the Committee for its on-going interest in our resourcing of justice related and legislative activity. The First Minister and I have provided information on the issue to the Committee by letters dated 10 and 17 January and 22 February. I appeared before the Committee on 17 January and I look forward to doing so again on 28 February as the Committee continues its work.

Turning to the recommendations and questions set out in your letter, I can reply as follows:

Recommendation 1: The Welsh Government should explain how it will monitor and evaluate the effectiveness of funding allocated within the Justice Commission in Wales BEL.

Recommendation 2: We would welcome greater clarity and details on what work to develop and publish a justice work programme will be delivered from within the Justice Commission in Wales BEL in 2022-23.

Recommendation 6: The Counsel General should commit to an annual report highlighting progress in delivering the justice work programme and evaluating outcomes against spending in relation to all individual components, highlighting also the contributions of relevant organisations as part of this process.

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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.

The Cabinet Sub-Committee on Justice was established to:

- provide strategic leadership for justice functions currently devolved to Wales;
- direct all governmental activity in response to the report of the Commission on Justice in Wales;
- ensure synergy across portfolios to ensure a coordinated approach to justice matters;
- agree Welsh Government positions on justice initiatives arising from the UK Government; and
- lead discussions with the UK Government on devolution of justice.

The Welsh Government's Justice Policy Division supports the Cabinet Sub-Committee in all of these functions, allowing the Sub-Committee to oversee activity across Welsh Government. Within the division, the majority of staff work on activity that contributes directly to the Programme for Government commitment to pursue the case for the devolution of policing and justice. It is this work – following on from the Commission on Justice in Wales – which is funded through the Justice Commission in Wales BEL.

This work includes both the creation and monitoring of the overall work programme, and also leading on the delivery of particular elements of the programme. For example, much of the Welsh Government's activity in seeking to strengthen Wales's legal sector is led by the staff funded from this BEL, such as the work to establish the Law Council of Wales and work that is being done to consider the case for solicitor apprenticeships; but these and other actions to strengthen the sector also require working closely with other parts of Welsh Government responsible for areas such as business development, further and higher education, procurement of legal services and more.

As indicated in my appearance before the Committee, this BEL also includes the staff who are working on proposals for reform of the tribunals, following the report of the Law Commission. Again, this is an important part of our response to the Commission on Justice in Wales and our pursuit of the case for devolution of justice – which, as I said to the Committee, is not just done by talking about devolution, but also by demonstrating our approach and our values through the actions we are taking.

In terms of monitoring and evaluation, the publication in the spring will set out our programme of justice-related activity, building on the initial work programme which the Committee has previously seen. This will provide a basis for both internal and external monitoring of progress. Internal monitoring of progress will be overseen by the Cabinet Sub-Committee, supported by the Justice Policy Division. Individual ministers and their officials will of course be responsible for monitoring and driving progress on individual elements of the overall work programme, with the Minister for Social Justice having a particularly important role as a large part of the activity falls within her portfolio or is closely related to it.

Evaluation of individual elements of the overall programme is ongoing, at the appropriate points – for example, plans are in place to evaluate the Family Drug and Alcohol Court pilot. We will evaluate the effectiveness of the specific funding in the Justice Commission BEL as we monitor progress against the Programme for Government commitment. However, in terms of allowing for external monitoring of progress, I am happy to make the commitment that we will bring forward an annual report setting out progress against the objectives in the programme of activity we plan to bring forward in our spring publication.

Recommendation 3: The Welsh Government should provide more detail about how this £4.2 million is used for that administration and support. In particular, we would welcome information about how much funding is allocated or set aside for improving remote access for citizens, investing in new technology and maintaining and improving physical and built infrastructure.

In the current financial year, the £4.2 million budget for the Welsh Tribunals is allocated between tribunal running costs including the costs associated with hearings (£2.9 million) and staff salaries which support the administration of the six Welsh Tribunals (£1.2 million). The budget allocation does not make specific provision for improvements to remote access for citizens and the physical and built infrastructure.

The President of Welsh Tribunals in his Annual Report for 2020-21 and in evidence to the Committee on 1 November 2021 has reported that the Welsh Tribunals have been able to operate remotely, and to do so successfully, in response to the pandemic. It is to the credit of the President, judicial leads, tribunal members and the staff of the Welsh Tribunals Unit that they have been able to make use of technology to ensure cases have been able to progress in the face of difficult circumstances.

One of the President's priorities, set out in the President's Annual Report, is to consider the way in which the Welsh Tribunals should operate going forward and the balance of how they should do so working remotely and face-to-face.

Recommendation 4: The Welsh Government should work toward disaggregating spending on justice in future budgets. For each BEL identified in the First Minister's letter of 10 January, the Welsh Government should identify relevant funding targeted at justice-related work. We believe this would be beneficial not just for scrutiny, transparency and accountability, but also for the Welsh Government in delivering better justice outcomes. We also see this process as being important in readiness for any future devolution of justice functions, when such an approach would be essential.

We publish significant amounts of information as part of our draft budget but we recognise there is always more we can do to improve transparency, as recognised in our annual Budget Improvement Plan. We also recognise the Committee's point that it is useful to the Welsh Government to be able to understand more fully the volume of its own expenditure which goes towards supporting the delivery of justice. As part of the on-going justice transformation programme, we will explore the ways in which we can improve the level of information we provide about justice expenditure.

Recommendation 5: The justice work programme should contain measurable actions and specific programmes for delivery that are fully costed.

We have noted this recommendation and will bear it in mind in the context of the preparation and future monitoring of our justice publication, referenced above.

Recommendation 7: The Welsh Government should provide a detailed breakdown of funding for advice services and should evaluate outcomes against spending on advice services as part of its annual report on justice.

The Welsh Government's commitment to supporting advice services is being maintained through the Single Advice Fund ("SAF"). We agree with the Committee that it is important to evaluate the effectiveness of spending through this fund, and intend to commission independent research to review its effectiveness as a delivery model. The research will focus on whether the SAF is achieving its key objectives, including if the SAF is:

- encouraging better collaboration amongst providers to improve the efficiency of service planning and delivery;
- promoting early access to advice services to vulnerable groups; and
- ensuring that people accessing advice are given opportunity to develop resilience to future social welfare problems.

This review will also consider findings from the Commission on Justice in Wales, which queried whether the approach of a single fund, founded upon collaborative partnership delivery model, might be a barrier to niche advice providers accessing Welsh Government funding; and it will of course also take into account the impacts of the pandemic. This work is expected to begin in April and report in the autumn so as to inform decisions for future funding, and we also note the Committee's recommendation that the outcome of that evaluation should form part of the Welsh Government's annual report.

Recommendation 8: In order to provide us with some baseline data, it would be helpful if the Welsh Government could provide details, for the current financial year of:

- a. the number of FTE staff it employs with a legal role;***
- b. the number of FTE primary legislative drafting lawyers it employs;***
- c. the number of FTE departmental lawyers that are employed and of those, how many either draft policy instructions for Bills or draft subordinate legislation;***
- d. how many FTE staff have been involved in drafting subordinate legislation relating to EU exit and coronavirus regulations;***
- e. how many other FTE staff, specialist or otherwise, are involved in the preparation of legislative proposals;***
- f. a view on how the information provided in relation to a to e above compares to previous financial years;***
- g. any other baseline data that the Welsh Government would deem to be useful.***

Recommendation 9: It would be helpful if the Counsel General could set out how much resource is currently allocated to deal with the drafting of legislation relating to EU exit and coronavirus regulations.

As I explained in my letter of 22 February, the work to deliver the legislative programme is an element of the work of the Government as a whole. Consequently, there is not a separate resource allocation for that activity: instead resource is allocated on a portfolio basis. The Government does not keep records of the numbers of all staff or FTEs working on legislation and given that many staff work on legislation as part of a wider role, this would not be a reliable reflection of resources allocated to legislation in any case.

Recommendation 10: In addition to providing the information requested in our letter to the First Minister of 10 December 2021, we would be grateful if the Counsel General could detail the resources he intends allocating and the programmes he will be introducing in the next financial year and subsequent financial years, to ensure that the Welsh Government has sufficient resource to deliver the Welsh Government's legislative programme and to address the challenges he identifies.

I set out in my letter of 22 February the steps the Government is taking to ensure we manage the pressures on our capacity to legislate.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

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

The Rt Hon. Mark Drakeford MS

First Minister

Mick Antoniw MS

Counsel General and Minister for the Constitution

28 January 2022

Dear both

Draft Budget 2022-23

I am writing to provide you with the outcome of our scrutiny of the Welsh Government's draft budget for 2022-23 as it applies within your areas of responsibility (although we recognise that it cuts across the responsibilities of other Ministerial portfolios). Our recommendations below therefore concern two specific areas: justice and legislative activities.

In order to assist with our work, we sought information from the First Minister on 10 December 2021 and a response to our request was received on 10 January 2022. We are grateful for this response and the evidence provided by the Counsel General on 17 January 2022.

Justice

This is the first time a scrutiny committee in the Senedd has undertaken budget scrutiny of the Welsh Government's justice-related spending and as such, marks an important milestone in improving the scrutiny of these issues in the Senedd and Wales.

In his letter to us of 10 January, the First Minister provided us with information indicating the resourcing lines within the draft budget *from which* justice work will be delivered. In so doing, he highlighted that spending on justice-related activity is not separately disaggregated, reflecting "the reality that the devolution settlement now in place does not fund the Welsh Government to have a

justice function" and that current justice related activity cuts across various Ministerial portfolios and MEGs.

Central Services Administration MEG

This MEG contains budget expenditure lines (BELs) for the Justice Commission in Wales and Tribunals.

In the Justice Commission in Wales BEL, £490,000 is allocated for 2022-23 and the two subsequent financial years. An official accompanying the Counsel General stated that the allocation is for the following activities:

*"coming on for two thirds ... is the cost of half a dozen staff to oversee the recommendations and support the Cabinet sub-committee in developing its work programme, taking it forward. And the remainder is a small budget that can be used on research and events, stakeholder engagement and the like. It's not all allocated, every penny of it, for each of the next three years, but it is obviously a commitment to there being funding available to keep this work moving over the next three years."*¹

The official accompanying the Counsel General also told us that the figure also includes Welsh Government staff working to take forward the Law Commission of England and Wales's recommendations on devolved tribunals in Wales. We were told that this accounts for a "significant proportion of the £490,000..."²

Recommendation 1: The Welsh Government should explain how it will monitor and evaluate the effectiveness of funding allocated within the Justice Commission in Wales BEL.

The Counsel General indicated that resources for this budget line would be used to develop a work programme for the Cabinet Sub-committee on Justice. He also referred to publication of "a programme related to the issues around social justice and the devolution of justice and a strategy in the spring".³

We are making the assumption that the strategy will be developed from the justice work programme but will refer to the latter throughout this letter.

Recommendation 2: We would welcome greater clarity and details on what work to develop and publish a justice work programme will be delivered from within the Justice Commission in Wales BEL in 2022-23.

¹ LJC Committee, RoP [29], 17 January 2022

² LJC Committee, RoP [65], 17 January 2022

³ LJC Committee, RoP [18], 17 January 2022

As regards the Tribunals MEG, we note the allocation of some £4.2 million for the administration and support of the Welsh Tribunals in 2022-23. We highlighted in the evidence session the important role played by Welsh Tribunals during the pandemic and the way in which they have responded to the challenges of coronavirus and the need to operate remotely.

Recommendation 3: The Welsh Government should provide more detail about how this £4.2 million is used for that administration and support. In particular, we would welcome information about how much funding is allocated or set aside for improving remote access for citizens, investing in new technology and maintaining and improving physical and built infrastructure.

In making this recommendation, we recognise the leadership role of the President of the Welsh Tribunals. However, the Welsh Tribunals Units, which administers Welsh Tribunals, is currently part of the Welsh Government (being neither an executive agency nor a non-ministerial department).

Cross-government funding

In his letter to us of 10 January, the First Minister confirmed that Welsh Government funding for justice is not confined to the Central Services and Administration MEG, but cuts across the Economy, Health and Social Services, and Social Justice MEGs.

However, the First Minister also said that:

"as part of the on-going justice transformation programme we will explore if there are any ways in which we can improve the level of information we provide about justice expenditure."

Recommendation 4: The Welsh Government should work toward disaggregating spending on justice in future budgets. For each BEL identified in the First Minister's letter of 10 January, the Welsh Government should identify relevant funding targeted at justice-related work. We believe this would be beneficial not just for scrutiny, transparency and accountability, but also for the Welsh Government in delivering better justice outcomes. We also see this process as being important in readiness for any future devolution of justice functions, when such an approach would be essential.

During our evidence session, as indicated above, the Counsel General made reference to publishing the justice work programme.

Recommendation 5: The justice work programme should contain measurable actions and specific programmes for delivery that are fully costed.

The Counsel General highlighted the challenge of ensuring that there is a collaborative, co-ordinated and joined-up approach between all relevant organisations to delivering and improving justice-related services.⁴

When it was suggested that an annual report would be appropriate, pulling together the work of all the disparate organisations to improve accountability and the monitoring of progress, the Counsel General acknowledged the need to bring together all existing reporting mechanisms.⁵ He stated that “an annual or comprehensive justice report on progress” would be “very useful in terms of monitoring and scrutinising the progress that's been made in these areas cohesively”.⁶

Recommendation 6: The Counsel General should commit to an annual report highlighting progress in delivering the justice work programme and evaluating outcomes against spending in relation to all individual components, highlighting also the contributions of relevant organisations as part of this process.

During our evidence session with the Counsel General, we discussed the importance of Welsh Government funding for advice services in ensuring access to justice. The draft budget allocates over £10m to advice services in the Social Justice MEG for 2022-23.

In his letter of 10 January, the First Minister explained that this funding is for the implementation of the Information and Advice Action Plan and that it includes grant funding for social welfare advice services through the Single Advice Fund, implementation of the Advice Quality Framework, and the “promotion of networking as a means of helping people attain a better understanding of accessing their individual rights”.

Recommendation 7: The Welsh Government should provide a detailed breakdown of funding for advice services and should evaluate outcomes against spending on advice services as part of its annual report on justice.

We believe that, in accepting these recommendations, the Welsh Government will help deliver a recommendation of the Commission on Justice in Wales for the Welsh Government to strengthen leadership and accountability on justice matters, which was highlighted in the First Minister’s letter of 10 January.

⁴ LJC Committee, RoP [36-39], 17 January 2022

⁵ LJC Committee, RoP [40-41], 17 January 2022

⁶ LJC Committee, RoP [43], 17 January 2022

Legislative Activities

Following the Counsel General's evidence to us on 29 November 2021, we sought further information on legislative capacity and the accessibility of Welsh law in our letter of 3 December 2021.

In our letter to the First Minister of 10 December, we asked for the following information:

- Any resources within the draft budget to increase capacity within the Welsh Government to meet these legislative demands, including recruiting new staff, increasing expertise and retaining existing staff, and potentially buying-in, seconding or otherwise acquiring additional expertise.
- Any resources within the draft budget for delivery of the Welsh Government's programme for improving the accessibility of Welsh law.

In his response on the 10 January, the First Minister said that the Counsel General was writing to us separately on matters that include legislative capacity and the accessibility of Welsh law.

The Counsel General's letter of 17 January 2022 responded to our letter of 3 December, but did not address the issues we requested in our letter to the First Minister of 10 December and to which the First Minister had suggested the Counsel General would (at some point) be responding.

In the Counsel General's letter of 17 January, he made a comment that we consider to be of considerable constitutional significance and of relevance to fundamental democratic principles:

*"... there is a need for the Welsh Government to consider each UK Government Bill carefully, and to balance **the need to defend the current devolution settlement so far as possible** and the principle that we should legislate ourselves here in Wales, with **opportunities that may arise to improve the law for citizens of Wales.**" [Our emphasis].*

This comment highlights why the information we requested on the how the Welsh Government is budgeting to ensure there is sufficient capacity to legislate is of such importance, particularly as regards the openness and transparency of how the *Programme for government*⁷ is to be implemented.

In his letter of 17 January, the Counsel General provided detailed information about the challenges of proposing primary legislation and making subordinate legislation currently faced by the Welsh Government, particularly as a consequence of leaving the EU and the coronavirus pandemic. We touched on these issues with the Counsel General in our evidence session on 17 January. The Counsel General also noted his role as Chair of the Cabinet committee on the legislative programme, saying

⁷ Welsh Government, Programme for government: update, December 2021

“of course we are looking very closely now at years two, three, and possibly beyond, of the legislative programme.”⁸

Given that the function of legislating is fundamental to the role of the Senedd, as the Counsel General acknowledged,⁹ we would like to better understand the challenges faced but also how the Welsh Government proposes to address them.

Recommendation 8: In order to provide us with some baseline data, it would be helpful if the Welsh Government could provide details, for the current financial year of:

- a. the number of FTE staff it employs with a legal role;
- b. the number of FTE primary legislative drafting lawyers it employs;
- c. the number of FTE departmental lawyers that are employed and of those, how many either draft policy instructions for Bills or draft subordinate legislation;
- d. how many FTE staff have been involved in drafting subordinate legislation relating to EU exit and coronavirus regulations;
- e. how many other FTE staff, specialist or otherwise, are involved in the preparation of legislative proposals;
- f. a view on how the information provided in relation to a to e above compares to previous financial years;
- g. any other baseline data that the Welsh Government would deem to be useful.

Recommendation 9: It would be helpful if the Counsel General could set out how much resource is currently allocated to deal with the drafting of legislation relating to EU exit and coronavirus regulations.

Recommendation 10: In addition to providing the information requested in our letter to the First Minister of 10 December 2021, we would be grateful if the Counsel General could detail the resources he intends allocating and the programmes he will be introducing in the next financial year and subsequent financial years, to ensure that the Welsh Government has sufficient resource to deliver the Welsh Government’s legislative programme and to address the challenges he identifies.

⁸ LJC Committee, [RoP 62], 17 January 2022

⁹ LJC Committee, [RoP 118], 17 January 2022

I am copying this letter to Jane Hutt MS, the Minister for Social Justice, the Equality and Social Justice Committee and the Finance Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair





Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd
Senedd Cymru
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Llywydd@senedd.wales

28 February 2022

Dear Elin,

I write to you regarding the UK Policing, Crime, Sentencing and Courts Bill (the Bill) and our proposal to seek to hold a legislative consent motion debate on Tuesday 1 March.

The Bill was introduced in the House of Commons on 9 March 2021 and carried over into the current Parliamentary session. We laid a legislative consent memorandum (LCM) on 28 May 2021 and three supplementary LCMs (Memorandum Nos 2-4) prior to the legislative consent debate held on 18 January 2022 where the Senedd voted to consent to one motion but rejected the other motion.

The UK Government tabled its final amendments to the Bill on 21 February and the Minister for Social Justice has today laid Supplementary LCM (Memorandum No 5). The Bill will return to the House of Commons for consideration of final amendments stage ("Ping Pong") today. As the Minister for Social Justice committed to do so during the legislative consent debate held on 18 January, Memorandum No 5 also addresses relevant amendments agreed at House of Lords Report stage on 17 January.

We wish to seek to provide the Senedd with the opportunity to debate and vote on consenting to the inclusion of these amendments in the Bill in a further Senedd debate which we propose be held on Tuesday 1 March.

As set out in the Supplementary LCM (Memorandum No 5) on this Bill laid today, whilst we recommend the Senedd gives its consent to some provisions of the Bill making provision within devolved matters, we cannot recommend the Senedd gives its consent to others. Therefore, as during the previous debate on 18 January, we propose the Senedd is given the opportunity to vote on two separate Legislative Consent Motions.

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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.

In accordance with the Standing Orders, both motions will ask the Senedd to approve the relevant clauses for consideration by UK Parliament. However, one motion will include the clauses to which we recommend the Senedd gives consent by agreeing the motion and the other motion will include the clauses to which we recommend the Senedd withholds consent by voting against the motion.

The Bill is now in Ping Pong, therefore, given the passage of the Bill and the timing of the tabling of the amendments we will need to table a motion seeking to suspend Standing Orders in order to hold the debate tomorrow. We are unable to lay the motion to suspend standing orders and the legislative consent motions themselves until the outcome of the votes on the amendments in the House of Commons today is known. It is, therefore, possible the motions will need to be tabled tomorrow on the day we propose the debate is held. Consequently, in accordance with Standing Order 33.8, we are seeking your agreement, in advance, to potentially tabling the motions tomorrow, which would be less than the requisite one working day before we propose to hold the debate. We would, where possible, always seek to provide the Senedd with as much formal notice of a debate as possible and would wish to avoid suspending Standing Orders however in the case of this Bill, we consider it important the Senedd has its say given the significant impact of its provisions on Wales.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Jenny Rathbone MS, Chair of the Equality and Social Justice Committee and all Members of the Senedd.

Regards,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned above the printed name and title.

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

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

1 March 2022

Dear Huw,

Thank you for your letter of 15 February regarding the committee's future work planning in relation to the UK Government's forthcoming legislative programme.

The current UK Parliamentary legislative programme has seen an unprecedented number of legislative consent memoranda. This has been the result of both the number of Bills containing provisions within the Senedd's competence as well as a large number of amendments to those Bills during their passage, sometimes as a result of amendments we have requested. I also indicated many of the challenges faced by the committee, particularly around the sharing of information and ensuring adequate time for consideration, are ones we share.

You ask me to share my expectation of the extent to which the current volume of memoranda will continue into the next legislative session. It is too early to be able to make a judgement on the likely volume of memoranda. Consideration of whether a Bill requires a LCM cannot begin until we have received the text of the Bill itself. Whilst there will be Bills in which we are requesting provision there will also be Bills in which we consider there to be provisions within the Senedd's competence which have not been subject to such requests. Even after the UK Government's legislative plans have been published in the Queen's Speech, it will only be once some of the Bills have been published that we will be able to indicate whether a LCM is required.

I share the committee's desire to be able to provide effective scrutiny of Bills affecting the devolution settlement. We also want to maximise the Senedd's ability to scrutinise Welsh provisions included in UK Government Bills at our request. For this reason we are working with the Business Committee on their review of the LCM process. This will include consideration of both the content and timing of legislative consent memoranda. Whilst the review is being undertaken we will, for our part, consider how we might provide as early an indication as possible of Bills containing Welsh provisions. I am sure you will appreciate we cannot place information into the public domain that has been shared with us in confidence.

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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.

However where we are able to provide advance notification, particularly where we make a request for Welsh provisions within a UK Bill, we will be happy to do so.

Finally you ask me to outline how I intend to keep the committee updated on my responsibilities more generally. I would be happy to continue engaging with the committee in the usual way. I will of course keep the committee, and indeed the Senedd, updated on key developments within my areas of responsibility. In particular I will ensure the committee is updated on inter-governmental meetings in line with the requirements of the inter-institutional agreement.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

Mick Antoniw AS/MS

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

Mick Antoniw MS
Counsel General and Minister for the Constitution

15 February 2022

Dear Mick

Assisting the Committee in its future work planning

Thank you for appearing once again before the Committee on 31 January to discuss common frameworks and the UK Government's review of retained EU law.

These are two important issues for the committee, alongside our scrutiny of the Welsh Government's primary and secondary legislation, and also legislative consent memoranda. Given this large volume of legislative scrutiny that sits alongside our scrutiny of policy areas within our remit, forward work planning is essential.

You will be aware of our concerns in relation to the volume of legislative consent memoranda for UK Bills that have been laid before the Senedd by the Welsh Government, and subsequently referred to us for scrutiny.

In order to assist with planning for this aspect of our future scrutiny work, we would therefore be grateful if you could:

- share your expectation of the extent to which the current volume of memoranda being laid will continue, considering the forthcoming new UK Parliament session and subsequent Queen's Speech;
- commit to listing those UK Government Bills (once details are publicly available) that the Welsh Government intends to use as legislative vehicles to give effect to its policy agenda, including in line with its [Programme for government](#);
- explain how you intend to routinely notify us of your decision to use future UK Government Bills which are likely to be the subject of legislative consent memoranda, and the point at which you start working with the UK Government.

In the same vein, we would be grateful if you could explain how you intend to provide the Committee with updates on other developments relating to your responsibilities as Counsel General and Minister of the Constitution.

We would welcome an initial response by 2 March, however we acknowledge that you may not be able to provide specific detail on future Bills until the UK Government announces its legislative programme for the new UK Parliament session.

We look forward to hear your response, and to continue working constructively together.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Mark Isherwood MS
Public Accounts and Public Administration Committee Chair
[by e-mail]

15 February 2022

Dear Mark

Thank you for your letter dated 10 December 2021 regarding the use of the acronym 'B.A.M.E' by the Senedd Commission.

Early during the Autumn term 2021, Commission officials consulted with the Commission's Race, Ethnicity and Cultural Heritage workplace equality network (REACH) regarding its preferences. Network members expressed a number of opinions, and the networks' collective preference was to retain the acronym B.A.M.E. As a result of your letter, the network has worked with the Commission's Diversity and Inclusion team to revisit the position.

The Senedd Commission considered the use of the acronym 'B.A.M.E' at its meeting on 31 January. The Commission considered a paper that set out some of the wider debate surrounding the use of the acronym and recognised the difficulty of capturing the complex histories and cultures of people from ethnic minority backgrounds in a single phrase or acronym.

Commissioners agreed that the Commission would:

- a. Observe context as a key driver for use of terminology and opt for specificity when using terminology wherever possible;
- b. Where specificity is not possible, to replace use of the acronym and collective term B.A.M.E. with the collective term(s) 'ethnic minority' and 'ethnic minority community'; and
- c. regularly review use of terminology and monitor internal and external debate.

In addition they agreed that Commission officials should seek meetings with those Members of the Senedd who are from an ethnic minority background to discuss the matter further, and that the



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information Commissioners had considered should form the basis of a briefing for Members, initially committee chairs.

Commissioners agreed that the guidance contained in the paper would be published internally to support Commission officials in drafting documents.

The Chairs' Forum will consider the item on Thursday 17 February 2022.

You will be aware that the Commission's Sixth Senedd Diversity and Inclusion Strategy is currently being consulted upon. Members have been asked to engage with the consultation process through the Members' Engagement Survey which is currently live. A number of Members have indicated that they would welcome a further discussion with Commission Officials, and these are currently being arranged. Similarly, if Members of the Public Accounts and Public Administration Committee would find a similar conversation helpful, please let me know, and I can make the necessary arrangements.

Yours sincerely



Manon Antoniazzi

Prif Weithredwr a Chlerc y Senedd / Chief Executive and Clerk of the Senedd

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



Agenda Item 4.6

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



Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

2 March 2022

Dear Jayne

Tertiary Education and Research (Wales) Bill

Further to my letter of 4 February, I am pleased to inform the Committee that following engagement with the UK Government, Minister of the Crown consent has been received in respect of section 128 of the Tertiary Education and Research (Wales) Bill.

This letter has been copied to the Legislation, Justice and Constitution Committee and the Finance Committee.

Yours sincerely

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

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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.

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

Agenda Item 4.7


Ein cyf/Our ref MA/RE/0958/22

Llywodraeth Cymru
Welsh Government

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

04 March 2022

Dear Huw,

I would like to thank you and the Committee for your consideration of the Supplementary Legislative Consent Memorandum on the Subsidy Control Bill. I welcome the continued support, provided in your conclusions for amendments to the Bill, to address our concerns.

Thank you, also, for bringing to our attention your concerns and the concerns raised by both the House of Lords DPRR Committee and the House of Lords Common Frameworks Scrutiny Committee.

With regards concerns around the relationship between the Subsidy Control Bill and common frameworks, this is a concern I share.

Prior to the implementation of the UK Internal Market Act, which specifically reserves competence in relation to subsidy control, the Welsh Government argued strongly that subsidy control was a devolved matter, and that policy should be developed collegiately through a Common Framework to ensure issues such as this could be identified and addressed early on in the policy development process. However, as the UK Government disagreed that subsidy control was a devolved matter they believed it would be inappropriate to include it in the Common Frameworks Programme.

As a result of the skeletal nature of the draft Subsidy Control Bill, it is impossible to say with any certainty what the outcome would be should a conflict akin to that raised in your report occur between the Bill and Common Frameworks.

We are pressing, and will continue to press, for the UK Government to provide greater clarity on the future regime given the potential economic and societal impact of the Bill upon Wales and the wider UK.

Yours sincerely,



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

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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 4.8



The Scottish Parliament
Pàrlamaid na h-Alba

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution
Committee
The Senedd
(by e-mail)

The Scottish Parliament
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22 February 2022

Dear Huw

UK Internal Market

The Constitution, Europe, External Affairs and Culture Committee has today published a report on our inquiry into the UK internal market:

<https://digitalpublications.parliament.scot/Committees/Report/CEEAC/2022/2/22/73682bfb-fb43-47e5-b206-b79ec5e28262-1#Introduction>

We identified three significant and interrelated tensions arising from and/or exacerbated by the UK leaving the EU –

- First, tension between open trade and regulatory divergence;
- Second, tension within the devolution settlement;
- Third, tension in the balance of relations between the Executive and the Legislature.

The Committee recognises, in relation to the first of these tensions, the economic benefits for businesses and consumers in ensuring open trade across the UK. But equally we recognise that the fundamental basis of devolution is to decentralise power so as to allow policy and legislation to be tailored to meet local needs and circumstances.

The Committee recognises that the UK Internal Market Act seeks to address the first tension. But from the clear consensus in the evidence we received it is the Committee's view that UKIMA places more emphasis on open trade than regulatory

autonomy compared to the EU Single Market. It is also the Committee's view that this has led to tensions within the devolved settlement.

The Committee recognises that Common Frameworks have the potential to resolve these tensions within the devolved settlement through managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market

But the Committee believes there is a risk that the emphasis on managing regulatory divergence at an inter-governmental level may lead to less transparency and Ministerial accountability and tension in the balance of relations between the Executive and the Legislature.

The Committee is concerned that this may result in reduced democratic oversight of the Executive and a less consultative policy-making process.

Our view is that there is a need for a much wider public debate with regards to how to deliver appropriate levels of parliamentary scrutiny and public and stakeholder engagement at an inter-governmental level especially in relation to the operation of common frameworks.

We believe that resolving this tension should be an immediate priority for the refreshed inter-parliamentary forum and we agreed to highlight the findings of the report to our colleagues on the relevant committees in the House of Commons, House of Lords, Welsh Senedd and Northern Ireland Assembly.

The Committee will also invite the views of both the Scottish Government and the UK Government on how to resolve this tension and ensure appropriate levels of public and stakeholder engagement and parliamentary scrutiny of inter-governmental working especially in relation to the operation of common frameworks.

The Deputy Convener and I look forward to meeting you and to discussing these issues in more detail at the first meeting of the refreshed inter-parliamentary forum on Friday.

Yours Sincerely

A handwritten signature in black ink that reads "Clare Adamson". The signature is written in a cursive, flowing style.

Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee

Agenda Item 6

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

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Agenda Item 9

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Commercial Rent (Coronavirus) Bill

1. This Supplementary 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 Commercial Rent (Coronavirus) Bill (the “Bill”) was introduced in the House of Commons on 9 November 2021 and consideration in the House of Lords commenced on 13 January 2022 with Lords Committee stage concluding on 10 February. On 28 February, the UK Government tabled 10 amendments for consideration at Lords Report stage due to take place on 14 March. Five of these amendments make provision falling within the legislative competence of the Senedd.
3. The latest version of the Bill, as amended at Lords Committee Stage can be found here:

[Commercial Rent \(Coronavirus\) Bill \(as amended in Grand Committee\)](#)

4. A copy of the amendments to the Bill tabled by UK Government for Lords Report Stage (the “Tabled Amendments”) can be found here:

[1492 \(parliament.uk\)](#)

Policy Objectives

5. The objectives of the Bill are to make provision enabling relief from payment of certain rent debts under business tenancies adversely affected by coronavirus to be available through arbitration; and for connected purposes.

Summary of the Bill

6. The Bill is sponsored by the Department for Business, Energy, and Industrial Strategy.
7. The Legislative Consent Memorandum laid on 3 December 2021 was based on the Bill as introduced into the UK Parliament on 9 November 2021. A full summary of the Bill as introduced is contained within that Legislative Consent Memorandum, where I also stated the following:
 - a) That legislative consent of the Senedd would be required for the following provisions of the Bill: Clause 9 (to the extent that Clause 9 relates to the extension of the “moratorium period”); Clause 23; Clause

27 (to the extent that Clause relates to matters within the legislative competence of the Senedd); and Schedule 2.

- b) That whilst the Welsh Government is broadly content with the principles of the Bill, there were concerns with the way in which Clauses 9 and 27 of the Bill (as introduced) were drafted to the extent that I could not at that stage recommend the Senedd gives its consent to the Bill.

Update on the position since the publication of the first Legislative Consent Memorandum of the Bill

- 8. Following extensive discussions between the UK Government and the Welsh Government at both an official and ministerial level, the UK Government has laid the Tabled Amendments, which include amendments to Clauses 9, 23 and 27 of the Bill and the creation of two new Clauses to the Bill (namely, Clauses 23A and 27A). This Supplementary Legislative Consent Memorandum sets out my position on these amendments.

Clauses 9, 23 and 23A of the Bill

- 9. We understand that in light of the Tabled Amendments, Clauses 9, 23 and 23A of the Bill are to be drafted as shown at Annex 1 (which we set out for illustrative purposes only).
- 10. As originally drafted, the ability for the Secretary of State to make regulations to extend the reference period to arbitration made no provision for recourse to Welsh Ministers before this power was exercised. While the regulation making power covered reserved matters, it also covered matters falling within the legislative competence of the Senedd, as the exercise of the power would also have had the effect of extending the “moratorium period” for the purposes of Clause 23 and Schedule 2 of the Bill.
- 11. However, the amendments to Clauses 9, 23 and 23A of the Bill provides that where the Secretary of State decides to extend the arbitration period in the case of Welsh business tenancies (defined as business tenancy comprising premises in Wales) then whilst the Secretary of State may make regulations to extend the period specified in section 23(2)(b)(i) (in the case of a protected rent debt under a Welsh business tenancy) for the same period of time, the consent of the Welsh Ministers will be required where such extension of the period specified in section 23(2)(b)(i) has effect for the purposes of Schedule 2 of the Bill (other than the purposes of paragraph 3(6) and (7) of Schedule 2).
- 12. In the circumstances I recommend the Senedd supports the amendments at Clauses 9, 23 and 23A of the Bill.

Clauses 27 and 27A of the Bill

13. We understand that in light of the Tabled Amendments, Clauses 27 and 27A of the Bill are to be drafted as shown at Annex 2 (which we set out for illustrative purposes only).
14. As originally drafted, the Secretary of State was able to exercise powers under Clause 27 of the Bill in relation to those provisions of the Bill which fall within the legislative competence of the Senedd and without any degree of control or influence being able to be exercised by the Welsh Ministers in relation to the same.
15. However, the updated drafting of Clause 27 ensures that the Secretary of State's powers under Clause 27 would only be exercisable with the consent of the Welsh Ministers so far as it relates to the re-application, in relation to Welsh business tenancies, of (a) Schedule 2 apart from paragraph 3(6) and (7); (b) section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7); and (c) Part 1 and Part 4 so far as relating to the provision mentioned in paragraphs (a) and (b). We take the view that this covers the substantive elements of the Bill falling within the legislative competence of the Senedd.
16. The drafting at Clause 27A also provides the Welsh Ministers with the ability to exercise the power conferred by Clause 27, concurrently with the Secretary of State, so far as it relates to the reapplication, in relation to Welsh business tenancies of (a) Schedule 2 apart from paragraph 3(6) and (7); (b) section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7); and (c) Part 1 and Part 4 so far as relating to the provision mentioned in paragraphs (a) and (b).
17. The updated drafting also makes provision to ensure that the powers conferred on the Secretary of State under Clause 27 in relation to these provisions do not fall within the scope of Paragraph 11(1)(a) of Schedule 7B of the Government of Wales Act 2006.
18. In the circumstances I recommend that the Senedd supports the amendments at Clauses 27 and 27A of the Bill.

Financial implications

19. There are currently no additional financial implications for the Welsh Government or the Senedd as a result of the powers in this bill.

Conclusion

20. Whilst the Tabled Amendments do not fully reflect the amendments to the Bill which I originally sought, it is my view that the amendments to Clauses 9 and 27 of the Bill, in conjunction with the amendments at Clauses 23, 23A and 27A of the Bill, represent a significant improvement on the UK Government's original position. This has followed extensive and urgent

discussions with the UK Government at both an official and ministerial level.

21. In my view it is appropriate to use the Bill as a vehicle to seek to resolve outstanding commercial rent arrears in Wales constituting a protected rent debt for the purposes of the Bill, whilst also taking forward protections for those businesses in Wales falling in scope of the Bill. I therefore recommend the Senedd supports the proposals and gives its consent.

Vaughan Gething MS
Minister for Economy
3 March 2022

ANNEX 1

Draft of Clauses 9, 23 and 23A of the Bill with the Tabled Amendments (shown for illustrative purposes only)

Clause 9 (Period for making a reference to arbitration)

- “(1) This section applies where the tenant and the landlord under a business tenancy are not in agreement as to the resolution of the matter of relief from payment of a protected rent debt.*
- (2) A reference to arbitration may be made by either the tenant or the landlord within the period of six months beginning with the day on which this Act is passed.*
- (3) The Secretary of State may by regulations made by statutory instrument extend the period allowed by subsection (2) for making references to arbitration in the case of—*
- (a) English business tenancies,*
 - (b) Welsh business tenancies, or*
 - (c) English business tenancies and Welsh business tenancies.*
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.”*

Clause 23 (Temporary moratorium on enforcement of protected rent debts)

- “(1) Schedule 2 contains—*
- (a) provision preventing a landlord who is owed a protected rent debt from using the following remedies in relation to (or on the basis of) the debt during the moratorium period—*
 - (i) making a debt claim in civil proceedings;*
 - (ii) using the commercial rent arrears recovery power;*
 - (iii) enforcing a right of re-entry or forfeiture;*
 - (iv) using a tenant’s deposit;*
 - (b) retrospective provision in relation to certain debt claims made by such a landlord before the start of the moratorium period for the protected rent debt;*
 - (c) provision relating to the right of such a landlord during the moratorium period to appropriate any rent paid by the tenant;*
 - (d) retrospective provision in relation to the right of such a landlord to appropriate any rent paid by the tenant before the start of the moratorium period for the protected rent debt;*
 - (e) provision connected with certain things mentioned in paragraphs (a) to (d).*

- (2) *In this section “the moratorium period”, in relation to a protected rent debt, is the period—*
- (a) *beginning with the day on which this Act is passed, and*
 - (b) *ending—*
 - (i) *where the matter of relief from payment of the protected rent debt is not referred to arbitration within the period of six months beginning with that day, with the last day of that period, or*
 - (ii) *where that matter is referred to arbitration, with the day on which the arbitration concludes.*
- (2A) *Subsection (2) is subject to any extension of the period mentioned in paragraph (b)(i) that—*
- (a) *is made by or by virtue of section 23A, and*
 - (b) *has effect in relation to the protected rent debt.*
- (3) *For the purposes of subsection (2)(b) an arbitration concludes when—*
- (a) *the arbitration proceedings are abandoned or withdrawn by the parties,*
 - (b) *the time period for appealing expires without an appeal being brought, or*
 - (c) *any appeal brought within that period is finally determined, abandoned or withdrawn.*
- (4) *In this section “arbitration” means arbitration under Part 2.”*

Clause 23A (Alteration of moratorium period)

- “(1) *In this section “extension regulations” means regulations under section 9(3) extending the period allowed by section 9(2) for making references to arbitration.*
- (2) *Where extension regulations made by virtue of section 9(3)(a) or (c) extend that period in the case of English business tenancies, the period specified in section 23(2)(b)(i), so far as it applies in the case of a protected rent debt under an English business tenancy, is extended for the same period of time.*
- (3) *Subsection (4) below applies where extension regulations made by virtue of section 9(3)(b) or (c) extend that period in the case of Welsh business tenancies.*
- (4) *The Secretary of State may by regulations made by statutory instrument extend the period specified in section 23(2)(b)(i), so far as it applies in the case of a protected rent debt under a Welsh business tenancy, for the same period of time.*

- (5) *Regulations under subsection (4) must provide for the extension referred to in that subsection—*
- (a) *to have effect for the purposes of this Part including the purposes of Schedule 2, or*
 - (b) *to have effect for the purposes of this Part other than the purposes of Schedule 2.*
- (6) *The power to make the provision referred to in subsection (5)(a) is exercisable only with the consent of the Welsh Ministers to the extension having effect for the purposes of Schedule 2 other than the purposes of paragraph 3(6) and (7).*
- (7) *A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.”*

ANNEX 2

Draft of Clauses 27 and 27A of the Bill with the Tabled Amendments (shown for illustrative purposes only)

Clause 27 (Power to apply Act in relation to future periods of coronavirus control)

“(1) The Secretary of State may by regulations provide for this Act (apart from this section) to apply again in relation to rent debts under business tenancies adversely affected by closure requirements.

(1A) Regulations under this section may—

- (a) be made so as to apply in relation to—
 - (i) English business tenancies,*
 - (ii) Welsh business tenancies, or*
 - (iii) English business tenancies and Welsh business tenancies;**
- (b) exclude the provisions mentioned in subsection (7B)(a) to (c) from the provisions being re-applied in relation to Welsh business tenancies.*

(2) A business tenancy is adversely affected by a closure requirement for the purposes of subsection (1) if—

- (a) the whole or part of a business carried on at or from the premises comprised in the tenancy, or*
- (b) the whole or part of those premises, is of a description subject to a closure requirement imposed at any time after 7 August 2021.*

(3) In this section “closure requirement” means a requirement imposed by regulations as a public health response to coronavirus and expressed as an obligation—

- (a) to close businesses, or parts of businesses, of a specified description, or*
- (b) to close premises, or parts of premises, of a specified description.*

(4) In subsection (3) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(5) The power under this section is exercisable whether or not the closure requirement remains in force when the regulations are made.

(6) Subsections (3) to (5) of section 4 apply for purposes of this section as they apply for purposes of section 4.

(7) Regulations under this section may—

- (a) provide for provisions of this Act to apply with such necessary modifications as are specified in the regulations;*

- (b) *make different provision for England and for Wales;*
- (c) *make incidental, supplemental, consequential, saving or transitional provision (including provision amending or otherwise modifying an Act of Parliament).*

(7A) For the purposes of subsection (7)(b)—

- (a) *“modifications” means omissions, additions or variations, and*
- (b) *modifications are “necessary” if they appear to the Secretary of State to be necessary for the provisions being reapplied to operate correctly in relation to business tenancies adversely affected by the closure requirements in question.*

(7B) The power under this section is exercisable only with the consent of the Welsh Ministers so far as it relates to the re-application, in relation to Welsh business tenancies, of—

- (a) *Schedule 2 apart from paragraph 3(6) and (7),*
- (b) *section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7), and*
- (c) *Part 1 and this Part, so far as relating to the provision mentioned in paragraphs (a) and (b).*

(8) Regulations under this section—

- (a) *are to be made by statutory instrument, and*
- (b) *may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.”*

Clause 27A (Concurrent power for Welsh Ministers to apply moratorium provisions again)

(1) The Welsh Ministers may exercise the power conferred by section 27, concurrently with the Secretary of State, so far as it relates to the reapplication, in relation to Welsh business tenancies, of—

- (a) *Schedule 2 apart from paragraph 3(6) and (7),*
- (b) *section 23 so far as relating to Schedule 2 apart from paragraph 3(6) and (7), and*
- (c) *Part 1 and this Part, so far as relating to the provision mentioned in paragraphs (a) and (b).*

(2) Section 27 has effect in relation to regulations made by the Welsh Ministers by virtue of this section as if—

- (a) *references to the Secretary of State were to the Welsh Ministers,*
- (b) *subsection (1A)(a)(i) and (iii) and (b) were omitted,*
- (c) *in subsection (7)—*
 - (i) *the references in paragraph (a) to provisions of this Act were references to provisions mentioned in subsection (1)(a) to (c) above and,*

- (ii) *the reference in paragraph (c) to an Act of Parliament included a reference to an Act or Measure of Senedd Cymru,*
 - (d) *subsection (7B) were omitted, and*
 - (e) *in subsection (8)(b), for “each House of Parliament” there were substituted “Senedd Cymru”.*

- (3) *In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—*
 - (a) *omit the “or” at the end of paragraph (vi), and*
 - (b) *after paragraph (viii) insert “;*
 - (ix) *section 27 of the Commercial Rent (Coronavirus) Act 2022.”*

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Ein cyf/Our ref MA-VG-0726-22

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

3 March 2022

Dear Huw,

Thank you for the Committee's [report](#) laid on 8 February in relation to the Legislative Consent Memorandum on the Commercial Rent (Coronavirus) Bill.

Please find my response to your recommendation below.

Recommendation 1. Given the Minister's statement in paragraph 28 of the Memorandum that there is "little evidence to suggest whether or not unpaid rent debt from business tenancies is a large scale issue in Wales", the Minister should, at the earliest opportunity and in advance of the Senedd's debate on a relevant consent motion, provide more full reasoning and justification for pursuing provision for Wales in the Bill.

Response: I can confirm recent data suggests an estimated 7,500 of commercial rent cases will go through the arbitration scheme across the UK. It is important that any business in Wales, which would fall within scope of the Bill, should be able to benefit from the arbitration regime and protections envisaged by the Bill which will also be afforded to their counterparts in England. This is of particular importance given the planned expiry of certain protections, such as the moratorium currently provided for under section 82 of the Coronavirus Act 2020.

I can confirm a number of urgent and extensive discussions around the Bill were held at both official and ministerial level with the UK Government's Department for Business, Energy and Industrial Strategy. I have today laid a supplementary LCM recommending consent on the basis of the proposed amended clauses tabled by the UK Government for consideration at Lords Report stage on 14 March.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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