

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Ty Hywel and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 25 April 2022	0300 200 6565
Meeting time: 13.30	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

13.30

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

13.30–13.40

(Pages 1 – 7)

Attached Documents:

LJC(6)–12–22 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)184 – The Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Transitional Provision) (Chief Executives) Regulations 2022

[Regulations](#)

[Explanatory Memorandum](#)

2.2 SL(6)189 – The Education (Postgraduate Student Support) (Miscellaneous Amendments) (Wales) Regulations 2022

[Regulations](#)

[Explanatory Memorandum](#)



**Senedd Cymru
Welsh Parliament**

2.3 SL(6)192 – The Local Government (Relevant Authorities) (Power to Trade) (Wales) Order 2022

[Regulations](#)

[Explanatory Memorandum](#)

2.4 SL(6)193 – The General Power of Competence (Commercial Purpose) (Conditions) (Wales) (Amendment) Regulations 2022

[Regulations](#)

[Explanatory Memorandum](#)

Affirmative Resolution Instruments

2.5 SL(6)187 – The Local Government and Elections (Wales) Act 2021 (Consequential Amendments) (Job-sharing and Assistants to the Executive) Regulations 2022

[Regulations](#)

[Explanatory Memorandum](#)

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

13.40–13.50

Made Negative Resolution Instruments

3.1 SL(6)181 – The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers etc.) (Wales) (Revocation) Regulations 2022

(Pages 8 – 10)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 2 – Draft report

3.2 SL(6)183 – The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022

(Pages 11 – 14)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 3 – Draft report

3.3 SL(6)188 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) (Wales) Regulations 2022

(Pages 15 – 18)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 4 – Draft report

LJC(6)-12-22 – Paper 5 – Letter from the Minister for Health and Social Services to the Llywydd, 30 March 2022

3.4 SL(6)195 – The Non-Commercial Movement of Pet Animals (Amendment) (Wales) Regulations 2022

(Pages 19 – 22)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 6 – Draft report

LJC(6)-12-22 – Paper 7 – Letter from the Minister for Rural Affairs, North Wales, and Trefnydd to the Llywydd, 8 April 2022

Affirmative Resolution Instruments

3.5 SL(6)194 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022

(Pages 23 – 27)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 8 – Draft report

LJC(6)-12-22 – Paper 9 – Letter from the Minister for Climate Change, 8 April 2022

LJC(6)-12-22 – Paper 10 – Written statement by the Minister for Climate Change, 6 April 2022

Made Affirmative Resolution Instrument

3.6 SL(6)196 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2022

(Pages 28 – 30)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-12-22 – Paper 11 – Draft report

LJC(6)-12-22 – Paper 12 – Letter from the First Minister to the Llywydd, 13 April 2022

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

13.50–14.00

4.1 SL(6)130 – The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022

(Pages 31 – 36)

Attached Documents:

LJC(6)–12–22 – Paper 13 – Letter from the Minister for Climate Change, 28 March 2022

LJC(6)–12–22 – Paper 14 – Letter to the Minister for Climate Change, 28 February 2022

4.2 SL(6)131 – The Renting Homes (Supplementary Provisions) (Wales) Regulations 2022

(Pages 37 – 42)

Attached Documents:

LJC(6)–12–22 – Paper 15 – Letter from the Minister for Climate Change, 28 March 2022

LJC(6)–12–22 – Paper 16 – Letter to the Minister for Climate Change, 28 February 2022

5 Common frameworks

14.00–14.05

5.1 Written statement by the Counsel General and Minister for the Constitution: Common Frameworks – Summary of Recent Progress

(Pages 43 – 44)

Attached Documents:

LJC(6)–12–22 – Paper 17 – Written statement by the Counsel General and Minister for the Constitution, 30 March 2022

5.2 Correspondence from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs: Provisional Plant Health Common Framework

(Pages 45 – 48)

Attached Documents:

LJC(6)-12-22 – Paper 18 – Letter from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs, 6 April 2022

5.3 Correspondence from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs: Provisional Fertilisers Common Framework

(Pages 49 – 52)

Attached Documents:

LJC(6)-12-22 – Paper 19 – Letter from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs, 6 April 2022

6 Inter-Institutional Relations Agreement

14.05-14.15

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

(Pages 53 – 55)

Attached Documents:

LJC(6)-12-22 – Paper 20 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 28 March 2022

6.2 Correspondence from the Chair of the Public Administration and Constitutional Affairs Committee to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations: Transparency of intergovernmental relationship meetings

(Pages 56 – 57)

Attached Documents:

LJC(6)-12-22 – Paper 21 – Letter from the Chair of the Public Administration and Constitutional Affairs Committee to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 29 March 2022

6.3 Correspondence from the First Minister: Inter-Ministerial Standing Committee

(Pages 58 – 61)

Attached Documents:

LJC(6)-12-22 – Paper 22 – Letter from the First Minister, 31 March 2022

LJC(6)-12-22 – Paper 23 – Written statement by the First Minister, 31 March 2022

6.4 Correspondence from the Minister for Finance and Local Government: Finance Interministerial Standing Committee Meeting

(Pages 62 – 63)

Attached Documents:

LJC(6)-12-22 – Paper 24 – Letter from the Minister for Finance and Local Government, 5 April 2022

6.5 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Agriculture and Horticulture Development Board (Amendment) Order 2022

(Page 64)

Attached Documents:

LJC(6)-12-22 – Paper 25 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 April 2022

6.6 Correspondence from the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations: Legislative consent memoranda and concurrent powers contained within UK Government bills

(Pages 65 – 69)

Attached Documents:

LJC(6)-12-22 – Paper 26 – Letter from the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 7 April 2022

LJC(6)-12-22 – Paper 27 – Letter to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 28 January 2022

6.7 Correspondence from the Minister for Economy: Trade and Cooperation Agreement

(Page 70)

Attached Documents:

LJC(6)-12-22 – Paper 28 – Letter from the Minister for Economy, 11 April 2022

6.8 Correspondence from the Counsel General and Minister for the Constitution: Intergovernmental Relations Review, the Internal Market Act, and the Sewel Convention

(Pages 71 – 84)

Attached Documents:

LJC(6)-12-22 – Paper 29 – Letter from the Counsel General and Minister for the Constitution, 20 April 2022

LJC(6)-12-22 – Paper 30 – Letter to the Counsel General and Minister for the Constitution, 25 March 2022

6.9 Correspondence from the Counsel General and Minister for the Constitution: Interministerial Group for Elections and Registration (IMG Elections)

(Pages 85 – 86)

Attached Documents:

LJC(6)-12-22 – Paper 31 – Letter from the Counsel General and Minister for the Constitution, 21 April 2022

LJC(6)-12-22 – Paper 32 – Written statement by the Counsel General and Minister for the Constitution, 21 April 2022

7 Written Statements under Standing Order 30C

14.15–14.25

7.1 WS-30C(6)007 – The Organic Production (Amendment) Regulations 2022

(Pages 87 – 88)

Attached Documents:

LJC(6)-12-22 – Paper 33 – Written statement, 31 March 2022

LJC(6)-12-22 – Paper 34 – Commentary

7.2 WS-30C(6)008 – The Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022

(Pages 89 – 94)

Attached Documents:

LJC(6)-12-22 – Paper 35 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 31 March 2022

LJC(6)-12-22 – Paper 36 – Written statement, 31 March 2022

LJC(6)-12-22 – Paper 37 – Commentary

8 Papers to note

14.25–14.35

8.1 Correspondence from the Minister for Education and Welsh Language: Welsh Government response to Stage 1 reports on the Tertiary Education and Research (Wales) Bill

(Pages 95 – 117)

Attached Documents:

LJC(6)-12-22 – Paper 38 – Letter from the Minister for Education and Welsh

Language to the Chair of the Legislation, Justice and Constitution Committee,
29 March 2022

LJC(6)-12-22 – Paper 39 – Letter from the Minister for Education and Welsh
Language to the Chair of the Finance Committee, 29 March 2022

LJC(6)-12-22 – Paper 40 – Letter from the Minister for Education and Welsh
Language to the Chair of the Children, Young People and Education
Committee, 29 March 2022

**8.2 Correspondence from the Local Government and Housing Committee:
Supplementary Legislative Consent Memoranda on the Building Safety Bill**

(Pages 118 – 119)

Attached Documents:

LJC(6)-12-22 – Paper 41 – Letter from Local Government and Housing
Committee, 31 March 2022

**8.3 Correspondence from the Equality and Social Justice Committee: Equality and
Social Justice Committee inquiry – experiences of the criminal justice system**

(Page 120)

Attached Documents:

LJC(6)-12-22 – Paper 42 – Letter from the Equality and Social Justice
Committee, 7 April 2022

**8.4 Wales Tourism Alliance, UKHospitality Cymru and PASC UK response to draft
Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2022**

(Pages 121 – 138)

Attached Documents:

LJC(6)-12-22 – Paper 43 – Wales Tourism Alliance, UKHospitality Cymru and
PASC UK response to draft Non-Domestic Rating (Definition of Domestic
Property) (Wales) Order 2022, 8 April 2022

**8.5 Correspondence from the Finance Committee: Welsh Government Draft
Budget 2023–24: Engagement**

(Pages 139 – 141)

Attached Documents:

LJC(6)-12-22 – Paper 44 – Letter from the Finance Committee, 11 April 2022

8.6 Welsh Government report: The legislative response by the Welsh Ministers to the coronavirus pandemic (1 September 2021 to 31 March 2022)

(Pages 142 – 165)

Attached Documents:

LJC(6)-12-22 – Paper 45 – Written Statement by the Minister for Health and Social Services, 11 April 2022

LJC(6)-12-22 – Paper 46 – Welsh Government report: The legislative response by the Welsh Ministers to the coronavirus pandemic (1 September 2021 to 31 March 2022)

8.7 Correspondence from the Lord Chancellor and Secretary of State for Justice: Invitation to give evidence to the Committee

(Pages 166 – 168)

Attached Documents:

LJC(6)-12-22 – Paper 47 – Letter from the Lord Chancellor and Secretary of State for Justice, 12 April 2022

LJC(6)-12-22 – Paper 48 – Letter to the Lord Chancellor and Secretary of State for Justice, 17 March 2022

8.8 Correspondence from the Chair of the Equality and Social Justice Committee: Annual scrutiny of the Future Generations Commissioner

(Page 169)

Attached Documents:

LJC(6)-12-22 – Paper 49 – Letter from the Chair of the Equality and Social Justice Committee, 13 April 2022

8.9 Written statement: The UK Shared Prosperity Fund

(Pages 170 – 171)

Attached Documents:

LJC(6)-12-22 – Paper 50 – Written statement by the Minister for Economy, 13 April 2022

8.10 Correspondence from the Counsel General and Minister for the Constitution: Supplementary Legislative Consent Memorandum on the Elections Bill

(Pages 172 – 176)

Attached Documents:

LJC(6)-12-22 – Paper 51 – Letter from the Counsel General and Minister for the Constitution to the Chair of the Local Government and Housing Committee, 19 April 2022

LJC(6)-12-22 – Paper 52 – Letter to the Counsel General and Minister for the Constitution from the Chair of the Local Government and Housing Committee, 25 March 2022

8.11 Correspondence from the Minister for Social Justice: Amendments to the Police, Crime, Sentencing and Courts Bill

(Pages 177 – 181)

Attached Documents:

LJC(6)-12-22 – Paper 53 – Letter from the Minister for Social Justice, 20 April 2022

LJC(6)-12-22 – Paper 54 – Written statement by the Minister for Social Justice, 20 April 2022

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

14.35

10 Legislative Consent Memorandum on the British Sign Language Bill – consideration of draft report

14.35–14.45

(Pages 182 – 185)

Attached Documents:

LJC(6)-12-22 – Paper 55 – Draft report

11 Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Health and Care Bill – consideration of legal advice note and draft report

14.45–15.00

(Pages 186 – 199)

Attached Documents:

LJC(6)-12-22 – Paper 56 – Supplementary Legislative Consent Memorandum
(Memorandum No. 4) on the Health and Care Bill

LJC(6)-12-22 – Paper 57 – Legal advice note

LJC(6)-12-22 – Paper 58 – Draft report

12 Forward work programme

15.00-15.20

Statutory Instruments with Clear Reports 25 April 2022

SL(6)184 – [The Local Government and Elections \(Wales\) Act 2021 \(Consequential Amendments and Transitional Provision\) \(Chief Executives\) Regulations 2022](#)

Procedure: Made Negative

Section 54 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) requires principal councils, which are county councils and county borough councils in Wales, to appoint a chief executive. This requirement replaces the requirement on principal councils to designate one of their officers as their head of paid service under section 4 of the Local Government and Housing Act 1989.

Schedule 5 to the 2021 Act makes consequential amendments to primary legislation as a result of section 54, however, consequential amendments to secondary legislation are not included in that Schedule. These Regulations therefore make such consequential amendments to secondary legislation. They also put in place transitional provision so that those officers who are designated as a head of paid service immediately before 5 May 2022 (the date upon which section 54 and Schedule 5 of the 2021 Act, together with these Regulations, come into force) will be treated as the chief executive under section 54 of the 2021 Act.

Parent Act: Local Government and Elections (Wales) Act 2021; Local Government and Housing Act 1989

Date Made: 22 March 2022

Date Laid: 25 March 2022

Coming into force date: 05 May 2022



Statutory Instruments with Clear Reports

25 April 2022

SL(6)189 – The Education (Postgraduate Student Support) (Miscellaneous Amendments) (Wales) Regulations 2022

Procedure: Made Negative

These Regulations amend the following postgraduate student support regulations:

- The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017;
- The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

The effect of these amendments is to:

- Increase the amount of support payable to postgraduate Master's students by the projected rate of inflation, by increasing the amount of loan. Grant support is not increased. Total support will increase from £18,025 to £18,430 per course;
- Increase the amount of support for doctoral students by the projected rate of inflation. Doctoral support is loan only, which will be increased from £27,265 to £27,880 per course;
- Remove references to the 'grace period' in relation to the EU Settlement Scheme as that period has now ended;
- Make individuals granted leave to enter or remain in the United Kingdom as a relevant Afghan citizen under the Afghan Relocation and Assistance Policy and Afghan Citizen Relocation Scheme eligible for student support. This is extended to the spouse, civil partner or any dependent children. It does not extend to a partner who is not a spouse or civil partner of a relevant Afghan citizen;
- Make students in receipt of the social work bursary eligible for postgraduate Master's support, in the form of a loan. Currently, students studying for a postgraduate Master's in social work who are in receipt of a Social Care Wales bursary are not eligible for student support. As a result of these Regulations, these students will become eligible to apply for top-up loan support; and
- Make certain students ineligible for a doctoral loan when in receipt of a Welsh Government bursary. The Government's policy rationale is to avoid double funding.

These Regulations apply in relation to the provision of student support in relation to an academic year which begins on or after 1 August 2022.

Parent Act: Teaching and Higher Education Act 1998



Date Made: 29 March 2022

Date Laid: 30 March 2022

Coming into force date: 06 May 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

Statutory Instruments with Clear Reports

25 April 2022

SL(6)192 – The Local Government (Relevant Authorities) (Power to Trade) (Wales) Order 2022

Procedure: Made Negative

The Local Government (Relevant Authorities) (Power to Trade) (Wales) Order 2022 (“the Order”) is made by in exercise of the powers conferred on the Welsh Ministers by the relevant provisions in sections 95, 96 and 123 of the Local Government Act 2003.

The Order authorises relevant authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions and makes further provision in relation to a relevant authority’s exercise of the power to trade.

Before it can exercise the power, a relevant authority must prepare and approve a business case in support of the proposed exercise of the power, and the business case must be published as soon as reasonably practicable. The Order requires that the relevant authority must recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company, through which it is exercising the power to trade, from that company.

Relevant authorities for the purposes of this Order are those relevant authorities in Wales which are: (a) county councils or county borough councils; (b) eligible community councils (that is those community councils which meet the conditions to exercise the General Power of Competence under section 30 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”); (c) National Park authorities; (d) fire and rescue authorities, constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies; and e) corporate joint committees established by regulations made under Part 5 of the 2021 Act.

This Order also revokes the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006.

Parent Act: Local Government Act 2003

Date Made: 04 April 2022

Date Laid: 06 April 2022

Coming into force date: 05 May 2022



Statutory Instruments with Clear Reports

25 April 2022

SL(6)193 – [The General Power of Competence \(Commercial Purpose\) \(Conditions\) \(Wales\) \(Amendment\) Regulations 2022](#)

Procedure: Made Negative

Section 24 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) confers a general power of competence on principal councils and eligible community councils. In particular, the general power of competence confers on those authorities a power to do certain things for a commercial purpose.

The power to do things for a commercial purpose is subject to conditions set out in section 27 of the 2021 Act. Section 28(4) of the 2021 Act provides a power for the Welsh Ministers to provide, by regulations, for the exercise of the general power to be subject to additional conditions.

The General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 (the 2021 Regulations) prescribe the conditions to be met by a principal council before exercising the general power for a commercial purpose.

These Regulations amend the 2021 Regulations to include eligible community councils within the meaning of “authority” in the 2021 Regulations. This has the effect of extending the application of the conditions in the 2021 Regulations to eligible community councils from 5 May 2022, which is the date from which they may exercise the general power of competence, including for a commercial purpose.

Parent Act: Local Government and Elections (Wales) Act 2021

Date Made: 04 April 2022

Date Laid: 06 April 2022

Coming into force date: 05 May 2022



Statutory Instruments with Clear Reports

25 April 2022

SL(6)187 – [The Local Government and Elections \(Wales\) Act 2021 \(Consequential Amendments\) \(Job-sharing and Assistants to the Executive\) Regulations 2022](#)

Procedure: Affirmative

These Regulations make amendments which are consequential on sections 57 and 58 of, and Schedule 7 to, the Local Government and Elections (Wales) Act 2021. Section 57 relates to the appointment of assistants to a local authority executive while section 58 and Schedule 7 relate to the sharing of office on a local authority executive.

Regulation 2 amends the Local Government (Wales) Measure 2011 to provide that two or more members of a local authority who share office on the executive, may be appointed to a local authority's democratic services committee, or a local authority's governance and audit committee, but that those members together only count as one member for the purposes specified in respect of each committee (membership, voting and requisitioning a meeting).

Regulation 3 amends the Standards Committee (Wales) Regulations 2001 (the 2001 Regulations) to provide that a local authority standards committee can only include either one executive member or one assistant to the executive, from that local authority. Further, where two or more local authorities establish a joint standards committee, then that committee can only include either one executive member or one assistant to the executive, from each constituent local authority.

Regulation 3 also amends the 2001 Regulations to provide that two or more members of a local authority executive who share office may be appointed to a local authority's standards committee but that those members together only count as one member for the purposes specified (size and composition of the committee, voting and quorum).

Regulation 4 amends the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002 to provide that neither an interim mayor nor interim executive members, are to be treated as members of a local authority executive for the purpose of the statutory limit imposed on the number of executive members set out in section 11 of the Local Government 2000 Act.

Parent Act: Local Government and Elections (Wales) Act 2021

Date Made:

Date Laid: 29 March 2022



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee

Coming into force date: 13 May 2022



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee

Agenda Item 3.1

SL(6)181 – The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers etc.) (Wales) (Revocation) Regulations 2022

Background and Purpose

These Regulations revoke the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022 (the “International Travel Regulations”), the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (the “Operator Liability Regulations”) and the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (the “Public Health Information Regulations”) (together “the Principal Regulations”).

The Regulations also revoke a number of statutory instruments which amend the Principal Regulations as well as the previous version of the International Travel Regulations.

Procedure

Negative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services, in [a letter to the Llywydd dated 16 March 2022](#).



In particular, we note what the letter says regarding the four nation approach to international travel being maintained:

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continues to maintain the four nation approach to international travel as the other nations will also revoke their Regulations at this time; in view of the changing evidence that the risks posed by international travel has changed therefore it is no longer proportionate to maintain the restriction measures.

Further, the Explanatory Memorandum notes that UK Government changes will render the corresponding Welsh legislation inoperable:

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. This is necessary because the UK government intend to revoke their regulations at 04:00 hours on 18 March which means the passenger locator form will cease from that time. Without the PLF the Wales regulations are inoperable. These Regulations are being revoked in the other nations so there will be alignment across the UK.

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

The Explanatory Memorandum accompanying the Regulations notes the impact of the Regulations on human rights:

The amendments contained in these Regulations changes the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human Rights as current restrictions are to be removed; the Government considers that they are justified because the domestic transmission of Omicron now significantly surpasses that from imported cases therefore it is no longer proportionate to maintain the restriction measures.

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

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

There has been no public consultation in relation to these Regulations due to the need to put them in place urgently to ensure legislation in Wales is operable.

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

We note that no regulatory impact assessment has been prepared in relation to these Regulations. Similar reasoning has been provided in the Explanatory Memorandum to that noted above, in relation to consultation:



There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to ensure legislation in Wales is operable.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 April 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee

SL(6)183 – The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022

Background and Purpose

The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers under the powers conferred by sections 1(1) and (2)(f), 2(1), and 3(1), (2)(c) and (3)(a) of the Public Service Pensions Act 2013 (“the 2013 Act”), as amended by the Public Service Pensions and Judicial Offices Act 2022 (“the Act”).

The Act, which follows the judgment in the case of *Sargeant and others v London Fire Commissioner and others*, removes the age discrimination from the main public service pension schemes which had occurred in the introduction of the 2015 pension schemes across the UK. It closes the legacy schemes to further accrual from 1 April 2022.

The Regulations provide arrangements to transfer all active “protected members” from the legacy schemes - the scheme established by the Firemen’s Pension Scheme Order 1992 (“the 1992 Scheme”) and the scheme established by the Firefighters’ Pension Scheme (Wales) Order 2007 - to the Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Scheme”), which is governed by the Firefighters’ Pension Scheme (Wales) Regulations 2015 from 1 April 2022.

They also provide an ill-health “underpin” by making provision in relation to members of the 1992 Scheme who transfer to the 2015 Scheme on 1 April 2022, where a fire and rescue authority in Wales had decided prior to transfer, to obtain the written opinion of an independent qualified medical practitioner in regard to a potential ill-health award. If it is subsequently decided that an ill-health award is payable then provision is made for the award to be at least equal to that which the member would have received had the decision on their ill-health award been made under the 1992 Scheme on 31 March 2022.

The Regulations are subject to the consent of the Treasury in accordance with section 3(5) of the 2013 Act. The process for giving consent is a matter for the Treasury. In this case, it has been signified by two of the Lords Commissioners of the Treasury signing the Regulations.

Procedure

Negative.

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

Technical Scrutiny

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



Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Hannah Blythyn MS, Deputy Minister for Social Partnership, in a letter to the Llywydd dated 22 March 2022.

In particular, we note the following:

“The Regulations are necessary to align with the requirements of the Act, which received Royal Assent on 10 March; the relevant provisions came into force immediately. Given it is not possible to make the Regulations until after the Bill receives Royal Assent, it is not therefore possible to allow for the conventional 21 day period before they need to come into force on 30 March.

If the Regulations were not made and brought into force by the end of the financial year, around 200 affected firefighters would not be members of any pension scheme from 1 April. This is because the Act closes their existing pension schemes; the Regulations are essential to transfer them to the 2015 Scheme.”

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

Whilst it is clear from the preamble to the Regulations and part 5 of the Explanatory Memorandum that the Welsh Ministers have consulted in compliance with the obligation set out in section 21(1) of the 2013 Act, it is unclear whether they have published a statement, and kept it up to date, in accordance with section 21(2), which requires:

“(2) The responsible authority must publish a statement indicating the persons that the authority would normally expect to consult under subsection (1) (and keep the statement up-to-date).”

It has not been possible on reasonable investigation to locate such a statement. Whilst we note that any failure to comply with section 21(2) does not invalidate the consultation that was undertaken to discharge the obligation under section 21(1), if in fact such a statement has not been published, it is appropriate that a compliant statement is produced and made readily accessible to the public as soon as is practicable.



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

We note the potential detrimental impact on female and disabled firefighters as set out in the two specific areas highlighted in part 5 of the Explanatory Memorandum. We note further that no equality impact assessment for the Regulations has been carried out in compliance with regulation 8(1) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 both in this regard and generally.

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

We note part 6 of the Explanatory Memorandum states in relation to the decision not to carry out a regulatory impact assessment, that the decision, “... *is in line with the policy set out in the Welsh Ministers’ code of practice for carrying out regulatory impact assessments for subordinate legislation.*” However, it is unclear, both from the Explanatory Memorandum and Explanatory Note, which exception is being relied upon under paragraph 3.2 of the *Welsh Ministers’ regulatory impact assessment code for subordinate legislation.*

Welsh Government response

Merit Scrutiny point 2:

All formal Welsh Government consultations on matters relating to firefighters’ pensions, including on these and all other scheme regulations, are publicly available and are not limited to specific organisations. Any organisation or individual can read and respond to them if they choose; we aim in particular to draft consultation documents in ways that are accessible to individual scheme members as well as their employers and representative bodies.

In practice, the persons most likely to respond to consultations on matters relating to firefighters’ pensions are the members of the statutory Firefighter Pension Scheme Advisory Board for Wales. The Board is also a forum for detailed collective discussion of matters relating to firefighters’ pensions, including these regulations, which were drawn to the specific attention of the Board, and discussed by it on several occasions. The membership of the Board includes all the employers and recognised representative bodies of firefighters in Wales, namely:

- Mid and West Wales Fire and Rescue Authority
- North Wales Fire and Rescue Authority
- South Wales Fire and Rescue Authority
- Fire and Rescue Services Association
- Fire Brigades Union
- Fire Leaders Association



- Fire Officers Association

A statement in accordance with section 21(2) will be published shortly.

Merit Scrutiny point 3:

An Equality Impact Assessment was undertaken for the draft regulations and overall policy as set out in the consultation published on 25 October, and this was referred to in the Integrated Impact Assessment published alongside the consultation. The overall policy position set out in the consultation document remained the same following consideration of the issues raised in the consultation responses received, and formed the basis of the final regulations. Therefore no changes were made to the Integrated Impact Assessment as originally published. The Summary of Consultation Responses sets out in more detail the consideration that was given to the equalities issues raised and the reasons for not changing the original policy position.

Merit Scrutiny point 4:

The primary decision for not undertaking a Regulatory Impact Assessment was based on the fact that the legislation imposes negligible costs, savings, benefits or dis-benefits on the public, private, charities and the voluntary sector or society in general. In specific respect of the Welsh Ministers' regulatory impact assessment code for subordinate legislation, as the regulations make provision consequential on the Public Service Pensions and Judicial Offices Act 2022, the following exemption applies to the regulations:

"Where the subordinate legislation is a Commencement Order or Commencement Regulations or Regulations which also make consequential provision or savings (provided the savings are not made by imposing an additional cost on an alternative party), etc."

Legal Advisers

Legislation, Justice and Constitution Committee

4 April 2022



SL(6)188 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) (Wales) Regulations 2022

Background and Purpose

The National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”) allow Local Health Boards and NHS Trusts in Wales to make and recover charges for relevant healthcare services that are provided to overseas visitors not ordinarily resident in the United Kingdom, unless the overseas visitor or the service they receive falls within a charging exemption.

These Regulations amend the Principal Regulations to provide exemptions from charging in relation to overseas visitors who are lawfully present in the United Kingdom but are ordinarily resident in Ukraine, as well as providing exemptions for their family members, authorised companions and authorised children.

These Regulations provide that charges incurred between 24 February 2022 (the date that the full scale Russian invasion of Ukraine began) and the date on which these Regulations come into force, in respect of such overseas visitors:

- if not yet made, must not be made,
- if made, must not be recovered, or
- if paid, must be repaid.

These Regulations are subject to review by the Welsh Ministers before 1 October 2022.

Procedure

Negative.

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

Technical Scrutiny

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



Merits Scrutiny

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

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a [letter to the Llywydd dated 30 March 2022](#).

In particular, we note the following part of the letter:

“The 2022 Regulations were made and laid as soon as practicable after the final draft SI for amending England’s Charging Regulations was shared by the Department for Health and Social Care in mid-March. The Wales’ 2022 Regulations have been made contingent to the English regulations so that the same exemptions apply in Wales and due to the urgency of the situation, requires that the Wales’ Regulations come into force less than 21 days after they were made.

If the 21 day convention is adhered to, there is a risk that Ukrainian refugees coming into Wales will be subject to NHS charges for treatment whereas the position in England will be more favourable as they will have a legal exception in force already. This will provide an unacceptable position of inequality between Ukrainian refugees in Wales and those across the border in England in a time of humanitarian crisis.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 April 2022





Ein cyf/Our ref MA/EM/1301/22

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

30 March 2022

Dear Llywydd,

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 31 March 2022, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The 2022 Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the Principal Regulations"). The Principal Regulations set the framework for charging persons who are not ordinarily resident in the UK for emergency and non-emergency hospital treatment which is provided in Wales.

The 2022 Regulations provide a new exemption from NHS secondary healthcare charges for Ukrainian residents and their family members who are lawfully in the UK and who come to Wales from 24 February 2022 following the start of the conflict in Ukraine.

The 2022 Regulations were made and laid as soon as practicable after the final draft SI for amending England's Charging Regulations was shared by the Department for Health and Social Care in mid-March. The Wales' 2022 Regulations have been made contingent to the English regulations so that the same exemptions apply in Wales and due to the urgency of the situation, requires that the Wales' Regulations come into force less than 21 days after they were made.

If the 21 day convention is adhered to, there is a risk that Ukrainian refugees coming into Wales will be subject to NHS charges for treatment whereas the position in England will be more favourable as they will have a legal exception in force already. This will provide an unacceptable position of inequality between Ukrainian refugees in Wales and those across the border in England in a time of humanitarian crisis.

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Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@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.

Not adhering to the 21 day convention allows the Regulations to come into force as early as practicable, due to exceptional humanitarian reasons involved. Not adhering to the 21 day rule is therefore necessary and justifiable in this case. The Regulations will be reviewed six months from the coming into force date to assess at that point whether the exemptions are still required.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Russell George MS Chair of the Health and Social Care Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

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

SL(6)195 – The Non-Commercial Movement of Pet Animals (Amendment) (Wales) Regulations 2022

Background and Purpose

These Regulations amend retained EU legislation to authorise the use of an alternative rabies antibody titre test for pet animals entering Wales from outside of the United Kingdom.

The Welsh Government's policy rationale, as explained in the Explanatory Memorandum, is that:

"Permitting the use of an additional test will significantly speed up the rabies testing process for pet animals entering Wales at a time when the system faces a significant backlog due to pet animals entering with their owners fleeing from Ukraine. This will reduce the overall burden on quarantine spaces and enable people being reunited with their pets earlier, while also protecting Great Britain's biosecurity."

These Regulations will expire on 1 October 2022.

Procedure

Negative.

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

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, in a [letter to the Llywydd dated 8 April 2022](#).

In particular, we note the following paragraphs in the letter:



“It has become necessary not to adhere to the 21-day convention due to the high numbers of animals arriving in a short period, which will imminently exceed the limited available spaces in quarantine.

The use of the faster test will reduce the waiting periods of pets in quarantine and the overall burden on quarantine spaces, enabling refugees to enter Wales quicker and becoming reunited with their pets earlier, while also protecting Wales’ biosecurity. The Explanatory Memorandum expands on the technical details.

Additionally, these Regulations will ensure consistency with equivalent changes, also urgently being made in England and in Scotland.”

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

Regulation 1(2) of these Regulations provides that they expire on 1 October 2022. This is also explained in the Explanatory Memorandum. However, the Explanatory Note states that these Regulations will expire on 7 October 2022.

Whilst it is accepted that the Explanatory Note does not form part of the Regulations, this has the potential to cause confusion as to the expiry date of these Regulations.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 April 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 20**

Legislation, Justice and Constitution Committee



Ein cyf/ Our ref MA/LG/1350/22

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

8 April 2022

Dear Llywydd,

The Non-Commercial Movement of Pet Animals (Amendment) (Wales) Regulations 2022

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument comes into force on 9 April, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The purpose of the Regulations is to make amendments to the Pet Travel Scheme, contained in retained Regulation (EU) 576/2013 to permit the use of an alternative rabies antibody blood test on pets coming with refugees from Ukraine. This alternative test has a much shorter turnaround time than the one currently prescribed. This alternative test will enable the authorities to make much quicker risk management decisions, such as releasing those pets from quarantine.

It has become necessary not to adhere to the 21-day convention due to the high numbers of animals arriving in a short period, which will imminently exceed the limited available spaces in quarantine.

The use of the faster test will reduce the waiting periods of pets in quarantine and the overall burden on quarantine spaces, enabling refugees to enter Wales quicker and becoming reunited with their pets earlier, while also protecting Wales' biosecurity. The Explanatory Memorandum expands on the technical detail.

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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.

Additionally, these Regulations will ensure consistency with equivalent changes, also urgently being made in England and in Scotland.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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 of the name.

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

SL(6)194 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022

Background and Purpose

The Allocation of Housing and Homelessness (Eligibility) (Wales) 2014 Regulations (“the 2014 Regulations”) provide for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance.

These Regulations amend the 2014 Regulations to extend eligibility for allocations of housing and housing assistance provided by local authorities to people affected by the Russian invasion of Ukraine that fall within three new immigration routes:

- (i) *The Ukraine Family Scheme*, which will allow immediate and extended family members of British citizens, UK settled persons and others to come from Ukraine to, or stay in, the UK.
- (ii) *The Homes for Ukraine Sponsorship Scheme*, which will allow Ukrainian nationals and their immediate family to come to the UK where they have an Approved sponsor who has agreed to provide accommodation.
- (iii) *The Ukraine Extension Scheme*, which will allow Ukrainian nationals with their partners and children in the UK with permission on 18 March 2022 (including those who have overstayed by a short period) to stay in the UK.

The three new immigration routes are referred to collectively as “the Ukraine Schemes” and are set out in Appendix Ukraine Scheme of the Immigration Rules¹.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

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

¹ Laid before Parliament on 23 May 1994 (HC 395), as amended. Appendix Ukraine Scheme was introduced by the statement of changes in the Immigration Rules: HC 1220, which was laid before Parliament on 29 March 2022



Merits Scrutiny

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

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

Standing Order 15.4 provides that:

"Any document laid or business tabled by the Presiding Officer, the Commission, the government, any committee or the Clerk, must be laid or tabled in both English and Welsh, so far as is appropriate in the circumstances and reasonably practicable."

We note that the Explanatory Memorandum is not available in Welsh. Can the Welsh Government explain the reason for this?

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

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

"Due to the speed at which the Ukraine Schemes have been established there has not been time to consult on this aspect of the Regulations. However, as the Ukraine Schemes are a product of reserved UK Government policy (immigration), it would not be possible to undertake a meaningful consultation on alternative approaches, as the effect of the 2022 Regulations is to ensure consistency between Welsh housing law and immigration law."

Welsh Government response

Merit Scrutiny point 1:

The Welsh Government is committed to increasing the number of Explanatory Memoranda and Regulatory Impact Assessments for Statutory Instruments that are laid bilingually before the Senedd.

Standing Order 15.4 of the Senedd requires all documents to be laid bilingually so far as is appropriate in the circumstances and reasonably practicable, and Standard 47 of the Welsh Language Standards (the statutory duties imposed on the Welsh Government by the Welsh Language Commissioner) requires us to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Under guidance provided by the Commissioner's office (in their Code of Practice on the Welsh Language Standards (No. 1) Regulations 2015), in prioritising these documents for translation at this time we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and



whether a high proportion of the documents' audience would be Welsh speaking. As these Regulations apply mainly to people from Ukraine, and do not concern the Welsh language and are unlikely to affect Welsh speakers, they have not been deemed a priority for translation at this time.

Legal Advisers

Legislation, Justice and Constitution Committee

13 April 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 25

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



Llywodraeth Cymru
Welsh Government

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

8 April 2022

Dear Huw,

You will be aware of people currently coming to the UK from Ukraine following the Russian invasion on 24 February. The UK Government has recently amended its Immigration Rules which will formalise access to public funds for people affected by the military conflict, which will include housing or homelessness assistance. Prior to this point, a discretionary power of the Home Office to grant leave outside the Immigration Rules has allowed Ukrainian nationals to access public funds. However, currently the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 do not give British nationals or those not subject to immigration control, any exemption from the habitual residence test should they also wish to access public funds. This process can take one to three months to complete.

The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022 have been drafted for the purpose of giving people who have been affected by the war in Ukraine eligibility to housing and homelessness services in Wales and waive the habitual residence test, including for British nationals or those not subject to immigration control. Due to the urgency of this situation, I would be grateful if the Committee will give early consideration and reporting on the 2022 Regulations in time for a plenary debate on 26 April 2022.

I would like to thank the Committee in advance for their assistance in providing support to arrangements which will allow people fleeing the war in Ukraine an opportunity to seek sanctuary in Wales and make it their home.

Yours sincerely

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

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Tabling of the draft Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022**

DATE **8 April 2022**

BY **Julie James MS, Minister for Climate Change**

Following the Russian invasion of Ukraine on 24 February, the UK Government has amended its Immigration Rules to provide additional rights to public funds, which include access to housing and homelessness assistance, for people coming to the UK who are fleeing the conflict. Those amendments also apply to people currently in the UK who are not eligible or whose leave will expire before the conflict is over. To align housing law in Wales with the Immigration Rules, so that this group of people can be made eligible to apply for social housing and homelessness assistance, I intend to lay the draft Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022 (“the draft 2022 Regulations”). Those eligible, including British nationals and others not subject to immigration control, will be exempt from the habitual residence test.

As people are already arriving in the Wales from Ukraine these changes must be made as soon as possible. Consequently, the draft 2022 Regulations will be laid on 8 April for consideration by the Senedd on 26 April. I appreciate that this accelerated process for considering the draft 2022 Regulations is unusual, but due to the urgency of the situation and potential uncertainty in the treatment of people seeking sanctuary in Wales, I have taken this step.

I have written to the Legislation, Justice and Constitution Committee to seek their assistance for urgent consideration of the Regulations, in order that Members of the Senedd have sight of the Committee’s report before the debate on 26 April 2022.

Agenda Item 3.6

SL(6)196 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2022

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”). The amendments—

- provide that the principal Regulations expire at the end of the day on 9 May 2022 (rather than 18 April 2022);
- omit Part 4 of the principal Regulations, which requires persons responsible for regulated premises to take all reasonable measures to minimise the risk of exposure to coronavirus at the premises (but Welsh Government guidance on minimising the risk of the transmission of coronavirus remains relevant).

The Regulations also make amendments that are consequential on the amendments set out above.

As amended by these Regulations, the principal Regulations continue to provide that no alert level applies to Wales. This means that none of the restrictions and requirements in Schedules 1 to 4 to the principal Regulations apply.

Procedure

Made Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

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

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



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

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

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

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

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

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

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

21 April 2022





Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

13 April 2022

Dear Elin,

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 9) Regulations 2022

I have today made these Regulations under sections 45C(1) and (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984. The Regulations come into force on 18 April. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 22 May 2022 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. As the principal Regulations which these Regulations amend are due to expire by 9 May, I intend to hold the plenary debate for this item of subordinate legislation on 26 April 2022, which is the earliest available opportunity after Easter Recess. As a result, unfortunately there is very limited time indeed for committee scrutiny.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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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.

Back Page 30
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/4354/21

Chair of the Legislation Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

28 March 2022

Dear Huw

I am writing in response to your letter of 28 February 2022 in relation to statutory instruments made under the Renting Homes (Wales) Act 2016.

To take the substantive points raised in your letter in order:

The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022 and the Renting Homes (Supplementary Provisions) (Wales) Regulation 2022

Your letter expresses concern that my response to the Committee's observation that the absence of a timescale within which landlords must take action in response to comments made by contract-holders about inventories leaves 'significant scope for uncertainty'.

As indicated in my response, we do not consider that this will be an issue in practice. However, I should perhaps have made it clearer in my original response to the Committee's reporting point that the Welsh Government does not believe it necessary to legislate in this regard because the Rent Smart Wales training that all landlords are required to undertake in order to be licensed is currently being updated to reflect the new legal framework which will be introduced by the 2016 Act. This training already includes guidance on the provision of inventories, and advises landlords that it is their interests to ensure the inventory is agreed because "if there is a dispute over the condition of the property...it will generally be for you or your agent to prove the claim". In updating the guidance we have asked Rent Smart Wales to include as best practice a recommendation that in the event of comments being received from the contract-holder in relation to the inventory provided, the landlord should respond to these within a 14 day timescale (the same timescale as the contract-holder is provided with to comment on the inventory in the first instance).

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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@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.

We are confident that incorporating this timescale into the Rent Smart Wales training as best practice will be sufficient to ensure that, in the event of a dispute arising between a landlord and contract-holder, a court or deposit scheme adjudicator would, in reaching a decision, be able to consider whether this recommendation had been adhered to by the landlord.

The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022

In relation to the matter of compensation where the landlord is late in providing a contract-holder with a written statement, your letter states that in response to my commitment to address this point the next time it becomes necessary to amend the Regulations the Committee believes this is an important issue and is concerned that it remains unaddressed.

Since providing my response to the Committee on this point, changes have been made to the Welsh Government's Renting Homes website to make it clear to contract-holders that "for each day after the occupation date that the written statement has not been provided, the landlord may be liable to pay you compensation". While it remains my intention to clarify this point in due course by amending the Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022, I am satisfied that the Regulations have to be interpreted in accordance with section 35(6) of the 2016 Act and that (in practice) most, if not all landlords, letting agents and contract-holders are likely to rely on the information available on the Welsh Government's Renting Homes website. I am therefore content that any of lack of clarity in the content of the Regulations in the meantime will have little, or perhaps no, practical impact.

The Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022

In relation to the absence of a space in the model for the term of the contract to be set out, your letter states that '...all other key matters are expressly dealt with in the model written statement, but the key matter of the term of the contract is not. We are particularly concerned that this is not being dealt with as a matter of priority.'

Since providing my response to the Committee on this reporting point, the Welsh Government's Renting Homes website has been updated to make it clear that the end of the fixed term should be recorded. Since most, if not all, landlords and contract-holders are expected to access the Welsh Government's website, any potential uncertainty caused by a lack of clarity in the Regulations is substantially mitigated. Nevertheless, I will still look to make an amendment to the version set out in the Regulations the next time it becomes necessary to amend the Regulations.

Delayed Implementation

I confirmed during the plenary debate on the first tranche of Regulations that I would support a post-implementation review of the 2016 Act. I recognise that there has been a delay in implementation, but I know you will share with me that it is important that we have good law, and the work involved in drafting the implementation Regulations have been colossal and complex.

We are keen to learn lessons and continue to keep the legislative programme under review. In the meantime, I can assure the Committee that the priority is to continue to fully implement the remaining aspects of the Act.

Yours sincerely

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

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

Julie James MS,
Minister for Climate Change

28 February 2022

Dear Julie

Statutory instruments made under the Renting Homes (Wales) Act 2016

We considered six sets of Welsh Government regulations made under the *Renting Homes (Wales) Act 2016* (the 2016 Act) at our meeting on 31 January 2022 (items 3.1, 4.1-4.4 and 4.6). We are grateful for the relevant government responses received, which we considered at our meeting on 7 February (items 5.1-5.5).

We make the following comments, in light of (among other things) these two stated aims of the 2016 Act:

- providing a clearer, more logical, legal framework, which reflects fairness and equality;
- providing greater understanding by landlords and tenants of their respective rights and responsibilities.¹

In so doing, we recognise that we are not the Senedd Committee which holds responsibility for considering the Welsh Government's policy on housing in Wales.

The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022 and the Renting Homes (Supplementary Provisions) (Wales) Regulation 2022

We reported that these Regulations do not set a timescale during which landlords must take action in response to comments made by contract-holders about inventories. Your response defends that policy by reference to things that are "likely" to happen, things that are "unlikely" to happen and things that "could" happen. This appears to leave significant scope for uncertainty, and it is unclear to us how this fits in with the aims of the 2016 Act.

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We reported on the lack of clarity of a landlord's liability to pay compensation where the landlord is late in providing a contract-holder with a written statement. You accept that the position could be clearer but that you will only address that lack of clarity the next time it becomes necessary to amend the Regulations. There is

¹ These, and other aims, are set out in paragraph 8 of the [Explanatory Memorandum](#) to the 2016 Act.

no way of knowing when this will be. Given we believe the lack of clarity to be an important issue, we are concerned that it remains unaddressed. Again, we refer back to the aims of the 2016 Act.

We also reported on the lack of clarity regarding the legislative basis for requiring a landlord to comply with specific restrictions in order to give notice under section 173 of the 2016 Act. You helpfully explained that consequential amendments will be made to the *Housing Act 2004* and the *Housing (Wales) Act 2014*. However, had you originally made reference to these future amendments (for example, in the Explanatory Memorandum), this would have helped our scrutiny considerably.

The Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022

We reported that the model written statement of a fixed term standard occupation contract for a term of less than seven years does not expressly provide for a space for the term of the contract to be included. Your response says that the term of the contract could be set out in several places, but that you accept this could be made clearer.

We remind you that the Explanatory Memorandum to these Regulations says:

“The purpose of the Model Written Statements Regulations is to provide model written statements that encourage consistency in the way written statements are drafted, and provides a reliable aid for the creation of written statements that are compliant with the legal requirements of the 2016 Act.”

You will also be aware of section 32(2) of the 2016 Act, which says that written statements must set out the terms of the contract addressing key matters. The term of a contract is one of a handful of key matters. All other key matters are expressly dealt with in the model written statement, but the key matter of the term of the contract is not. We are particularly concerned that this is not being dealt with as a matter of priority.

Delayed implementation

More generally, we are concerned that it has taken over five years since the 2016 Act received Royal Assent for these regulations to be made in order to implement detailed policy on renting homes.

Should appropriate timetabling opportunities arise, we believe that there would be merit in the 2016 Act being subject to post-legislative scrutiny to learn lessons not only about the reasons for the delay in implementing the regulations but also in determining the practical impact of that delay, and, now they have been made, their impact in delivering improvements for citizens.

I am therefore copying this letter to the Chair of the Local Government and Housing Committee, not only to draw their attention to the outcome of our scrutiny of the regulations, but also in light of our comments about post-legislative scrutiny.

I look forward to receiving a response to the points we raise in due course.

Yours sincerely,

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Huw Irranca-Davies
Chair

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Huw Irranca-Davies
Chair

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Common Frameworks - Summary of Recent Progress**

DATE **30 March 2022**

BY **Mick Antoniw MS, Counsel General and Minister for the
Constitution**

Most Common Frameworks have been in operation on a provisional basis since the end of 2020. These frameworks have provided a more equal basis for policy development among officials and have been working effectively. Of the 26 frameworks that apply to Wales, one framework has been through the full process of scrutiny, Ministerial sign-off and final publication. Twenty-three frameworks are in operation on that provisional basis. The remaining two frameworks are in development.

The delivery plan for the Common Frameworks was based on the expectation that they would be finalised and implemented before the start of the Northern Ireland Assembly pre-election period in late March. As this is no longer feasible for the majority of frameworks, scrutiny will now continue beyond March to ensure that legislatures have sufficient time to perform this role effectively.

Most of the frameworks have now been published for scrutiny by legislatures. These are the current versions of frameworks that are operational on a provisional basis while scrutiny takes place and recommendations are considered. The four governments will want to understand the views of all legislatures before finally deciding on changes to individual Frameworks as a result of any recommendations.

On a related matter, on 10 December 2021, the UK Government published a process, developed by all four governments, for considering and agreeing exclusions from the UK Internal Market Act in areas covered by a Common Framework. The Welsh Government's position on the UK Internal Market Act has not changed and our legal challenge continues.

[Process for considering UK Internal Market Act exclusions in Common Framework areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/process-for-considering-uk-internal-market-act-exclusions-in-common-framework-areas)

Separately, on 9 December the Minister for Levelling Up, The Union and Constitution, Neil O'Brien MP, issued a Written Ministerial Statement to the UK Parliament on the use of section 12 of the EU (Withdrawal) Act. This stated that, as a result of the progress that had been made to establish Common Frameworks in collaboration with the Devolved Governments, the UK Government intended to repeal section 12 (the "freezing power") through the use of the enabling power set out in section 12(9) of the Act. We welcome this repeal and the fact that the freezing power has never been exercised.

[European Union \(Withdrawal\) Act: Common Frameworks Rep - Hansard - UK Parliament](#)

Finally, the thirteenth and fourteenth reports relating to the use of section 12 of the Act, covering between them the period 26 June to 25 December 2021, were published on 11 December 2021 and 10 March 2022 respectively.

[The European Union \(Withdrawal\) Act and Common Frameworks: 26 June to 25 September 2021 - GOV.UK \(www.gov.uk\)](#)

[The European Union \(Withdrawal\) Act and Common Frameworks: 26 September to 25 December 2021 - GOV.UK \(www.gov.uk\)](#)



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

hlcommonframeworks@parliament.uk

6 April 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 your letter of 23 March replying to our questions about the Plant Health Provisional Framework. It clarified many of the issues the Committee were concerned about. We are now writing to provide our final recommendations.

We appreciate your letter provided more information about the various working groups involved in the framework. However, we remain extremely concerned that the arrangements surrounding working groups are unclear, complex, and overly bureaucratic. First, we are concerned that the Annex 3 diagram in the framework does not accurately represent how working groups relate and interact. In your Appendix I attachment, for example, you say that the Surveillance and Control sub-group is a sub-group to the Plant Health Outbreak Readiness Board, but that it also feeds “operations and recommendations ... to the field operation and diagnostics sub-group”. This relationship between sub-groups is not reflected in the diagram.

We recommend that the Annex 3 diagram is updated to accurately convey how working groups interact with one another.

We are also concerned that the information you provided in Appendix I actually provides limited information about what different working groups do. Common frameworks must be clear, concise, and transparent on the role and function of working groups. However, much of the information you supplied had unexpanded acronyms and unclear language. For example, the information about the Import Threats and Horizon Scanning sub-group claims the group has “ownership of the UKPHINS IT system”, without ever expanding this acronym or explaining what it is. The information given about the IT Preparedness sub-group says “It covers both BAU and outbreak working. This work will primarily be coordinated via the PH IT steering group which oversees the Plant Health Data System (PHDS) project.” Again, the BAU acronym is not expanded and there is no information about what the PH IT steering group or Plant Health Data System project is.

We recommend that the framework is updated to include the extended information on the framework's various working groups that you provided in your letter. We recommend that this information is revised to make it more clear about what various groups do. Acronyms should be used sparingly.

The Committee are very concerned that, as you outline in your letter, the majority of working groups were created after EU Exit. While we appreciate EU Exit has meant the UK has had to take on more functions previously conducted by the EU, having such a substantial number of working groups is overly bureaucratic and could prevent the framework from being efficient. One of the arguments the Prime Minister put forward when he campaigned in favour of EU Exit was that leaving the EU could reduce bureaucracy, but the frameworks resist this.

It is extremely important that frameworks are efficient and facilitate swift, effective decision-making. This is likely to be impeded when frameworks are overly bureaucratic. We recommend that the number of working groups needed in the framework is reviewed to ensure the processes outlined in the framework are more streamlined.

We are also concerned that working bodies can quickly become out of date or ineffective as a policy area changes and develops over time. We are concerned that there is no reference in the framework to an internal review to ensure the working groups outlined in the framework successfully meet the needs of the policy area.

We recommend that the framework is updated to include provisions for the number, remit and effectiveness working groups to be regularly reviewed.

We appreciate your response about stakeholders and how they are engaged. However, we remain unclear as to who can be engaged and when. You told us that "All groups are able to consult the Plant Health Advisory Forum and the Tree Health Policy Group ... The sub-groups to the UK PHRG, frequently engage with these groups, for example to inform options for new/amended measures against pests or to inform priorities for market access." This implies that the only stakeholders that could be consulted are the Plant Health Advisory Forum and the Tree Health Policy Group, rather than, for example, a union or charity.

Engagement with a wide range of stakeholders, including those outside Government and Whitehall, is essential for the development of effective frameworks. We recommend that the framework is updated to encourage stakeholder engagement from both the Plant Health Advisory Forum and Tree Health Policy Group, as well as external stakeholders.

We recommend that the Annex 3 diagram and framework text is updated to make clear that all working groups can engage with stakeholders – not just the UK NPPO.

The Committee was not clear on why the UK Plant Health Policy Group did not appear in the framework's Annex 3 diagram showing the UK Plant Health governance structure. You clarified that "The UK Plant Health Policy Group is referred to as the "Defra-DA Policy Working Group" in Annex 3 of the Framework."

We recommend that Annex 3 is corrected to refer to the UK Plant Health Policy Group rather than the Defra-DA Policy Working Group.

The Common Frameworks Programme will be most effective when it is consistent. We were very disappointed that you did not answer our question on why legal counsel was mentioned as an option in this particular framework but not in others. This unexplained inconsistency is not helpful. We were also confused by the response you provided that legal counsel should be “an option” to “mitigate triggering a formal dispute”. Page 18 of the framework states that “As set out in the dispute resolution process, any Party to the framework can seek legal counsel.” This implies legal counsel is something sought during the dispute resolution process – not something sought before it is triggered.

Clarity and consistency are essential to the Common Frameworks Programme, but this framework fails to provide in these areas when discussing legal counsel and the dispute resolution process. We recommend that the framework is updated to outline why it particularly mentions legal counsel when other frameworks do not, or that mention of legal counsel is removed from the framework.

If this recommendation is rejected, we recommend the framework is updated to make it clear whether legal counsel can be sought before or during the dispute resolution process.

The Committee is disappointed that you did not answer our question on whether or not the North-South Ministerial Council discussed this framework in its development. While we appreciate your response that Irish officials may attend a UK meeting every six months, this is not the level of engagement we deem necessary for a framework that has implications for the whole island of Ireland.

We recommend that the opinion and feedback of the Irish Government is sought on this common framework, and that the Irish Government is treated as a key stakeholder in future reviews of the framework.

While we recognise that the Plant Health and Pesticides Steering Group does not appear in the Annex 3 diagram as it is not part of the UK’s Plant Health Service, we think this diagram should more clearly show all working groups related to the framework, even if they fall outside the remit of the UK Plant Health Service.

We recommend that the Annex 3 diagram is updated to show the interaction of all working groups relevant to the framework, rather than simply the working groups that are part of the structure of the UK Plant Health Service.

The Committee was disappointed to see that the process for agreeing exclusions from the UK Internal Market Act 2020 was not contained in the framework. We appreciate that in your letter you said that your officials would work closely with other government departments and the devolved administrations to see if the text could be included. We reiterate that the UK Internal Market Act exclusions process must be set out in relevant frameworks as paragraph 2b of the exclusions process guidance states. Failure to do so jeopardises respecting the autonomy of the devolved administrations within their areas of

competence. It should be clearly set out in relevant common frameworks as an essential process agreed for the wider Programme.

We recommend that the framework is updated to include text setting out the UK Internal Market Act exclusions process.

We are disappointed to note the absence in this framework of any commitments on ongoing engagement with Parliament. We note the absence of any commitments in the texts of these frameworks to publish reviews of the frameworks or to update legislatures on the outcomes of reviews. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of these frameworks.

We recommend that the framework should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.

We were concerned by the use of language on page 5. This was with respect to the UK Government facilitating the attendance of the devolved administrations at UK-EU meetings, where the agenda includes an item concerning implementation in an area of devolved competence. Currently, the text states that the UK Government “should facilitate” the attendance of the devolved administrations at such meetings. While international agreements is a reserved area, the implementation of international agreements remains devolved. Every effort should be made to respect the devolution settlements and ensure the devolved administrations are present at such meetings. This would also ensure adherence to the JMC principle that common frameworks will “lead to a significant increase in decision-making powers for the devolved administrations.”¹

We recommend that the framework is updated to state that the UK Government “will” facilitate the attendance of the devolved administrations at EU-UK meetings, where an agenda item concerns implementation in an area of devolved competence. This would ensure adherence to the JMC principles underpinning the Common Frameworks Programme and that the devolution settlements are respected.

We understand that each of the four governments are currently receiving views on this Provisional Framework from their respective legislatures. We therefore look forward to your response to this letter once these have been received, and our recommendations have been considered, together with the final version of the framework.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf



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Common Frameworks Scrutiny Committee

House of Lords

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Tel: 020 7219 8664

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6 April 2022

The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
Department for Environment Food & Rural Affairs
Seacole Building
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Dear George,

Thank you for your letter of 23 March replying to our questions about the Fertilisers Provisional Framework. It clarified many of the issues the Committee were concerned about. We are now writing to provide our final recommendations.

Thank you for providing the paragraph of the Protocol on Ireland/Northern Ireland relevant to the framework, and for clarifying that an editing error was responsible for its omission. However, this again highlights a problem we have persistently encountered with DEFRA frameworks: that there appears to be a lack of proofing and of final checks before provisional frameworks are published. Simple editing errors should not be able to penetrate frameworks if they have been rigorously checked before publication, as you said they are in your [letter of 7 March](#). We also noticed other editing errors in the framework. The 'Decision making Flow Diagram' on page 10 is unreadable as it is in black and white, meaning the key is unclear and it is impossible to know which are the 'yes' arrows and which are the 'no' arrows. Page 10 also contains a heading 'Diagram showing the dispute resolution process', yet no diagram is provided. However, the heading does seem to correspond to the text below it.

The Committee feels that these basic failures in presenting the framework indicate a more significant departmental failure. High-quality, transparent, and consistent common frameworks are essential for successful intergovernmental working; and to provide strong foundations for a cooperative Union. They must be taken seriously and all efforts should be made to draft them carefully and accurately. We recommend that far greater effort is taken to ensure all frameworks are drafted to a high standard before they are approved.

We recommend that the editing issues outlined above are corrected in the framework. The diagram on page 10 should be in colour and the heading 'Diagram showing the dispute resolution process' should be removed or corrected to 'The dispute resolution process'.

We remain concerned about the lack of acknowledgement of the need for communication with the Irish Government on this framework. While we appreciate that frameworks are cross UK governance arrangements, fertilisers are a cross-border issue that require cross-border engagement, and as such this should be reflected in the framework since it will no doubt feed into policy discussions within the framework. We must emphasise that the island of Ireland is considered a single epidemiological unit on matters concerning animal health, and therefore fertilisers.

We recommend the opinion and feedback of the Irish Government is sought on this common framework, and that the Irish Government is treated as a key stakeholder in future reviews of the framework.

We recommend that the framework is updated to outline the processes used to facilitate communication between Northern Ireland and the Republic of Ireland on matters relating to fertilisers.

We still lack clarity following your letter's discussion of the dispute resolution process outlined in the framework. We asked you to provide clarity on the role of senior officials in the decision making and dispute resolution process. In the fifth paragraph of your letter, you state that in the dispute resolution process, "any dispute between parties would not proceed directly from policy officials (the UKFRC) to the SOPB; hence the establishment of the Fertiliser Liaison Group. This group comprising senior officials (Grade 5 level) would seek to mediate on any disputes before any further escalation." This suggests that the Fertiliser Liaison Group, made up of senior officials, are the first real stage of the dispute resolution process, an idea reflected on page 10 and page 15 of the framework. However, in the seventh paragraph of your letter, you say that "The Fertiliser Liaison Group is referring to the UKFRC and we will amend to that effect for clarity. The dispute resolution process should start by discussion at the UKFRC between officials. After a dispute cannot be solved here it should be escalated to the SOPB". This is completely contradictory, and as such it is impossible to know how the dispute resolution process is supposed to work. In light of the persistent concerns we have expressed to you about inconsistencies in frameworks, the inconsistency in departmental letters again suggests that the Common Frameworks Programme is not being taken seriously by the Government. It also suggests the levels of bureaucracy in the framework are causing confusion even to those who have drafted the framework.

The dispute resolution process of a framework must be clearly outlined to be effective, yet both the framework and your letter fundamentally fail to provide this clarity. We recommend that the framework is updated to provide clarity on the dispute resolution process.

We welcome your clarification on paragraph 10.6 of the framework that is intended to refer to the fact that a new senior officials policy group does not need to be established because of the SOPB.

We recommend that the following is removed from the framework, as it causes unnecessary confusion: "There is no specific senior official group that exists for fertilisers with regard to decision making. Policy officials also consider that there is no need for a specific senior official group only for fertiliser related decisions."

In [previous correspondence](#) with you, you said that “it may become necessary to gather independent UK wide evidence to inform policy, and this may require a new or existing body to provide this evidence base in an independent manner. The FRC is the main body that has been formed and it will be within their remit to decide whether any decision making powers or operational roles will be delegated to other bodies, either existing or new, in the future as part of the functioning of any new regulatory framework.” This information is not reflected in the framework.

We recommend that the framework is updated to include information about the FRC.

The Committee was disappointed to see that the process for agreeing exclusions from the UK Internal Market Act 2020 was not contained in the framework. We appreciate that you have already told us that your officials would work closely with other government departments and the devolved administrations to see if the text could be included. We reiterate that the UK Internal Market Act exclusions process must be set out in relevant frameworks as paragraph 2b of the exclusions process guidance states. Failure to do so jeopardises respecting the autonomy of the devolved administrations within their areas of competence. It should be clearly set out in relevant common frameworks as an essential process agreed for the wider Programme.

We recommend that the framework is updated to include text setting out the UK Internal Market Act exclusions process.

We are disappointed to note the absence in this framework of any commitments on ongoing engagement with Parliament. We note the absence of any commitments in the texts of these frameworks to publish reviews of the frameworks or to update legislatures on the outcomes of reviews. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of these frameworks.

We recommend that the framework should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.

We were concerned by the use of language on page 4. This was with respect to the UK Government facilitating the attendance of the devolved administrations at UK-EU meetings, where the agenda includes an item concerning implementation in an area of devolved competence. Currently, the text states that the UK Government “should facilitate” the attendance of the devolved administrations at such meetings. While international agreements is a reserved area, the implementation of international agreements remains devolved. Every effort should be made to respect the devolution settlements and ensure the devolved administrations are present at such meetings. This would also ensure adherence to

the JMC principle that common frameworks will “lead to a significant increase in decision making powers for the devolved administrations.”¹

We recommend that the framework is updated to state that the UK Government “will” facilitate the attendance of the devolved administrations at EU-UK meetings, where an agenda item concerns implementation in an area of devolved competence. This would ensure adherence to the JMC principles underpinning the Common Frameworks Programme and that the devolution settlements are respected.

We understand that each of the four governments are currently receiving views on this Provisional Framework from their respective legislatures. We therefore look forward to your response to this letter once these have been received, and our recommendations have been considered, together with the final version of the framework.

Yours sincerely,

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

Huw.Irranca-Davies@senedd.wales

28 March 2022

Dear Huw,

In accordance with the inter-institutional relations agreement I wish to notify you that a further meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 21 March.

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

At the meeting we discussed the terrible situation in Ukraine and the impacts for the production costs of fertiliser, feed, and the processing of white fish. Pet travel and quarantine concerns were also raised.

The UK Government introduced their proposals for protected site designations outlined in their Nature Green Paper. They also provided an update on the publication and scrutiny of Common Frameworks.

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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.



When discussing Border control preparations I pressed the UK Government for assurances devolved administrations would be consulted as soon as possible in the drafting of any necessary further legislation and in discussions around infrastructure funding.

The decision by the UK Government to grant an exclusion to the Internal Market Act for single use plastics was noted by all administrations. On behalf of the Minister for Climate Change I joined my Scottish Government colleagues in noting disappointment at the narrow nature of the exclusion.

There were a number of items of AOB including an update on the proposals for a Food Data and Transparency Partnership, discussions relating to the practice of using fish in fish feed for salmon in aquaculture, and Scottish Ministers raised concerns regarding Deposit Return Scheme tax issues. I also extended an invitation to members to the Royal Welsh Show in July.

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

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

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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

Regards,

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

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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PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Rt Hon Michael Gove MP

Secretary of State, Department for Levelling Up, Housing and Communities

By email

29th March 2022

Transparency of IGR meetings

It has been brought to our attention that the first meeting of the Inter-Ministerial Standing Committee (IMSC) took place on Wednesday 23rd March. The Committee are concerned that it was not given notice of this meeting or provided a copy of the agenda in advance. We are aware that the Welsh Government provided notice and advance sight of the agenda to the relevant Senedd Committee.

The Committee took seriously the commitments you made to us on 1st March that the UK Government wanted the new intergovernmental relations system to be more transparent. We also took note of your view that the UK Government was being restricted in greater transparency by one or more of the devolved administrations. Moreover, when questioned on the issue of IGR transparency on 22nd March, the Minister for Levelling up, the Union and the Constitution, Neil O'Brien, emphasised to us that it was not possible for one government to act unilaterally on matters of transparency.

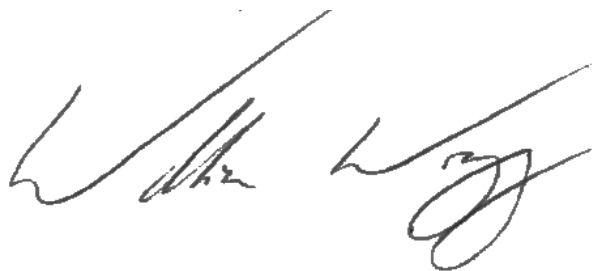
When contacted on this matter to clarify the oversight, your department confirmed that this was not in fact an oversight, but that the position of the UK Government is not provide the agenda for IMSC meetings to this Committee in advance, and the promised transparency would be in the form of a communique published after IMSC meetings.

The Committee is extremely concerned by these events, and the stated position of the UK Government. In this instance, the actions of the UK Government not only fall short of the expected level of transparency and the level of transparency on display by the devolved administrations, it also seems to fly in the face of the statements your department has made to this Committee on two separate occasions in recent months regarding commitments to transparency. Indeed, this position represents a backsliding from the arrangements formerly in place regarding IGR, whereby established practice was that the Committee was given information about IGR meetings in advance.

As we discussed when you appeared before the Committee, there is a need to significantly improve the transparency of IGR so that the new arrangements are open and trusted. The new system provides the opportunity to set up positive practices in this regard from the very beginning. A good first step would be for you to commit the UK Government to maintain, at the very least, the previously existing transparency arrangements by providing adequate advanced notice (a week for planned meetings, and as soon as possible for meeting arranged

for within a week), and the agenda for the meeting to this Committee. This should be the practice for all IGR meetings at Ministerial level and should be established across the UK Government in relation to the relevant Select Committee.

I look forward to your positive response in this regard and clarity on the UK Government's commitment to transparency in these matters.

A handwritten signature in black ink, appearing to read 'William Wragg', written in a cursive style.

William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee
(approved by the Chair remotely)



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

SeneddLJC@senedd.wales

31 March 2022

Annwyl Huw,

Inter-Institutional Relations Agreement: Inter-Ministerial Standing Committee

Further to my letter of 18 March and your letter of 22 March ahead of the first meeting of the Inter-Ministerial Standing Committee on 23 March, I have issued a Written Ministerial Statement summarising the discussions at the meeting. It has been published at: [Written Statement: Inter-Ministerial Standing Committee \(IMSC\) \(31 March 2022\) | GOV.WALES](#)

Your letter was noted by the Chair of the Inter-Ministerial Standing Committee, the Secretary of State for Levelling Up, Michael Gove MP. I also specifically drew the Chair's attention to the Committee's position on UK Bills and legislative consent.

In your letter you refer to the new machinery, including Inter-Ministerial Groups (IMGs), and UK Bills and legislative consent, and I address each point in turn below.

The UK Government's approach to the Professional Qualifications Bill does not respect the Sewel Convention and remains completely unjustified given the lack of exceptional circumstances involved. If trust is to be maintained between the UK Government and the other governments of the United Kingdom, it is essential the Sewel Convention is respected. The new intergovernmental processes have the potential to achieve significant and sorely needed improvements to the way in which the UK Government and the devolved governments work together. For us, the test will be whether the UK Government consistently follows the spirit and the substance of the reforms – based on respect, parity of participation and a desire to reach agreement through discussion, compromise and not imposition.

We share the Committee's disappointment over the short notice of the first UK-EU Relations IMG, and we expect future IMG meetings to be handled in a manner consistent with the IGR principles. The next IMG is expected to take place before the next meeting of the UK-EU

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Partnership Council, for which there is currently no proposed date, but we will keep the Committee updated in line with the Inter-Institutional Relations Agreement.

The Cultural Objects (Protection from Seizure) Bill is a telling example of the challenges posed by late sharing of provisions and information. This was a Bill where our policy objectives were aligned but insufficient time was available to discuss and agree upon the appropriate safeguards for devolution, resulting in the UK Government disapplying provisions in relation to Wales. I don't believe that the outcome here is fairly described as a breakdown in communications. Our policy position is clear. The UK Government was unwilling to provide the necessary assurances, and without those assurances, the Welsh Government was unwilling to be included in the Bill. We welcome UK Government's commitments for greater early engagement in the next Parliamentary session which, if respected, will ease pressures. We continue to press, however, for substantive discussions on our principles to UK Bills which would further assist with improving inter-governmental working.

Whilst these developments are indeed welcome, we remain of the view that placing the Sewel Convention on a statutory and justiciable footing remains the most appropriate way to protect the devolution settlement and safeguard the United Kingdom.

I am also copying this letter to Mick Antoniw MS, the Counsel General and Minister for the Constitution; the Rt Hon Elin Jones MS, the Llywydd; the Rt Hon Michael Gove MP, the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations; the Northern Ireland Assembly's Committee for the Executive Office, the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee, the House of Lords' Constitution Committee, and the House of Commons' Public Administration and Constitutional Affairs Select Committee.

Yours sincerely,

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

MARK DRAKEFORD



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Inter-Ministerial Standing Committee (IMSC)**

DATE **31 March 2022**

BY **First Minister, Mark Drakeford MS**

The Counsel General and Minister for the Constitution and I represented the Welsh Government at the meeting of the Inter-Ministerial Standing Committee on 23 March, the first meeting since all governments agreed to use the Intergovernmental Relations (IGR) Review machinery as a basis for our intergovernmental relations earlier this year.

First Minister Rt Hon Nicola Sturgeon MSP and Deputy First Minister and Cabinet Secretary for Covid Recovery John Swinney MSP joined on behalf of the Scottish Government. Rt Hon Michael Gove, Secretary of State for Levelling Up chaired this virtual Standing Committee meeting, and he was accompanied by the Secretaries of State for Scotland and Wales, and Minister of State for Northern Ireland. Senior officials from the Northern Ireland Civil Service attended as observers.

Among the items on the agenda were: the ongoing situation in Ukraine and the domestic implications for the UK; implementation of the new IGR arrangements; approach to UK legislation and future ways of working; and the implications of the Levelling Up White Paper. A communique was published following the meeting: [Interministerial Standing Committee Communiqué: 23 March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/communique/interministerial-standing-committee-communique-23-march-2022)

The positive features of joint intergovernmental working in relation to the current Russia/Ukraine crisis, in particular resettlement of refugees arriving in the UK, were emphasised during the meeting. Alongside this, the Counsel General and I called for efforts to be made to improve the systems around visas, assistance with reaching destinations, and data flows. I welcome the fact that a specific request I made to the UK Government in the meeting to improve data sharing has since been addressed. More broadly, in the context of the economic consequences of the situation in Ukraine, I called for IGR fora to focus on the how it is exacerbating the increasing cost of living crisis being experienced in the UK.

Concerning the agenda item on UK legislation and legislative consent, the Counsel General and I highlighted the unacceptable and increasing breaches of the Sewel Convention. I drew the Chair's attention to a recent letter from the Chair of the LJC Committee on the use

of UK legislation. I also encouraged serious consideration of the House of Lords Constitution Committee's report and recommendations on the Convention. Linked to this, we called for codification of the Sewel Convention, and a strengthening of reporting mechanisms to respective Parliaments. In the near term, the Counsel General underlined the importance of early engagement on future UK Bills. Officials have been asked to follow this up and work on principles to minimise, if not eliminate, differences in approach.

Within the item discussing the UK Government's Levelling Up agenda, I reminded the Chair of the conclusions of the Dunlop Review, specifically: *"funding by the UK government in devolved areas must not replace core funding and must be applied with the support of the devolved governments"*. In relation to the overall picture on successor arrangements to EU funding, I highlighted the promises and the commitments that had been made, despite which the reality is that UK Government decisions mean Wales is set to be around £1 billion worse off. I also emphasised the importance of UKG learning lessons from where constructive joint working has proved possible, with co-design and co-decision embedded in the approach.

In relation to implementing the IGR Review, it was agreed that a forward programme of meetings would be developed to enable a structured and regular rhythm of engagement.

Agenda Item 6.4

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



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
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5 April 2022

Dear Huw,

Further to my recent letter advising you of the Finance Interministerial Standing Committee Meeting on 21 March, I write to briefly report on the discussions. A communique was also published following the meeting: [Finance: Interministerial Standing Committee – 21 March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/finance-interministerial-standing-committee-21-march-2022)

In attendance were myself, Chief Secretary to the Treasury - Simon Clarke MP, Minister for Finance Northern Ireland - Conor Murphy MLA, and Cabinet Secretary for Finance and the Economy Scottish Government - Kate Forbes MSP.

There was a natural focus on the UK Government's proposals for the UK Spring Statement, with little further clarity received at that time. I pressed the Chief Secretary about support for those to be harmed the most by the cost of living crisis, especially for those individuals on welfare benefits. Details of the impact of the UK Government's Spring Statement for Wales are set out in my Written Statement: [Written Statement: Welsh Government response to the UK Spring Statement 2022 \(23 March 2022\) | GOV.WALES](https://www.gov.wales/government/written-statements/written-statement-welsh-government-response-to-the-uk-spring-statement-2022-23-march-2022)

I led an agenda item on Devolved Government budgeting and communications, providing examples of our year-end budgeting experience and stressing the importance of the need for greater certainty. An action was agreed for officials to work together to consider whether year-end processes can be operated more effectively.

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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.

Under the item regarding the UK Government's Levelling Up White paper I took the opportunity to reiterate concerns that this should not cut across devolved policy and highlighted that Wales receives much less Research and Development funding than other parts of the UK.

Under the new arrangements, the Chair position will rotate so I will be Chairing the next meeting. The date is still to be confirmed but is expected to take place before summer recess.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca". The script is cursive and fluid.

Rebecca Evans AS/MS

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

Agenda Item 6.5

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

Ein cyf/Our ref: LG/1167/22

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

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6 April 2022

Dear Huw,

Following my letter of 2 March, I am writing to inform you my consent has been granted for the Agriculture and Horticulture Development Board (Amendment) Order 2022 and the Order has been laid in the UK Parliament. The Order will make changes to the Agriculture and Horticulture Development Board Order 2008 (AHDB Order).

The Agriculture and Horticulture Development Board (AHDB) was established by the AHDB Order under powers provided in the Natural Environment and Rural Communities Act 2006 (the NERC Act). The Agriculture and Horticulture Development Board (Amendment) Order 2022 (the 2022 Order) amends the AHDB Order and will be 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 NERC Act with the approval of the Welsh Ministers.

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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Department for Levelling Up,
Housing & Communities

Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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Agenda Item 6.6
Rt Hon Michael Gove MP
*Secretary of State for Levelling Up, Housing
and Communities*
Minister for Intergovernmental Relations

**Department for Levelling Up,
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Email: michael.gove@levellingup.gov.uk

Our Ref: 15114784

April 2022

Dear Huw,

Thank you for your letter, dated 28 January, regarding recent legislative consent memoranda and concurrent powers contained within UK Government bills. I welcome the Committee's work in assessing legislative consent memoranda for UK Government bills that engage the Senedd's legislative consent process. These bills are vital in making sure policies work effectively and equitably in all parts of the UK. Positive collaboration continues between the UK Government and the Devolved Governments on UK Government bills, with 24 Legislative Consent Motions (LCMs) passed collectively to date by the devolved legislatures for bills and Acts in the current legislative session of Parliament. We remain fully committed to the Sewel Convention and to the associated practices for seeking consent, as set out in both the Devolution Memorandum of Understanding and Devolution Guidance Notes.

I note the concerns you have raised on behalf of the Committee regarding concurrent powers on devolved matters in UK Government bills. Concurrent powers are a useful legislative mechanism, allowing for one consistent set of regulations to be in place across the UK. They also respect the devolution settlements by allowing both UK Government and Devolved Government Ministers to make regulations, where appropriate. This position is reflected in the case of the Professional Qualifications Bill, which is currently making its way through Parliament. I am aware that both BEIS Bill Ministers Lord Grimstone and Paul Scully MP have had extensive discussions with Welsh Government Minister Jeremy Miles MS on the use of concurrent powers within the Professional Qualifications Bill. I am also aware that the Bill Ministers wrote to Minister Miles on 21 February 2022 setting out the UK Government's current position on the Bill along with the UK Government's intention to amend the Bill to add a statutory 'consult plus' mechanism to all of the Bill's concurrent powers. This is in addition to exempting the Bill's concurrent powers from the restrictions of Schedule 7B of the Government of Wales Act 2006.

You raise concerns over the inclusion of powers in recent UK Government bills which could be used to amend existing primary legislation and the Government of Wales Act 2006 in particular. I can assure you that such provisions are not automatically included in bills, but are only considered

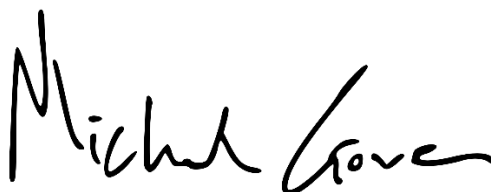
in unique and compelling circumstances. Each bill is drafted according to its specific policy intent and the most appropriate way to affect those policy changes. In the case of the Professional Qualifications Bill, the powers are targeted and constrained to make sure they are appropriate; they provide the necessary flexibility to implement our new system for recognising professional qualifications in a complex professional regulatory landscape, which consists of both primary and secondary legislation across more than 200 regulated professions. I hope I can provide you and the Committee with the necessary reassurance when I say that the UK Government has no intention to use these powers to amend the Government of Wales Act 2006.

I recognise your broad argument in regard to Minister of the Crown consent. However, in the specific context of the Professional Qualifications Bill we have simply made Welsh Ministers' competence the same as that of the Senedd. This means that the same consent requirements apply, so that Welsh Ministers need consent for any provision in regulations they make under the Act which would otherwise be outside competence because of the effect of paragraph 12 of Schedule 7B to the Government of Wales Act 2006. Consent is needed in the same circumstances when the Senedd legislates. We believe this delivers the right result, and follows the general principles of the Welsh devolution settlement as set out in the 2006 Act.

I also welcome and appreciate the Committee's interest in the Review of Intergovernmental Relations, undertaken jointly by the UK Government and Devolved Governments. I am grateful for the Welsh Government's support of the new intergovernmental arrangements which will herald a new era for joint working between the UK Government and the Devolved Governments. Legislative consent featured on the agenda for the first meeting of the Interministerial Standing Committee (IMSC) held on 23 March which, I hope, demonstrates our ambition to work with the Devolved Governments at a much earlier stage. I look forward to working with the Welsh Government, Scottish Government and the Northern Ireland Executive, as well as with the devolved legislatures in implementing the new working arrangements.

I am copying this letter for reference to the Lord Grimstone of Boscobel; Paul Scully MP, Minister for Small Business, Consumers and Labour Markets; Kwasi Kwarteng MP, Secretary of State for Business, Energy & Industrial Strategy; Simon Hart MP, Secretary of State for Wales; and Jeremy Miles MS, Welsh Government Minister for Education and Welsh Language.

With every good wish,

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

**Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and Communities
Minister for Intergovernmental Relations**

The Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and
Communities and Minister for Intergovernmental
Relations

28 January 2022

Dear Michael

The Welsh Government's Legislative Consent Memoranda for UK Bills

By way of introduction, I chair the Senedd's Legislation, Justice and Constitution Committee. In addition to considering all primary and subordinate legislation laid before the Senedd, our broad remit places a responsibility on us to consider matters relating to devolution, the constitution, justice and external affairs.

A specific responsibility is to consider all Welsh Government legislative consent memoranda laid before the Senedd in relation to UK Bills being considered by the UK Parliament. In your role as Minister for Intergovernmental Relations you may be well aware that the number of UK Bills that are subject to consent memoranda has increased significantly in recent times when compared with previous Senedd terms.

To date in this Sixth Senedd, which you will know began last May, the Welsh Government has laid legislative consent memoranda in respect of 17 UK Bills. Today, we have laid before the Senedd our twentieth report on these matters, in respect of the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Professional Qualifications Bill. It follows an earlier report on the Bill published in September 2021.

While our consideration of each legislative consent memorandum focuses on specific issues, the quantity of consent memoranda we have reported on within such a relatively short space of time has brought sharply into focus a number of key constitutional matters.

Our two reports on the legislative consent memoranda on the Professional Qualifications Bill highlight a range of issues. I would like to draw your attention to three of these issues, two of which we have found to be common across our scrutiny of consent memoranda for other UK Bills. So while this letter focuses on our consideration of the Professional Qualifications Bill as a key example, the matters we draw to your attention are not limited to this one Bill.

On that basis, we would therefore welcome your views on the following matters, given your responsibilities in the UK Government on matters relating to intergovernmental relations.

First, we are increasingly concerned by the number of UK Bills that include concurrent regulation-making powers – powers that may be exercised by either the Welsh Ministers or the Secretary of State in devolved

areas – and the implications this has on government accountability to, and scrutiny by, the relevant legislatures, and on the devolution settlement itself.

A UK Government Minister exercising such powers for Wales in a devolved area, without a role for the legislature (or, in certain circumstances, government) in Wales, is an unnecessary and unwelcome delegation of power, and blurs an already confused picture of government accountability.

The Minister for Education and Welsh Language, Jeremy Miles MS, informed us that “the UK Government has refused to remove the concurrent powers given to the Secretary of State and Lord Chancellor” which appear in clause 1 of the Professional Qualifications Bill. While we disagree with the Minister’s preferred mechanism for attempting to resolve this impasse – by requesting that the Bill be amended to provide the Welsh Ministers and not the Senedd with a role in consenting to such regulations before they may be made – we do acknowledge that the Minister has made attempts to work across the intergovernmental divide.

We share the Minister’s concerns regarding the inclusion of concurrent powers in the Bill. Our concerns apply equally to the presence of all such concurrent powers in UK Bills.

Secondly, the Professional Qualifications Bill is, unfortunately, just one of a number of Bills that as currently drafted would permit – through a combination of concurrent functions and Henry VIII powers – the Secretary of State or the Lord Chancellor to amend not only Senedd Acts but, of even greater concern, the *Government of Wales Act 2006*. We do not consider this to be acceptable.

We are aware that the Minister has written to Lord Grimstone and sought an amendment to the Professional Qualifications Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the 2006 Act. We strongly support this position.

This is not the only UK Bill introduced into the UK Parliament that would permit such regulations to be made. On occasion, the Welsh Government has been successful in negotiating amendments as described above. We believe that such regulation-making powers should not become an automatic feature when Bills are drafted by the UK Government.

I would also like to draw your attention to a third issue, that is specific to clause 16 of the Professional Qualifications Bill, which the Minister described to us as including a “restriction unique to the Welsh Ministers powers”.

The Minister has recently informed us that his own concerns with this clause have been addressed. However, in the absence of further information or evidence of changes to the face of the Bill, it remains our view that the clause as drafted will mean that the Welsh Ministers will require Minister of the Crown consent for any regulations containing provisions which, if contained in an Act of the Senedd, would require Minister of the Crown consent. Under Schedule 7B to the 2006 Act, once a regulation-making power has been given via an Act of the Senedd with Minister of the Crown consent, that power can be exercised by the Welsh Ministers without the limitation of again seeking Minister of the Crown consent to the content of the regulations. Therefore, in our view, clause 16(5) Professional Qualifications Bill is an unusual and unwelcome power to be included in a Bill.

I look forward to receiving a response from you at the earliest opportunity which addresses the points described above.

We recognise that in future these matters may be resolved in line with the final package of reforms announced following the [Review of Intergovernmental Relations](#). As regards that Review, given your Ministerial responsibility in these areas, you would be welcome to attend a future meeting to discuss such matters further

and/or any other matter relevant to our respective responsibilities. We would see such a meeting as part of an ongoing constructive dialogue between the various bodies within the UK's constitutional framework.

I am copying this letter to The Lord Grimstone of Boscobel Kt; Kwasi Kwarteng MP, the Secretary of State for Business, Energy and Industrial Strategy; the Rt Hon Simon Hart MP, the Secretary of State for Wales; and the Minister for Education and Welsh Language. I am also copying the letter to the Chairs of the House of Lords Constitution Committee, the House of Lords Delegated Powers and Regulatory Reform Committee, and the House of Commons Public Administration and Constitutional Affairs Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



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

11 April 2022

Dear Huw,

I am writing to you in relation to the UK Government's establishment of a Domestic Advisory Committee, which is a requirement of the Trade and Cooperation Agreement between the UK and the EU.

In his letter to you of 10 March, the First Minister undertook to provide your Committee with an update on the membership of the DAG, and the Civil Society Forum (CSF), once further information was available. On 31 March, the Minister for Europe and North America issued a Written Statement confirming the membership of the DAG, and providing an update on the CSF. Thirty organisations have been selected as members of the DAG, including the Wales Council for Voluntary Action, and my officials will be meeting with WCVA before the first meeting of the DAG. The full membership list is available in the Written Statement.

[Written statements - Written questions, answers and statements - UK Parliament](#)

I will continue to keep the Committee updated.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

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

Agenda Item 6.8



Llywodraeth Cymru
Welsh Government

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

20 April 2022

Dear Huw,

Thank you for your letter of 25 March in relation to my appearance at Legislation, Justice and Constitution Committee on 14 March. I welcomed the opportunity to speak to the Committee regarding the Intergovernmental Relations Review, the Internal Market Act, and the Sewel Convention. I have provided a detailed response to your further questions in an Annex to this letter.

Yours sincerely,



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

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

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

Annex

Intergovernmental Relations

1. You indicated that you hoped to discuss the implementation of the Intergovernmental Relations Review and the “situation in respect of UK legislation” at the first meeting of the Interministerial Standing Committee (IMSC) this month. You will have seen our letter to the First Minister (dated 22 March) and our request to be kept updated on progress following the first meeting. What are your priorities and expectations for the work of the IMSC?

The First Minister and I represented the Welsh Government at the first meeting of the Inter-Ministerial Standing Committee (IMSC) on 23 March. The First Minister wrote to you on 31 March with an update on the discussions at that meeting. The First Minister also issued a Written Statement to the Senedd on the IMSC, outlining that at this meeting the important topics of the Ukraine crisis, our approach to UK legislation, and the Levelling Up White Paper were discussed.

In relation to implementing the IGR Review, it was agreed that a forward programme of meetings would be developed to enable a structured and regular rhythm of engagement. It is important that these meetings are timetabled and routinely take place if the promise of the IGR Review is to be fulfilled. The IMSC must be given time to establish its ways of working, with joint ownership of the machinery, reflected for example in shared chairing and agenda-setting, and the intention to work on the basis of agreement by consensus.

The IMSC will become an important forum for Ministerial engagement on cross-cutting domestic and international matters. The IMSC will provide a strong basis to work jointly and collaboratively on common frameworks and regulatory matters and to facilitate consultation between the governments at a Ministerial level. The IMSC will oversee portfolio-level engagement and provide an escalation route for matters of strategic importance.

2. How do you think the IMSC should approach oversight of the UK internal market and common frameworks? In particular:

- What consideration should the IMSC give to the reporting of the Office for the Internal Market?
- How will the IMSC ensure that discussions on balancing the opportunities and risks of regulatory divergence are open to parliaments and stakeholders?

As set out in its Terms of Reference, the Standing Committee will “consider issues which have an impact on regulatory standards across the UK for internal trade” and “consider the implications of diverging approaches in establishing cross-cutting local policies which impact on another government’s area of responsibility.” Discussions with the other governments through the IMSC – and through relevant Inter-Ministerial Groups on specific issues – should enable consideration to be given to reports from the Office for the Internal Market (OIM) and wider developments. We remain committed to engaging with the Senedd and stakeholders when considering future regulatory policy and potential divergence, and to reporting on inter-Ministerial discussions in line with the Inter-Institutional Relations Agreement and arrangements relating to Common Frameworks.

The OIM has a duty to publish an annual report (the first is due no later than March 2023) and once every five years with a more detailed examination of the health of the internal market. This five yearly report will also look at how Common Frameworks are contributing to the effective operation of the internal market.

The OIM published an initial [report](#) this March. Among other things, it considers possible future regulatory measures of the four nations, within the scope of the UK Internal Market Act 2020, and provides an initial analysis of intra-UK trade data regarding the size and importance of this market.

▪ What is your response to the recent recommendation of the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee that there should be agreement between the Scottish Government and Scottish Parliament that, as a minimum, there should be to no dilution of public consultation or of parliamentary scrutiny as a result of common frameworks and intergovernmental working?

I agree with this recommendation; Common Frameworks are not intended to interfere with the ability of the Senedd or any other legislature to scrutinise.

3. We discussed the establishment of the Intergovernmental Relations Secretariat. Could you set out your expectations for what the size and grade composition of the secretariat should be? Given the key role of the secretariat to the functioning of the new tiers of intergovernmental working and, not least, the dispute resolution processes, we would be grateful too if you could keep us updated on the establishment of the secretariat.

As outlined in the evidence session the resourcing of the standing IGR secretariat has not yet been finalised. Work is underway on the overall staff complement and grade mix as well as options around recruitment to ensure appropriate resource for the standing secretariat to carry out its functions. Ownership will be shared across the four governments, but it will operate independently of any parent governments' interests. The secretariat will ultimately be accountable to the Council. It will support and co-ordinate business at the top and cross-cutting tiers – but not the FISC – and oversee disputes, according to an agreed set of guidelines. The standing secretariat will liaise and work closely together with senior IGR officials across all of the governments. Core functions are set out in the package of reforms. Until the standing secretariat is established, officials from each government will act as a joint secretariat. I will keep you updated as the standing secretariat is established.

4. As discussed during the session, we were concerned to note the statement made by the Minister for Economy on 10 March that the first meeting of the UK-EU Relations Interministerial Group (IMG) was called with only two hours' notice. You expressed a hope that these were "early teething troubles". How will the Welsh Government seek to ensure future meetings of IMGs are called with reasonable notice?

As mentioned above, the IMSC oversees portfolio-level engagement and provides an escalation route for matters of strategic importance. Oversight and assurance will also be provided jointly by senior officials in all four governments, meeting on a regular basis to oversee the establishment of IMGs, where they do not currently exist, as well as provide a mechanism for improving the quality of engagement. We will continue to work to influence the focus, operations and ways of working through joint secretariat arrangements with the other governments.

IMGs need to operate in line with the principles for intergovernmental relations and should have agreed terms of reference; meetings organised collaboratively by policy officials from the four governments; agendas agreed between governments; rotating chairs (as well as locations, if 'in-person' meetings are needed) as standard practice. If issues emerge, we will raise these at official level, Ministerial level, the IMSC and, if necessary, in the Council. We will continue to keep the Senedd updated in line with our commitment to transparency and accountability around inter-governmental relations.

As for the UK-EU Relations IMG, we have made clear that we expect to be given proper notice of all intergovernmental meetings of this nature, consistent with the principles agreed under the review of IGR. Welsh Government officials have fortnightly meetings with the UK Government's EU Secretariat and the other Devolved Governments, and through this we will continue to seek to ensure future meetings of the IMG operate in line with these principles.

5. Can you set out how the Interministerial Group for the TCA will interact and communicate with forums established by the TCA? For example, will it coordinate its meeting schedule to align with TCA meetings?

The Terms of Reference for this IMG are yet to be finalised and signed off, but the current intention is that the Group should aim to meet regularly, including before meetings of the Partnership Council and the Withdrawal Agreement Joint Committee. This will enable Devolved Ministers to discuss with UK Government counterparts the issues which are likely to be considered at these meetings, and seek to ensure that devolved interests are represented in the positions taken by the UK in those TCA meetings. Relevant issues may also be discussed in portfolio-specific IMG or official level meetings.

6. We discussed whether the new intergovernmental structures provide for sufficient Welsh Government involvement in international policy. Can you set out your understanding of how the IMSC and the various interministerial groups will work together to provide four government oversight of international policy?

The importance of engagement on international issues as it affects devolved responsibilities is recognised within the IGR Review.

There are two international focussed IMGs – the Trade IMG to discuss agreements with the UK's new trading partners, and the Trade and Cooperation Agreement Implementation (TCA) IMG for the UK-EU TCA. The departmental IMGs can also consider international engagement and agreements where devolved responsibilities are involved.

The new UK-EU Relations IMG will be a forum for discussion of matters relating to the TCA and the Withdrawal Agreement, but the UK Government has outlined that wider diplomatic issues relating to the UK's international affairs are outside the scope of this IMG.

With regards to engagement with the UK Government on the negotiation of new Free Trade Agreements, structures were already in place that allowed for Welsh Government engagement, both at an official and Ministerial level. Although there remains room for improvements in some elements of this engagement, these are focused on the nature of the information shared with us, rather than the engagement structures themselves.

The Ministerial Forum for Trade (MfT) has been in place for several years and provides an opportunity for Ministers from the Devolved Governments to engage on UK Trade Policy. However, the Terms of Reference (ToR) for the Ministerial Forum for Trade have never been formally agreed. Now that the IGR Review is complete, the ToR for the MfT will be revisited and discussions have begun with UK Government and the other devolved governments over how best to align the terms of the MfT with the IGR principles.

The IMSC can consider cross cutting and wider strategic international issues. It can also provide an escalation route for international issues which cannot be adequately addressed in the relevant IMG, or bilateral meetings, or which require further strategic oversight across multiple policy areas.

The IGR Review also allows that international engagement and agreements that fall outside the remit of the IMSC or a relevant IMG can be led directly by the FCDO, either on a bilateral or multilateral basis as necessary. In support of this, regular senior official level meetings involving the FCDO and the devolved governments have been established.

7. We discussed the new intergovernmental dispute resolution process. Could you confirm whether the Welsh Government has, or will have, internal criteria for deciding how and when to seek escalation of matters through the new intergovernmental dispute resolution process? If such criteria exist, please can you provide us with the details?

The proposed mechanism around dispute avoidance and resolution outlines each government's right to refer and escalate a dispute, and requires independent chairing and independent secretariat arrangements. It includes a presumption of independent input, through either advice or mediation, and increased transparency to aid legislatures' scrutiny and stakeholder engagement.

Triggering a formal dispute is a significant step to take and should normally be seen as a last resort, when all attempts to satisfactorily resolve an emerging issue or disagreement have been exhausted. As such, our approach prior to initiating a formal dispute would commonly involve a number of important stages, including:

- Exhausting all of the portfolio level intergovernmental dispute avoidance and resolution mechanisms, including IMGs and any Common Framework arrangements;
- An internal review by senior Welsh Government officials to consider the steps taken to that point to resolve the issues, and to consider it in the context of the IGR dispute resolution process, and any criteria or guidance issued by the standing secretariat, including the eligibility criteria set out in the IGR Review;
- Securing agreement from the portfolio Minister, the Counsel General, the Finance Minister (for finance disputes) and the First Minister who will consider the merits of the case in the context of the specific issue and overall intergovernmental relations;

8. We briefly discussed the UK Government's intention to proceed with the Professional Qualifications Bill despite legislative consent not being given by the Senedd and the Scottish Parliament. As noted by the Minister for Education and Welsh Language in his letter to us on 8 March, and as you acknowledged during the meeting, this is a breach of the legislative consent convention. It was not clear from the session whether you consider this matter, or any similar matter in the future, would be taken through the new dispute resolution processes by the Welsh Government. We would welcome clarity on this point.

During the IMSC on 23 March, the First Minister and I made clear that the UK Government must properly respect the Sewel Convention. As a result of which it was agreed for joint work to be carried out by officials on principles to minimise, if not eliminate, differences in approach to the Sewel Convention. I propose to see how this joint work is taken forward in the first instance, but all options remain on the table.

9. You described the revised dispute resolution process as a “massive improvement” and “groundbreaking”. How will you monitor how well new intergovernmental processes are working, and what action will you take if you feel they are not being followed?

The IGR Secretariat will be responsible for ensuring transparency of IGR operations such as sharing joint communiqués for the Council and IMSC. It is also required to complete an annual report of intergovernmental activity. This will include any issues progressed through the DAR mechanism and, respecting the confidential nature of some issues, each government will share this with their legislature. We will supplement and complement this via our own monitoring and reporting as required by our Inter-Institutional Relations Agreement with the Senedd. Where we have any concerns over the intergovernmental processes and procedures, we will raise these directly with the Secretariat and at senior official level, or via the IGR Ministerial structures including the IMSC, the FISC, or the Council.

Making laws for Wales

10. In a letter to us on 17 January 2022, you set out that there is a need to balance “defend[ing] 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.” How does the Welsh Government weigh up the conflicts between these factors?

The final decision on whether to recommend the Senedd gives consent to a UK Bill typically involves consideration of a range of constitutional, policy, political and other factors, which can sometimes conflict.

Consequently, whilst the principles agreed by Cabinet in October 2021 will provide the basis for such decisions, we must recognise they will be applied in the context of often complex and fluid negotiations, and it will sometimes be necessary to consider the possibility of compromises in order to secure our overall policy objectives.

We approach legislation in terms of maximising the outcomes for the people of Wales in line with our priorities. So we decide how best to do that via both Senedd and UK Parliament legislation, taking account of the priorities and capacity of our own legislative programme and also the potential opportunities – and risks – arising from the UK Government’s legislative programme.

If we only delivered our priorities through Senedd legislation, rather than pursuing a wider set of priorities through both legislative programmes, then we would end up delivering less for the people of Wales. However, where we consider accepting or proactively using UK Government legislation to pursue our policy objectives, our commitment to defending the devolution settlement and our principles will continue to guide our approach.

11. How is the Welsh Government's decision to seek consent for UK bills in devolved areas such as leasehold reform and building safety compatible with the Welsh Government's principle that primary legislation in devolved areas should be enacted by the Senedd?

Our starting point remains that primary legislation in devolved areas should be enacted by the Senedd. However, there are, and will continue to be, circumstances in which it is sensible and advantageous if provision, which would be within the Senedd's legislative competence, is sought for Wales in UK Parliament Bills, with the consent of the Senedd.

In October 2021 I wrote to the Legislation, Justice and Constitution Committee setting out our criteria for determining the circumstances in which we would consider using a UK Bill to take powers for Wales. In summary we would consider using a UK Bill where the law can be changed more quickly than we could achieve in our own legislative programme and where it is sensible for the regulatory regime to be similar across England and Wales. As previously noted, the final decision on recommending consent to a UK Bill typically involves consideration of a range of factors, which can sometimes conflict.

Our principles were consistently applied in relation to our decisions on both leasehold reform and building safety. In relation to both Bills in those areas there were significant benefits to be found through the preservation of commonality of law, utilising timely Parliamentary legislative opportunities as opposed to introducing Senedd legislation (which would have had an impact upon the existing legislative programme before the Senedd), and a significant degree of Welsh Government involvement in the development of proposals (for example the collaboration with the Law Commission's leasehold reform projects).

12. Can you clarify the **statement you made in Plenary on 15 February 2022 that the number of legislative consent memoranda is not "within the choice of the Welsh Government"?**

Whilst there will be UK 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.

In this Sixth Senedd, and since the new Parliamentary session in May, we have laid legislative consent memoranda, including supplementary memoranda on 19 UK Bills. The sheer volume of initial and supplementary legislative consent memoranda tabled by the Welsh Government reflects the amount of legislation coming from the UK Government, and also the extent to which the UK Government or the UK Parliament is amending the legislation during its Parliamentary passage.

13. The Minister for Education and Welsh Language sought an amendment to the Professional Qualifications Bill to the effect that the powers in that Bill cannot be used by UK Ministers to make regulations that amend the Government of Wales Act 2006. In contrast, the Minister for Health and Social Services has not pursued a similar amendment to an equivalent enabling power in the Health and Care Bill. What are your views on the two opposing approaches, and which of these approaches is compatible with the Welsh Government's principles for UK bills?

I do not consider there is a conflict here; each UK Bill we deal with is different and has to be considered on a case-by-case basis. A consistent approach to similar clauses across Bills is aimed for, however each Bill requires different issues to be balanced and negotiated agreements reached.

The Professional Qualifications Bill continues to give the Lord Chancellor and the Secretary of State the power to legislate in areas which are within the legislative competence of the Senedd, without any requirement to obtain the consent of the Welsh Ministers. This directly affects future policy space, Welsh regulators and the professions they regulate. This significantly impacts the approach we have taken, and we have worked with the UK Government to make clear our concerns with the concurrent powers in the Bill, and have repeatedly explained that they must be amended to reflect Welsh Ministers' powers in areas of devolved competency.

The decision to recommend Senedd consent to the consequential amendment provisions in the UK Health and Care Bill was taken following much consideration. The decision was based on reassurances given by the UK Government about the intended use of the powers, the sight of examples of the likely usage of the powers (for example the changing of names of English organisations which are referred to in Welsh legislation where a transfer of functions has occurred) and the Despatch Box Statement made in the House of Lords on 9 February by Lord Kamall. This was set out in the Supplementary Legislative Consent Memorandum (Memorandum No. 3) and the Minister for Health and Social Services letters to the Committee of 14 and 28 February.

The consequential amendment clauses are not considered by the UK Government as being within the competence of the Senedd (although we did not share this view) and the UK Government made clear in discussions that it was not prepared to remove or amend the clauses. The UK Government has specifically confirmed that it has no plans to use the powers, which are consequential on the Bill, to amend the Government of Wales Act 2006.

We obtained significant concessions for Wales in this Bill and it was clear that, given the assurances provided by the UK Government and the Despatch Box commitment, not obtaining the concessions in other areas of the Bill presented a greater risk to Wales than the risk presented by the consequential amendments clauses.

14. What steps is the Welsh Government taking to move forward with reform of the legislative consent process as set out in Proposition 5 of Reforming our Union: Shared governance in the UK?

The First Minister and I raised the unacceptable breaches of the Sewel Convention at the recent meeting of the Inter-Ministerial Standing Committee. As indicated in the First Minister's Written Statement to members following the meeting, the First Minister drew the Chair's attention to a recent letter from the Chair of the LJC Committee on the use of UK legislation. He also encouraged serious consideration of the House of Lords Constitution Committee's report and recommendations on the Convention. Linked to this, we called for codification of the Sewel Convention, and a strengthening of reporting mechanisms to respective Parliaments. I underlined the importance of early engagement on future UK Bills. As outlined earlier in this note, arising from the discussion at the IMSC, officials have been asked to follow this up and work on principles to minimise, if not eliminate, differences in approach. We remain of the view that placing the Sewel Convention on a statutory and justiciable footing remains the most appropriate way to protect the devolution settlement and safeguard the United Kingdom and we will continue to press this point.

Mick Antoniw MS
Counsel General and Minister for the Constitution

25 March 2022

Dear Mick

The outcome of the Intergovernmental Relations Review, the Welsh Government's response to the UK Government's legislative programme, and the Welsh Government's capacity to legislate: request for further information following the evidence session on 14 March 2022

We would like to thank you and your officials for giving evidence to us on 14 March 2022.

I mentioned at the close of the session that there were a number of questions that it was not possible to cover during the time we had with you. Furthermore, there are some matters which we did discuss during the session and which we would like to pursue further with you.

Please see the Annex for a full list of questions. We would be grateful to receive a response by 19 April.

In addition, thank you for the update you provided on the Welsh Government's response to date to the Court of Appeal's judgment on the legal challenge to the *United Kingdom Internal Market Act 2020*. We would be grateful if you would continue to keep us informed on any developments.

More broadly, we look forward to being kept updated about the implementation of the Intergovernmental Relations Review as per our Inter-Institutional Relations Agreement.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Intergovernmental relations

1. You indicated that you hoped to discuss the implementation of the Intergovernmental Relations Review and the “situation in respect of UK legislation” at the first meeting of the Interministerial Standing Committee (IMSC) this month. You will have seen our letter to the First Minister (dated 22 March) and our request to be kept updated on progress following the first meeting. What are your priorities and expectations for the work of the IMSC?
2. How do you think the IMSC should approach oversight of the UK internal market and common frameworks? In particular:
 - What consideration should the IMSC give to the reporting of the Office for the Internal Market?
 - How will the IMSC ensure that discussions on balancing the opportunities and risks of regulatory divergence are open to parliaments and stakeholders?
 - What is your response to the recent recommendation of the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee that there should be agreement between the Scottish Government and Scottish Parliament that, as a minimum, there should be to no dilution of public consultation or of parliamentary scrutiny as a result of common frameworks and intergovernmental working?
3. We discussed the establishment of the Intergovernmental Relations Secretariat. Could you set out your expectations for what the size and grade composition of the secretariat should be? Given the key role of the secretariat to the functioning of the new tiers of intergovernmental working and, not least, the dispute resolution processes, we would be grateful too if you could keep us updated on the establishment of the secretariat.
4. As discussed during the session, we were concerned to note the statement made by the Minister for Economy on 10 March that the first meeting of the UK-EU Relations Interministerial Group (IMG) was called with only two hours’ notice. You expressed a hope that these were “early teething troubles”. How will the Welsh Government seek to ensure future meetings of IMGs are called with reasonable notice?
5. Can you set out how the Interministerial Group for the TCA will interact and communicate with forums established by the TCA? For example, will it coordinate its meeting schedule to align with TCA meetings?
6. We discussed whether the new intergovernmental structures provide for sufficient Welsh Government involvement in international policy. Can you set out your understanding of

how the IMSC and the various interministerial groups will work together to provide four-government oversight of international policy?

7. We discussed the new intergovernmental dispute resolution process. Could you confirm whether the Welsh Government has, or will have, internal criteria for deciding how and when to seek escalation of matters through the new intergovernmental dispute resolution process? If such criteria exist, please can you provide us with the details?
8. We briefly discussed the UK Government's intention to proceed with the Professional Qualifications Bill despite legislative consent not being given by the Senedd and the Scottish Parliament. As noted by the Minister for Education and Welsh Language in his letter to us on 8 March, and as you acknowledged during the meeting, this is a breach of the legislative consent convention. It was not clear from the session whether you consider this matter, or any similar matter in the future, would be taken through the new dispute resolution processes by the Welsh Government. We would welcome clarity on this point.
9. You described the revised dispute resolution process as a "massive improvement" and "groundbreaking". How will you monitor how well new intergovernmental processes are working, and what action will you take if you feel they are not being followed?

Making laws for Wales

10. In a letter to us on 17 January 2022, you set out that there is a need to balance "defend[ing] 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." How does the Welsh Government weigh up the conflicts between these factors?
11. How is the Welsh Government's decision to seek consent for UK bills in devolved areas such as leasehold reform and building safety compatible with the Welsh Government's principle that primary legislation in devolved areas should be enacted by the Senedd?
12. Can you clarify the statement you made in Plenary on 15 February 2022 that the number of legislative consent memoranda is not "within the choice of the Welsh Government"?
13. The Minister for Education and Welsh Language sought an amendment to the Professional Qualifications Bill to the effect that the powers in that Bill cannot be used by UK Ministers to make regulations that amend the *Government of Wales Act 2006*. In contrast, the Minister for Health and Social Services has not pursued a similar amendment to an equivalent enabling power in the Health and Care Bill. What are your views on the two opposing approaches, and which of these approaches is compatible with the Welsh Government's principles for UK bills?

14. What steps is the Welsh Government taking to move forward with reform of the legislative consent process as set out in Proposition 5 of [Reforming our Union: Shared governance in the UK?](#)

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

Agenda Item 6.9



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref 2022/03/08 IGR

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

SeneddLJC@senedd.wales

21 April 2022

Dear Huw

I am writing in accordance with the inter-institutional relations agreement. My earlier letter informed you that a meeting would be taking place on 8 March and that I would be representing the Welsh Government, I am now writing to give you an update from that meeting.

I have today issued a Written Ministerial Statement which includes an agreed Communiqué from the meeting which can be found at <https://gov.wales/written-statement-interministerial-group-elections-and-registration-img-elections>

Yours sincerely

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Interministerial Group for Elections and Registration (IMG Elections)**

DATE **21 April 2022**

BY **Mick Antoniw MS, Counsel General and Minister for the Constitution**

In accordance with the inter-institutional relations agreement, I can report to Members of the Senedd that I represented the Welsh Government at a meeting of the Interministerial Group for Elections and Registrations on 8 March.

The meeting was held virtually and chaired by George Adam MSP, Scottish Government's Minister for Parliamentary Business. Also in attendance were Kemi Badenoch MP, Minister for Levelling Up Communities, and the Rt Hon Conor Burns MP, Minister of State for Northern Ireland.

This meeting was a chance to discuss the UK Elections Bill and competence issues, which were discussed in our recent Supplementary Legislative Consent Memorandum. We also discussed preparations for the forthcoming elections in May, including our flexible voting pilots.

A joint Communiqué relating to the meeting was issued on 21 April and is available at <https://www.gov.uk/government/publications/communiques-from-the-interministerial-group-for-elections-and-registration>

We continue to work together, with meetings planned to take place on a quarterly basis with rotating chairing arrangements. I will keep Members updated.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Organic Production (Amendment) Regulations 2022
DATE	31 March 2022
BY	Lesley Griffiths, Minister for Rural Affairs and North Wales, and Trefnydd

The Minister for Rural Affairs and North Wales, and Trefnydd has given her consent to the Secretary of State for the Environment, Food and Rural Affairs for The Organic Production (Amendment) Regulations 2022 to be made in the UK Parliament. The Regulations make provision in a devolved area on behalf of the Welsh Ministers in relation to Wales.

The Regulations are required for two derogations for the use of non-organic products in organic production. These are for pullets and gellan gum.

Under retained EU Regulation (EC) No 889/2008 a derogation was permitted for the use of non-organic pullets to be granted until 31 December 2020 and for non-organic gellan gum until 31 December 2021. Both of these derogations have now expired, however there are still insufficient supplies of these two products. This has necessitated the reintroduction of a derogation.

While these Regulations make provision in a devolved area of competence, these regulations are minor and technical in nature. As such, it is expedient to introduce a Great Britain-wide Statutory Instrument on this occasion.

WS-30C(6)-007 – The Organic Production (Amendment) Regulations 2022

Background

These Regulations were made by the UK Government under Articles 22(3) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.

Summary

The purpose of these Regulations is to extend the dates until which derogations may be authorised for the use of non-organic pullets (young chickens) and non-organic gellan gum in organic production.

The derogation for pullets expired on 31st December 2020, while that for gellan gum expired on 31st December 2021. Since there is currently insufficient supply of organic pullets and gellan gum available to the market in Great Britain, these Regulations extend both derogations until 31 December 2022. This will allow organic production to continue uninterrupted while the market develops.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 31 March 2022 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers

Legislation, Justice and Constitution Committee

11 April 2022



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

Huw.irranca-davies@senedd.wales

31 March 2022

Dear Huw,

The Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022

I am writing to you to inform LJCC I have given consent to the Secretary of State to make the above regulations in relation to Wales.

The regulations make technical amendments to several pieces of retained EU law to remedy deficiencies arising from the withdrawal of the UK from the EU. Specifically, they make changes to the processes by which third countries are listed by the UK, in relation to health conditions placed on other countries with respect to imports of animals and animal products.

Trading partners that are approved to export animals and animal products to the UK must comply with country-specific import conditions that are found in retained EU law. Regular amendments to these conditions are required to respond to changes in risk, including to safely manage trade from countries experiencing animal disease outbreaks (for example, Avian Influenza and African Swine Fever) or food safety incidents.

The retained EU law provides that such imports are generally only permitted from countries (or parts thereof) which are listed in Annexes to various pieces of retained EU law ("approved country lists"). These approved country lists set out in tables the details of which animals/products are permitted from which third countries (or parts thereof) and the specific conditions applicable to such imports.

Prior to withdrawal from the EU, the power to amend the 'approved country lists' was conferred on the European Commission using its delegated powers. This enabled changes to be made quickly and frequently by the European Commission through tertiary legislation, to reflect changes relevant to imports of animals or animal products which may present biosecurity or food safety risks, for example: a disease outbreak in a certain country or area (or equally to reflect changes to remove restrictions where risks diminished).

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

The amendments made by the regulations enable future changes in ‘approved country lists’ to be made by the Secretary of State specifying such changes in a document published for that specific purpose, instead of making such changes in the retained EU law through a statutory instrument each time a change is needed.

This means the future process for amending approved country lists will be less burdensome and quicker, with benefits to biosecurity (as we can deal with incidents quicker) and to our ability to comply with international obligations (when countries are required to lift trade barriers rapidly once incidents resolve).

The powers to amend approved country lists are devolved powers and can only be exercised by the Secretary of State, with the consent of the Welsh Ministers in relation to Wales (and Scottish Ministers, in relation to Scotland). The regulations allows the exercise of such powers where they are necessary or appropriate subject to an assessment of the risks to animal or public health in GB, taking into account certain specified criteria. Such risk assessments will also have to be approved by the Welsh Ministers.

There is a functioning Common UK Animal Health and Welfare Framework where my officials arrive at policy decisions by consensus with their counterparts in Scottish and UK Government on these matters. The technical functions in relation to approved third country lists are managed by the new UK Office for Sanitary and Phytosanitary Trade Assurance.

It is normally the policy of the Welsh Government to legislate for Wales on matters of devolved competence; however, in this instance I have decided to give my consent to the Secretary of State making these regulations in relation to Wales.

The reasons for my consent are the need for consistency across Great Britain in relation to import controls for managing our collective biosecurity, as goods move freely within Great Britain once imported. Additionally, this approach will enable the management of common resources, which is a key principle of the Common UK Animal Health and Welfare Framework.

Were I not to give consent, I would require the Welsh Government to bring forward equivalent legislation for Wales. There are no material changes in policy; only the process of publication of changes to approved country lists is different. Therefore, in this case, I do not consider that making legislation separately for Wales would be a good use of Senedd time and resources of a government, which inherited many new functions from the EU and is dealing with crises such as Covid-19, Avian Influenza and – now – the war in Ukraine.

The SI is subject to the draft affirmative SI procedure, and is being laid before Parliament on 30 March 2022 with a commencement date expected to be in June or July depending on when the House of Commons and House of Lords debates are scheduled.

I have laid a Written Statement, which can be found attached to this letter.

I am copying this letter to the Counsel General and Minister for the Constitution.

Regards,



Lesley Griffiths AS/MS

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

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022**

DATE **30 March 2022**

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

Members of the Senedd will wish to be aware that I am giving consent to the UK Secretary of State for Environment, Food and Rural Affairs exercising a power to make regulations in a devolved area in relation to Wales.

The above titled Statutory Instrument (SI) will be made by the Secretary of State in exercise of the powers conferred by section 8(1) and (6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The SI makes technical amendments to several pieces of retained European Union law to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union. Specifically, they make changes to the processes by which third countries are listed by the UK, in relation to health conditions placed on other countries with respect to imports of animals and animal products.

The SI will enable that future changes in import conditions for animals and animal products entering Great Britain, can be made by the Secretary of State with consent of the Welsh Ministers specifying such changes in a document published for that specific purpose, instead of making such changes in the retained EU law through a statutory instrument each time a change is needed.

The regulations are due to be laid in draft before Parliament on 30 March 2022 to come into force on 01 July 2022.

WS-30C(6)008 – The Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022

Background

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

Trading partners that are approved to export animals and animal products to Great Britain must comply with country-specific import conditions that are found in retained EU law. Regular amendments to these conditions are required to respond to changes in risk, including to safely manage trade from countries experiencing animal disease outbreaks (for example, Avian Influenza and African Swine Fever) or food safety incidents.

Amendments to the retained EU law are currently made by Statutory Instrument. This means that even when a negative procedure is used and the 21 day rule is breached, there is a significant gap between the identification of risk and the legal implementation of import conditions. Both trade bodies and trading partners have raised concerns about the lack of responsiveness of the current legislative mechanism.

The amendments made by this instrument confer powers on the Secretary of State, with consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to change import conditions for animals and animal products entering Great Britain, by specifying the change in a document published for that specific purpose rather than in legislation. The functions that were previously carried out by the European Commission to protect human and animal health are therefore transferred in a way that enables them to be exercised promptly and effectively.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 31 March 2022 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.



Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers

Legislation, Justice and Constitution Committee

11 April 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Pack Page 94

Legislation, Justice and Constitution Committee

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

Agenda Item 8.1



Llywodraeth Cymru
Welsh Government

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

29 March 2022

Dear Huw,

Tertiary Education and Research (Wales) Bill

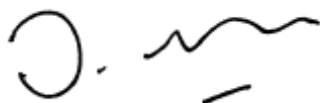
I would like to thank you for your valuable contributions to the general principles debate of the Tertiary Education and Research (Wales) Bill ("the Bill") following publication of your committee's Stage 1 report on the Bill on 2 March 2022.

Further to my letter of 14 March, I have set out responses to the remaining recommendations of the Committee in the Annex to this letter. It has not been possible for me to accept all of the committee's recommendations in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,



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

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

Recommendation 1. The Minister should use the Stage 1 debate to confirm to the Senedd whether the required consent from the UK Government in relation to section 128 has been received.

Consent has been received from the UK Government in relation to section 128, the First Minister wrote to the Llywydd confirming this on 1 March.

Recommendation 3. The Minister should provide the Senedd with draft versions of any regulations that are to be made or laid before the Senedd upon, or shortly following, the commencement of the relevant provision as soon as possible and while the Bill is under consideration by the Senedd at Stage 2 of the Bill to enable more full scrutiny of the relevant powers.

I cannot accept this recommendation. In order to ensure stakeholders are afforded ample opportunities to inform the development of the necessary regulations, and to ensure that those regulations reflect any refinement to the Bill following consideration of the Committee's recommendations, I do not anticipate being in a position to share draft regulations with the Committee whilst the Bill is undergoing scrutiny.

Recommendation 5. The Minister should ensure that the explanatory notes to the Bill make it clear that, where lists of examples are used in specific sections, such lists are not exhaustive and should not be interpreted as such.

I accept this recommendation and will ensure the necessary changes are made to the explanatory notes when they are republished after Stage 2. I will also consider whether any amendments are necessary to the Bill to ensure clarity for the reader.

Recommendation 6. The Minister should use the Stage 1 debate on the general principles of the Bill to provide a commitment that the regulation-making powers in the Bill will not be used to address inconsistencies between Welsh legislation and UK Bills; issues with UK Bills that make provision within devolved areas; or any other concerns regarding UK legislation which deals with tertiary education.

I note this recommendation, the scenarios described is not the intention of the regulation-making powers

Recommendation 7. The Bill should be amended so that the Welsh Ministers are placed under a duty to consult with the Commission and such other persons as they consider appropriate before publishing a statement under section 11.

I do not accept this recommendation. The high-level, strategic, nature of the priorities we intend to be set out in the statement to be published under section 11 will not, I consider, lend themselves to consultation.

Recommendation 8. The Bill should be amended to the effect that directions made under section 19 of the Bill are made by an order of the Welsh Ministers that is subject to the negative scrutiny procedure.

Recommendation 18. The Bill should be amended to the effect that directions made under section 106 of the Bill are made by order of the Welsh Ministers which is subject to the negative scrutiny procedure.

I do not accept these recommendations. All powers within the Bill have been subject to thorough consideration in respect of the manner in which the power is to be exercised and the appropriate Senedd procedure. In doing so the nature of any existing provision, from which the power has been derived, has been considered, however the historic approach to the original power has not automatically been carried forward if doing so was not necessarily considered appropriate.

The power in sections 19 and 106 enables the giving of directions to the Commission by the Welsh Ministers in relation to specific matters, as set out on the face of the Bill. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature.

The requirements set out in the Bill in respect of the requirement on the Welsh Ministers to publish the direction, report to the Senedd that a direction has been given and lay of copy of the directions before the Senedd are considered sufficient to ensure the accessibility and transparency of directions given to the Commission under sections 19 and 106.

Recommendation 9. The Minister should use the Stage 1 debate on the general principles to clarify why registration is necessary and why, if it is possible to regulate other tertiary education providers through terms and conditions of funding, it is not possible to regulate higher education providers in the same way.

The register is necessary in respect of higher education providers, which now receive only a small proportion of their funding in the form of recurrent grants to which terms and conditions can be applied, and instead a majority of their public funding from student support.

If the register were removed from the Bill then the Commission would be unable to effectively regulate higher education providers because of this predominate reliance on student support, rather than Commission grants, and the Bill would fail to achieve a number of its key objectives.

The register also enables providers to be appropriately and proportionately regulated regardless of the sources of their funding and the relative balance of these different sources of funding.

In addition, the register creates the option of bringing all tertiary education providers into a common and coherent system of regulation in the long-term. This is not an immediate priority in the context of setting up the Commission and ensuring proper regulation of providers in receipt of student support, and so is not current government policy. However, this is a matter which we are open to exploring further with the sector through consultation and engagement.

Recommendation 10. Should section 23 remain in the Bill, the Bill should be amended to the effect that the categories of registration referred to by the Minister for the purpose of section 23 should be set out on the face of the Bill. The Bill should also be amended to provide for a regulation-making power to enable further categories (or changes to categories) to be specified in regulations that are subject to the affirmative procedure.

I do not accept this recommendation. As set out in the response to recommendation 3 it is my intention to ensure we work with stakeholders to co-construct the regulations necessary to support the implementation of the Bill. Whilst I am clear in my policy intention, as set out in the statement of policy intent, I wish to see that reviewed and refined through engagement and dialogue with stakeholders.

Recommendation 12. The Bill should be amended to the effect that regulations made under sections 39 and 41 are subject to the negative scrutiny procedure.

I accept this recommendation, having considered these provisions further I agree it is appropriate that they be subject to the negative Senedd procedure and I will bring forward an amendment to this effect

Recommendation 13. Given the Minister's explanation regarding the level of detail that may be included in a statement made under section 70 of the Bill, we believe the Bill should be amended so as to require such statements to be laid before the Senedd.

I accept this recommendation and will explore options for bringing forward an amendment to provide for the statement to be laid before the Senedd, I do not consider it appropriate for the statement to be subject to a Senedd procedure

Recommendation 15. The Bill should be amended to the effect that regulations made under section 78(1)(c) and 78(2) are subject to the affirmative scrutiny procedure.

I accept this recommendation, having considered these provisions further I agree it is appropriate that they be subject to the affirmative Senedd procedure and I will bring forward an amendment to this effect

Recommendation 16. The Bill should be amended to the effect that regulations made under section 105(1) are subject to the affirmative scrutiny procedure.

I note this recommendation, although I am exploring an amendment in response to CYPE recommendation 30 in respect of this provision.

Recommendation 19. The Bill should be amended so that requirements in relation to approved Welsh apprenticeships, for the purpose of Part 4 of the Bill, are prescribed in regulations that are subject to the negative scrutiny procedure.

I do not accept this recommendation. In respect of the apprenticeship specification, it has been the intention for some years to use the earliest primary legislative opportunity to correct provision in the Apprenticeships, Skills, Children and Learning Act 2009, which deals with the specification of apprenticeship standards.

This Act replicated for Wales the procedures for England (those provisions were repealed for England in 2015) despite there being a different regulatory structure in Wales. This meant

that there was an order-making function which was unnecessary in the Welsh context as it related to approving actions of a non-government body which did not exist in Wales.

The specification is, in effect, a long list of very detailed qualifications and grade criteria. It is of a technical nature and its development depends on specialist sector knowledge. Qualifications are fast moving and what should be included in the list can change often.

This is a technical and detailed administrative action of the Executive which often needs to be updated quickly in order to ensure that it is always up-to date. Added procedural burdens result in delays to the finalisation/updating process. That is not in the best interests of apprentices.

I do not consider that the interests of good administration are served by maintaining an unnecessarily cumbersome process which denies agility and places barriers to ensuring that the apprenticeships system is responsive to the needs of Wales, is kept as up-to-date and is fit for purpose at all times.

Recommendation 22. If preserving the existing power in section 128(2) of the Education Reform Act 1988 through section 135 of the Bill is merely desirable and not essential to the implementation of the Bill, the Bill should be amended to the effect that the power in section 128(2) of the 1998 Act is repealed, rather than expanded upon.

I note this recommendation, although I am exploring an amendment in response to CYPE recommendation 34 in respect of this provision.

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



Llywodraeth Cymru
Welsh Government

Peredur Owen Griffiths MS
Chair of the Finance Committee
Senedd Cymru

29 March 2022

Dear Peredur,

I would like to thank the Finance Committee for their scrutiny of the Tertiary Education and Research (Wales) Bill ("the Bill") during Stage 1 and for the report which was published on 04 March 2022.

I welcome the conclusion that the Committee is broadly content with the financial implications of the Bill. I note that the Committee feels unable to draw a conclusion on whether the resources are adequate and reasonable to deliver the legislation due to the Regulatory Impact Assessment not being able to quantify costs to other bodies.

It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation. I wanted to assure the Committee that in line with standard practice, any subordinate legislation made as a consequence of this Bill would, where relevant, be accompanied by a Regulatory Impact Assessment. This would provide a comprehensive analysis of the costs, including costs to other bodies.

I have set out responses to the Committee's recommendations in Annex A and while it has not been possible for me to accept all of the Committee's recommendations in full, I hope you will find this useful.

I will also be writing to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

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

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

Annex

Recommendation 1. Throughout this report, the Committee has identified that further financial information is required. Should there be significant changes to the Regulatory Impact Assessment, the Committee recommends the Minister appears before the Committee to consider those changes in more detail.

I note this recommendation. The Regulatory Impact Assessment will be updated in line with standard procedure after Stage 2. It will be updated with the latest information and in light of the Committee's recommendations. Cost estimates will also be reviewed to ensure they represent the most up-to-date figures. At this stage, I do not envisage this will result in significant changes to the overall figures in the Regulatory Impact Assessment because the anticipated staff numbers of the Commission, the major driver of overall cost, have not altered since November. I recognise the Committee's desire to explore the updated Regulatory Impact Assessment so will share a copy with the Committee as soon as possible after Stage 2 to give the Committee an opportunity to consider the latest information and ask any follow up questions before Stage 3.

Recommendation 2. The Committee recommends the Welsh Government undertakes further work analysing and estimating the cost benefits of the Bill. The Regulatory Impact Assessment should be updated to include further information on these benefits, how they will be analysed and when they are anticipated to be delivered.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. A range of non-quantified benefits are set out in the Regulatory Impact Assessment. The benefits that will flow from the reforms will have outcomes with real-world impact, ultimately better educational outcomes for a wider range of learners and more broadly, a higher skilled workforce delivering more productivity in the economy.

The benefits of any education reform are challenging to quantify and many costs, particularly those that may be incurred by other bodies, are unknown at this stage. This means that it is not possible to set out detailed cost benefits in quantified form in the Regulatory Impact Assessment. The benefits will be tracked and analysed post-implementation and the Commission will be assessed on its contribution to these goals and the national milestones.

Recommendation 3. The Committee recommends that the Welsh Government provides as much clarity as possible about the likelihood of the risk that the Office of National Statistics could reclassify further and higher education institutions as a result of the proposals contained in the Bill, the severity of its financial impact if realised and the practical implications of reclassification on the Welsh Government and the new Commission.

I accept this recommendation. The Welsh Government believes that the risk of reclassification is low as the changes proposed in the Bill do not alter the extent of 'control' over individual tertiary education providers who will, as at present, remain autonomous bodies responsible for determining their own general policy. The Bill is concerned with the proportionate regulation of registered providers rather than control of institutions.

The Bill seeks to establish a new body, the Commission for Tertiary Education and Research, which will be responsible for the funding and regulatory oversight of tertiary

education providers in Wales. There are two main changes which will impact tertiary education providers in connection with Welsh public funding:

A change in the regulatory framework – the Bill proposes the introduction of registration system. This is similar to changes made in England following establishment of the Office for Students, this body has already been classified to the central government sector by the ONS, and will allow the Commission to ensure regulatory oversight of tertiary education providers in Wales who benefit from the automatic designation of their higher education courses for Welsh Government student support.

A change in the funding relationship – the Bill proposes the introduction of Outcome Agreements. These will be the means by which the Commission negotiates with funded providers the activities they will undertake in pursuit of the Commission's objectives in its approved Strategic Plan.

The Bill is intended to strike an appropriate balance between maintaining further and higher education institutions' independence while safeguarding the significant amount of public money invested in the tertiary education sector.

Regarding the impact of reclassification. If the arrangements between the Commission and these institutions changed to the extent that the ONS could determine that 'control' fell within the public sector i.e. the public sector had the ability to determine the general purpose or programme of these institutions, they would be reclassified to the public sector and at least some element of their transactions and balances would hit the Welsh Government Consolidated Balance Sheet. The extent would depend on whether they were classed as market bodies, i.e. fund 50% or more of their operational costs from 'sales' or not:

If the institutions do not meet the criteria to be market bodies, all of the assets & liabilities of these institutions would be "on" the WG's consolidated balance sheet, budgets for the institutions would have to be planned, managed & reported on a net resource basis and funding would only score against budget when the institutions incur the expenditure not on payment.

If the institutions did meet the criteria to be market bodies, they will be Public Non-Financial Corporations and the budget will be reported on an 'external finance basis' i.e. the budget show all transactions with the institutions on payment and, should they undertake any borrowing, the financing raised will be reported in the budget.

If the institutions were not market bodies, they would fall within the central government sector and be treated no differently to the WG itself for budgeting and accounting purposes. The institutions would need to be aligned, designated in the GOWA 2006 (budget Motions & Designated Bodies) Order, i.e. the full resources of these institutions would be included in the ambits to the budget motions and voted by the Senedd and consolidated within the WG Consolidated Accounts if they met the annual materiality threshold.

If the institutions were market bodies, they would be classified as Non-Financial Public Corporations. They would not be aligned, i.e. not designated, although they would need to provide some financial information for the WG Consolidated Accounts.

The ONS will classify the Commission once it is established. We will engage with ONS to advise them of when that will be so that ONS can include the Commission in its forward plan, which will inform us of the timescales for formal classification

Recommendation 4. The Committee recommends that the Welsh Government undertakes further work on the cost associated with the Bill and updates the Regulatory Impact Assessment to demonstrate, for clarity, to which costs the +/- 30 per cent variance applies.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. The revised Regulatory Impact Assessment will set out which costs are subject to up to 30% variance and why. Further work will also be undertaken on whether this percentage for the potential variance remains the most appropriate to use and if not, what percentage should be used.

Recommendation 5. The Committee recommends that detailed information is provided on the membership, work plan and intended outcomes of the strategy and implementation group. Including where the work of this group will lead to amendments to the Regulatory Impact Assessment and what the scope of those amendments might be.

I accept this recommendation. I established The Post Compulsory Education and Training (PCET) Strategy and Implementation Board to work collectively with me, the Programme's Senior Responsible Officer and Welsh Government officials to provide strategic oversight and expert advice to support the delivery of the PCET reforms and associated policy development, implementation arrangements and the establishment of the Commission. The Board also operates as a platform to raise awareness of tertiary education and research policy developments planned elsewhere in the UK and internationally and considers the potential for it to impact on post 16 learning in Wales.

All Board members are drawn from external stakeholders impacted by the planned legislative and cultural changes and all have a vested interest in the successful delivery of the reforms. Members are required to take a proactive and participatory role providing advice, guidance and constructive challenge on the proposed work required to deliver on the reforms and support the smooth transition to the Commission. This includes communicating our vision for change, advising on the long term strategic duties and objectives, highlighting potential risks to the successful introduction of the Commission and to the wider post 16 sector during implementation.

To date the group has worked collegiately to consider areas related to the strategic duties in the Bill including the high level quality principles, scope for greater collaboration and partnership working, and a duty to support Lifelong Learning. The forward work plan remains fluid and is prioritised according to need. Future discussions will include the Employability Plan, learner engagement principles, delivery and development of Welsh language provision and planned Stage 2 Bill amendments in due course. A list of the PCET Strategy and Implementation Board's external membership is attached at Annex B.

Recommendation 6. The Committee recommends that the Welsh Government provides information regarding the strategy and implementation group's consideration of the location of the Commission and staffing numbers, including details of any financial impacts arising from the group's work.

I note this recommendation, however the PCET Strategy and Implementation Board provide strategic oversight and expert advice, and it is not the intention that the Board will be involved in operational discussions and decisions. As is standard practice, there is a Programme Board to oversee the operational side of establishing the Commission. The

membership of the Programme Board includes representatives of Welsh Government, HEFCW and Trade Union Side (TUS). Operating under the Programme Board are a number of individually focused work streams that are considering the elements for establishing the Commission. These work streams are Legislation, IT, HR, Location and Finance and Governance. As more detail emerges on location and staffing numbers and the resulting financial impact, any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 7. The Committee recommends that the Welsh Government undertakes further work on a location strategy, particularly the impact that COVID-19 will have on any costs associated with it, and that this information is included in a revised Regulatory Impact Assessment.

I accept this recommendation. There is ongoing work relating to the location of the new Commission, it is one of the key work streams of the implementation programme. As more detail emerges any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 8. The Committee recommends that the Welsh Government provides further information relating to the financial impact of using IT consultants to undertake transferring the Higher Education Funding Council for Wales's systems and data to the new Commission and this should be included in the revised Regulatory Impact Assessment.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. As I said at Committee any use of consultants will be kept under review and the programme hasn't ruled out hiring permanent IT staff if that turns out to be a better value for money option. The revised Regulatory Impact Assessment will make clear, as far as possible, the financial impact and rationale of basing forecast costs on using IT consultants.

Recommendation 9. The Committee recommends that the Welsh Government reassesses the costs associated with other bodies as a result of this legislation. The costs and any financial implications should be created in consultation with the stakeholders affected and detailed in a revised Regulatory Impact Assessment.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. It has not been possible to quantify any potential additional costs to other bodies as this will depend upon decisions taken by the Commission once it is established. Any assumptions or estimates made by the Welsh Government at this time would pre-empt these decisions and would not provide for accurate estimations of any potential costs. As I said in my letter to the Committee of 22 December 2021, I acknowledge that there is a potential risk, that the bill could place additional costs on the providers in the sector. This risk is managed by close monitoring and engaging closely with stakeholders, including through but not limited to the Strategy and Implementation Board to ensure any additional costs incurred due to the bill are absolutely necessary and kept to a minimum. It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation, which would, where relevant, be accompanied by a Regulatory Impact Assessment which would provide a comprehensive analysis of the costs, including costs to other bodies.

Recommendation 10. The Committee recommends that the Welsh Government continues to include post-implementation review of all Bills before the Senedd as standard practice, including information as to how value for money will be assessed.

I accept this recommendation. Post-implementation reviews play an important role in ensuring that lessons are learnt for future areas of work in both areas of maintaining good practice and where improvements could be made.

Annex B - PCET Strategy and Implementation Board External Membership

Organisation	Sector Represented
Adult Learning Wales	Adult learning
Careers Wales	All
CBI	Industry
Chairs of Universities Wales	HE
Colegau Cymru	FE
Coleg Cymraeg Cenedlaethol	HE
CYDAG	School 6 th Forms
Education Workforce Council	Regulator
Estyn	Regulator
FSB	Industry
Higher Education Funding Council Wales	HE
IOD	Industry
Learning and Work Institute	Work-based Learning
National Centre for Learning Welsh	All
National Mission Change Board	School 6 th Forms
National Training Federation Wales	Work-based Learning
National Union of Students	Social Partner
Qualifications Wales	Regulator
Quality Assurance Agency	Regulator
The Association of Directors of Education in Wales (ADEW)	Lifelong Learning School 6 th Forms
Universities College Union	Social Partner
Universities Wales	HE
WLGA	Lifelong Learning School 6 th Forms

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

29 March 2022

Dear Jayne,

Tertiary Education and Research (Wales) Bill

I would like to thank you for your cogent contributions to the general principles debate of the Tertiary Education and Research (Wales) Bill (“the Bill”) following publication of your committee’s Stage 1 report on the Bill on 4 March 2022.

Further to my letter of 14 March, I have set out responses to the remaining recommendations of the Committee in the Annex to this letter. It has not been possible for me to accept all of the committee’s recommendations in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee’s Report. I will also be writing to the Chairs of the Legislation, Justice and Constitution Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

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.

Recommendation 1. That the Senedd agrees the general principles of the Tertiary Education and Research (Wales) Bill.

I **note and welcome this recommendation** and the support of the Committee for the general principles of the Bill. I would like to thank each member of the Committee for their considered and thorough scrutiny of the Bill.

Recommendation 2. That the Explanatory Memorandum is updated to list the policy objectives for the Bill and how the Bill's provisions seeks to meet them.

I **note this recommendation** and will ensure consideration is given to how best the Explanatory Memorandum could be expanded, when it is updated after Stage 2, to provide further clarity on this matter.

Recommendation 3. That the Welsh Government sets out clearly to the Committee, the Commission and the wider sector how they define parity of esteem, what delivering on parity of esteem would look like, and how they expect the post 16 sector to achieve this.

The reforms brought about by the Bill will enable parity of esteem between vocational and academic pathways to be advanced in a number of ways:

- Firstly, by bringing universities, colleges, and work-based training providers together under a single funder and regulator, it ensures that the main providers of vocational and academic pathways are considered under a single policy umbrella. By facilitating collaboration between schools, colleges, universities and training providers, CTER will discourage competitive behaviour which can create perceived imbalances of esteem between different qualification pathways.
- Secondly, the Commission will have a strategic duty to promote "a variety of levels of study and types of qualification", "a variety of educational settings and modes of study" and "facilitates movements of learners" between different parts of the system. CTER will need to consider equal esteem for all provision and qualification pathways which it funds.
- Thirdly, we intend any changes to the 16-19 curriculum to follow from the Curriculum for Wales reforms by ensuring that students and learners have a wide range of options for progression from 16 onwards in both academic and vocational knowledge, experiences and skills that develop engaged, employable and entrepreneurial citizens.

Recommendation 4. That the Welsh Government publishes a revised Equality Impact Assessment which takes account of the issues raised by the EHRC before Stage 2 proceedings.

I **accept this recommendation** and will publish a revised Equality Impact Assessment.

Recommendation 5. That the Minister provides more information to the Committee and Universities Wales on why they believe the Internal Market Act does not have any implication for this Bill.

I have considered the provisions of the Bill in light of the Internal Market Act and do not consider there to be any implications for this Bill.

Recommendation 6. That the Minister brings forward Amendments to Schedule 1 at Stage 2 to place a requirement on Welsh Ministers that they must have regard to the need to ensure that the Board (as a whole) reflects the breadth of education provision and research, and the diversity of Wales. This should encompass the appointment of all members to the Commission including associate members.

I recognise the intention behind this recommendation, however I do not consider that an amendment to the Bill is necessary. Firstly, as public appointments these will meet the existing protections in relation to equality and diversity and the government's Diversity and Inclusion Strategy for Public Appointments in Wales.

Secondly, Schedule 1 (paragraph 2(2)) provides for a list of skills and experience the Welsh Ministers must have regard to in appointing members of the Board. I am currently considering amendments intended to expand the list of experiences detailed here.

Thirdly, in taking a nation and system-wide approach through the bill and establishing the commission, we are moving away from (the risks of) a silo approach. The approach set out in Schedule 1 reflects this, and is intended to provide for a Board that represents the needs of sector as a whole. Board members are not intended to be appointed as representatives for the traditional individual sectors, institutions or providers. Whilst I recognise the intent underpinning this recommendation, I am concerned that the approach it recommends risks hard-wiring an approach based on individual representatives for each of the traditional sectors.

Recommendation 7. That the Minister brings forward amendments at Stage 2 to increase the worker and learner representation on the Commission, and to make explicit in the Explanatory Memorandum the Government's expectation that the Commission should be seeking to go beyond the minimum set out in the legislation.

I recognise the intention behind this recommendation but I do not accept the need to bring forward an amendment. The Bill provides for minimum membership level in respect of associate members and the option remains to provide for a higher number of such members.

As part of updating the Explanatory Memorandum after Stage 2 I will consider options in respect of setting out expectations in respect of the Commission going beyond the minimum.

Recommendation 8. That the Minister brings forward amendments at Stage 2 to give the learner and worker associate members voting rights on the Commission.

I do not accept this recommendation. The inclusion of advisory board members ('associate members') of learners, staff member trade unions and members of the wider tertiary education workforce trade unions, will enable those most affected by the establishment of the Commission to have an opportunity to influence and advise its Board.

A key benefit of associate members not having voting rights on the Commission is the avoidance of a conflict of interest through the separation between the activities required of those individuals as a member of the Commission and the wider activities of the trade union, NUS or learner representative body itself. There is potential for conflict of interest should the advisory board members have a vote.

Whilst unable to formally vote, their valuable role will be to influence and advise the board representing the views of the workforce and learners. In order to ensure a balance of skills and representation within the Board's membership at present associate board members are in addition to the Board's minimum number.

Recommendation 9. That the Welsh Government ensures that the appointment process for the Chair of the Research and Innovation Committee includes a pre-appointment process by the relevant Senedd Committee.

I note this recommendation and will consider how this recommendation can best be addressed. I do not consider that any provision needs to be made on the face of the Bill to provide for this matter.

Recommendation 10. That the Minister brings forward amendments at Stage 2 to include a strategic duty to promote collaboration and competitiveness in research and innovation.

I agree with this recommendation and am already exploring options for bringing forward an amendment in this areas following consideration of the evidence provided by stakeholders.

Recommendation 11. That the Minister brings forward amendments at Stage 2 to include researchers within section 5(2) regarding the capability of the tertiary education and research workforce.

I note the recommendation and am considering this matter further.

Recommendation 12. That the Minister brings forward amendments at Stage 2 to add a general duty to protection the institutional autonomy of tertiary education providers.

I accept this recommendation. Whilst the Bill already contains a number of provisions which make clear the already well established autonomy of tertiary education providers in their governance and management, I note the views of stakeholders and the Committee and am already exploring options for bringing forward an amendment in this area.

Recommendation 13. That the Minister brings forward amendments at Stage 2 to expand academic freedom beyond higher education provision to include research and innovation, and, to suitably future proof the legislation, provision in all other tertiary education settings.

I do not accept this recommendation. The protections described as 'academic freedom' under this section relate to specific matters including the freedom of providers to determine the content, teaching, assessment of and admissions to higher education courses, and the appointment of academic staff. The latter would incorporate staff appointed for the purposes of research and innovation.

However, the other specific provisions are not appropriate to research and innovation or to other forms of tertiary education. For instance, the assessment of many further education courses is not subject to 'academic freedom', because it is determined by qualification awarding bodies, and the content of many further education courses is subject to local curriculum requirements, both of which are inconsistent with section 15(2)(a).

Admissions to further education courses or apprenticeships may sometimes be determined by policy decisions made by government (and in the future the Commission) in respect of funding or progression, which would be inconsistent with section 15(2)(b).

In addition, teaching staff in the further education sector are regulated by the Education Workforce Council, which is inconsistent with section 15(2)(c).

Recommendation 14. That the Minister brings forward amendments at Stage 2 to ensure that academic freedom covers individual academics, both in their teaching and research.

I recognise the intention behind this recommendation but not consider an amendment is necessary. Section 16 provides for the academic freedom of individual academics at tertiary education providers that provide higher education to question and test received wisdom and put forward controversial ideas in whatever activity they might undertake.

Recommendation 15. That the Minister brings forward amendments at Stage 2 to strengthen the duty on the Commission to promote Welsh medium tertiary education to reflect the ambition of Cymraeg 2050 and the Commission's important role in helping to deliver on one million Welsh speakers. The duty on the Commission must be stronger and go further than "meeting reasonable demand".

I welcome this recommendation and in light of stakeholder evidence, as well as the Committee's report, am already considering options for bringing forward an amendment to this strategic duty, subject to the identification of no unintended consequences.

Recommendation 16. That the Minister brings forward amendments at Stage 2 so that the strategic duty to promote tertiary education through the medium of Welsh is broadened to include the promotion of research through the Welsh medium.

I accept this recommendation. In light of stakeholder evidence, as well as the Committee's report, I am already exploring options for an amendment.

Recommendation 17. That the Minister brings forward amendments at Stage 2 to set out how the Commission will work collaboratively and strategically with Coleg Cymraeg on the planning and delivery of Welsh medium provision, to avoid the potential for duplication.

I accept this recommendation and I am, in light of stakeholder evidence, as well as the Committee's report, already exploring options for an amendment.

Recommendation 18. That the Minister brings forward amendments at Stage 2 to add a strategic duty for the Commission to promote the learner voice.

I accept this recommendation and am already, in light of stakeholder evidence and the Committee's report, considering options for ensuring the importance of learner views is captured within the strategic duties.

Recommendation 19. That the Minister brings forward amendments at Stage 2 to add a social partnership strategic duty for the Commission.

I recognise, and agree with, the intention behind the Committee's recommendation, and will explore whether an appropriate amendment placing a duty on the Commission in respect of social partnership can be brought forward taking full account of the proposals for the forthcoming Social Partnership Bill.

Recommendation 20. That the Minister brings forward amendments at Stage 2 to amend section 13 of the Bill to ensure that the Commission's strategic plan cannot be changed without the agreement of the Commission.

I note this recommendation and will consider how this recommendation can best be addressed.

Recommendation 21. That the Minister brings forward amendments at Stage 2 to amend section 19 of the Bill to ensure that any general directions issued by Welsh Ministers are made by Order subject to the negative procedure.

I do not accept this recommendation. All powers within the Bill have been subject to thorough consideration in respect of the manner in which the power is to be exercised and the appropriate Senedd procedure. In doing so the nature of any existing provision, from which the power has been derived, has been considered, however the historic approach to the original power has not automatically been carried forward if doing so was not necessarily considered appropriate.

The power in section 19 enables the giving of directions to the Commission by the Welsh Ministers in relation to specific matters, as set out in section 19. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature.

The requirements set out in the Bill in respect of the requirement on the Welsh Ministers to publish the direction, report to the Senedd that a direction has been given and lay of copy before the Senedd are considered sufficient to ensure the accessibility and transparency of directions given to the Commission under section 19.

Recommendation 22. That the Minister bring forward amendments at Stage 2 to provide a more consistent and wide ranging approach to the equal opportunity and widening access duties for all parts of the post-16 sector, and not just those providers who have to register.

I accept this recommendation and am exploring options for bringing forward amendments in relation to equal opportunity.

Recommendation 24. That the Minister provides absolute clarity as to whether a national body for adult community learning will be established.

My intention is to move away from a National Body for Adult Learning in Wales. All adult learning providers funded by Welsh Government, including the Chief Executive and Chair of Adult Learning Wales have been notified of my decision.

All recognise that policy considerations have moved forward since a national body was considered in 2019 with the introduction of the Tertiary Education and Research Bill, which will establish a new Commission for Tertiary Education and Research.

I have approved £2m of funding, and a terms of reference for an external group to progress the review of adult education, and to support the development of a 2 year programme of national co-ordination for adult learning. The inaugural meeting is being held 15th March, and will be Chaired by Sue Pember, from Wales Centre for Public Policy, author of the Welsh Lifelong Learning System report published in December last year. The role of chair will be rotated thereafter to ensure inclusivity across the sector.

I am pleased that key stakeholders including Adult Learning Wales, the Adult Learning Partnership Network, FE, HE and the Learning and Work Institute, among others, are coming together collaboratively to embrace this direction.

Recommendation 25. That the Minister tables amendments at Stage 2 to put a balanced funding duty on the face of the Bill.

I note this recommendation, whilst I consider that the amendment I am exploring in response to recommendation 26 will provide the reassurances being sought by this recommendation but will consider this matter further.

Recommendation 26. That the Minister tables amendments at Stage 2 to place duties on the Commission to publish the details of at least its funding allocations, funding methodologies, funding formulas, and financial outturns, as well as a duty to be transparent in its funding decisions.

I accept this recommendation and am exploring options for bringing forward an amendment.

Recommendation 27. That amendments are tabled at Stage 2 to enable the Commission to provide research and innovation fund to a limited range of non-registered bodies.

I note the recommendation and am considering this matter further.

Recommendation 28. That the Minister brings forward amendments at Stage 2 to make a clear distinction between Welsh Ministers powers to directly fund tertiary education providers to deliver employability provision and the Commission's broader funding powers.

I do not accept this recommendation. Whilst it is essential that any use of the concurrent funding powers by the Welsh Ministers is not counter to the strategic position of the Commission in respect of funding decisions, it is essential that undue restrictions are not

placed on the funding powers if the Welsh Minister due to the risk of unintended consequences.

Simply restricting the power of the Welsh Ministers to provide funding by reference to employability provision risks creating potential gaps in those funding powers that could hamper their ability to fund future employability provision. Funding in respect of employability impacts a wide range of employment sectors including for example the health and social care sector. Hard restrictions or no funding powers for the Welsh Government could affect future funding streams for employability provision, and would risk putting learners and employment sectors in a worse position.

Recommendation 29. That the Minister brings forward amendments at Stage 2 to provide additional safeguards to ensure that any plans brought forward by the Commission for changes to sixth form provision does not have a detrimental impact on Welsh medium provision or provision within a religious school setting.

I note the intention behind recommendation but do not consider further amendments to the Bill to be necessary to ensure these protections. The overarching strategic duty placed on the Commission to promote tertiary education through the medium of Welsh, and the requirement to encourage learners to study through the medium of Welsh and to take all reasonable steps to ensure that there is sufficient tertiary education provided in Wales through the medium of Welsh will apply to the Commission in discharging its functions across the post-16 sector, including any considerations in respect of maintained school sixth form provision.

Additionally, the School Standards and Organisation (Wales) Act 2013 and the statutory School Organisation Code also includes relevant protections and safeguards to ensure that Welsh language provision and provision provided by faith schools is duly considered in any proposals brought forward for re-organisation.

The provisions in the Bill amend the current Chapters 2 and 3 of Part 3 of the 2013 Act and insert a new chapter 3A which enables the Commission to take a more strategic approach and offer a wider perspective to ensure school sixth form provision in a particular area or region is sensible and coherent – this includes ensuring that appropriate provision is available to meet the demand and planned demand for Welsh language provision.

The amendments to the 2013 Act relate to those proposals which affect sixth form education, that is:

- proposals to establish or discontinue a school providing education suitable only to the requirements of persons over compulsory school age, or
- proposals that make a regulated alteration to a school, the effect of which would be that the provision of education suitable to the requirements of persons over compulsory school age at the school increases or decreases.

The Commission will be able to direct a local authority or the governing body of a foundation or voluntary school to make sixth form proposals under section 63A. Section 54 of the 2013 Act will be amended to enable the Commission, in the circumstances set out in section 54(1), to refer proposals to Welsh Ministers if they affect sixth form education.

Under the new section 63C as inserted into the 2013 Act by the Bill, the Commission may make its own proposals in accordance with a direction. In these circumstances should any

objections be raised the Commission's proposals will be subject to the arrangements for the approval by Welsh Ministers as defined in section 63F under the 2013 Act.

In addition to these safeguards and protections, section 63C (3) of the 2013 Act will require the Commission to obtain the consent of Welsh Ministers prior to making any proposal to open or close a voluntary or foundation school's sixth form provision.

Recommendation 30. That the Minister brings forward amendments at Stage 2 to delete section 105 and sets out a different approach to managing due diligence when funding is passed onto third parties.

I agree with the intention behind the Committee's recommendation and am exploring options for bringing forward an amendment to section 105 to ensure arrangements intended to protect public money do not result in unnecessary additional bureaucracy or complexity.

Recommendation 31. That the Welsh Government commissions a review of apprenticeship framework development which considers the wider context beyond the Commission.

We already have in place robust arrangements for developing apprenticeship frameworks which are founded on employer and broader stakeholder engagement.

Three years ago we introduced new arrangements to improve the development process for framework developers, centred on stakeholder consultation including employers, sector bodies, training providers and awarding bodies. Each of these parties feeds into a stakeholder evidence report and which in turn supports the development of a draft framework, prior to Welsh Government issuing the framework.

These are robust and transparent arrangements, which ensure all new and revised frameworks are developed in consultation with key stakeholders and support sectors critical to the Welsh economy. The Commission will need to consider how it wishes to continue framework development and stakeholder consultation.

Recommendation 32. That the Minister brings forward amendments at Stage 2 to ensure that learner protection plans must take account of student / learner welfare and ensuring students can continue to study through the medium of Welsh.

I accept this recommendation and will consider whether this recommendation would be best achieved through an amendment to the Bill or statutory guidance to the Commission.

Recommendation 33. That the Minister brings forward amendments at Stage 2 to section 126 so that Welsh Ministers can only request information from the Commission when it directly relates to Welsh Ministers' functions.

I recognise the intention behind the Committee's recommendation, however, I cannot accept this recommendation. The intention is for the Commission to be a data hub and to become expert in tertiary education enabling the Commission to work alongside the tertiary education providers. The Welsh Ministers will rely on the Commission to perform that role, as they do now with HEFCW. However, Welsh Ministers will be responsible to the Senedd for the spending of public money provided to the Commission and will, from time to time, require access to information on the sector.

Section 69(1)(a) of the Further and Higher Education Act 1992 (FHEA) currently requires HEFCW to provide the Welsh Ministers with such information or advice relating to the provision for their area of higher education as they may from time to time require. The drafting of section 126 is intended to operate in exactly the same way as it does currently, but with a broader scope of providers.

Recommendation 34. That the Minister brings forward amendments at Stage 2 to explicitly require the consent of, or to act on the request of a governing body of a higher education corporation to being dissolved.

I accept this recommendation and am, in light of evidence to committee, as well as the Committee's report already exploring options for an amendment

Recommendation 35. That the Minister brings forward an amendment at Stage 2 to broaden the definition to include adult community learning, in line with the definition in the Explanatory Notes

I do not consider an amendment to the definition to be necessary. Section 139 of the Bill defines tertiary education by reference to higher education, further education and training, which are each also defined in that section. I am content the adult community learning is captured within the definition of tertiary education and that no amendments are required. The current references within the Explanatory Notes to community based adult learning are intended to provide explanation and clarity in respect of the provisions to which the notes refer.

Recommendation 36. That the Welsh Government publish draft regulations on:

- **Categories of registration (section 23(2))**
- **Conditions of registration (sections 25(3); 31(1); 32)**
- **Designation of other providers of tertiary education (section 81(4))**
- **Securing and funding tertiary education (section 91(3); 91(7)(b))**
- **Apprenticeships (section 107(4))**
- **Open University (section 140(1))**

before the Stage 2 proceedings.

I cannot accept this recommendation. In order to ensure stakeholders are afforded ample opportunities to inform the development of the necessary regulations, and to ensure that those regulations reflect any refinement to the Bill following consideration of the Committee's recommendations, I do not anticipate being in a position to share draft regulations with the Committee whilst the Bill is undergoing scrutiny.

Recommendation 37. That the Minister provides greater clarity either as part of the Stage 1 debate or in writing before Stage 2 commences on how the Bill will align with the 2018 Act and will support appropriate provision and support for learners/students with additional learning needs.

It is important to recognise the distinction between the provisions and duties contained in the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the 2018 Act) and the statutory requirements to provide strategic oversight, funding and regulation placed on the Commission while acknowledging the interdependencies and the different roles and responsibilities of those organisations involved.

Perhaps it would be helpful if I first explain the basis for the provisions contained in the Bill relating to ALN and how the 2018 Act, together with provisions in the Bill, supports learners with ALN.

The 2018 Act makes provision for supporting children with additional learning needs (ALN) and young people with ALN in, or wanting to pursue, post 16 education or training. The statutory duties to support individual learners with ALN are detailed in the 2018 Act and the subordinate legislation made under it. The 2018 Act also places more general duties on particular persons to support the effective operation of the ALN system. For example, some of those more general duties are aimed at improving and ensuring the capability of the workforce to deliver additional learning provision, including such provision in Welsh.

Those more general duties include ones on the Welsh Ministers when exercising particular functions under the Learning and Skills Act 2000 related to the provision of post-16 education and training. For example, the Welsh Ministers, in securing the provision of such facilities, must take account of the education and training required to ensure that there are employees and potential employees available who can deliver additional learning provision in Welsh (sections 31 and 32 of the Learning and Skills Act 2000 as amended by section 50 of the 2018 Act).

The approach in the Bill in respect of ALN matters is based upon the provisions of the 2018 Act. The Bill places similar duties about matters affecting the ALN system on the Commission when it is exercising functions related to the provision of further education and training. So, taking the example in the last paragraph, section 93 of the Bill requires the Commission to have regard to that matter, and other specific matters related to ALN, when discharging its duties in sections 90 to 92 to secure the provision of facilities for further education and training.

Similarly, section 99 of the Bill, like the duty on the Welsh Ministers under section 41 of the Learning and Skills Act 2000 as amended by the 2018 Act, requires the Commission, when exercising those functions to secure facilities for further education and training and particular related functions, to have regard to the needs of persons with ALN and to the desirability of there being facilities that would assist in the discharge of duties under the 2018 Act.

So the duties on the Commission related to ALN generally reflect those on the Welsh Ministers in this area as a result of the 2018 Act. There are also a few additional provisions. For example, the duty in section 99 to have regard to those matters related to ALN also applies to the Commission's function of providing financial support for the provision of information, advice or guidance about education or training. This is because those ALN matters could be relevant to the exercise of that function. Another example is the Bill's amendment to section 65 of the 2018 Act to require the Commission and the Welsh Ministers to respond to a local authority's request for information or other help for the purpose of exercising its ALN functions. For example, the Commission or Welsh Ministers may hold additional information which would help a local authority to exercise its ALN functions. The Commission and Welsh Ministers will also be required to have regard to relevant guidance in the ALN Code when dealing with any such request.

I will turn now to how, taken together, the 2018 Act and the Bill support provision for learners with ALN.

The 2018 Act places duties on the governing bodies of further education institutions in relation to meeting the needs of their enrolled students who have ALN.¹ In addition, local authorities have duties towards young people with ALN. This may entail a local authority maintaining an individual development plan for a young person enrolled at a further education institution; in some cases it may involve the local authority securing and funding specialist ALN provision at other institutions for individual learners aged 16 – 25 where this is necessary to meet the learners' reasonable needs for education or training.² Pending the implementation of these provisions of the 2018 Act, the Welsh Ministers will retain responsibility for securing such specialist placements for individual learners.

Under the Bill, the Commission (instead of the Welsh Ministers) will be responsible for securing proper and reasonable facilities for further education and training (which includes ALN provision), having had regard to various matters, including some which are relevant to ALN learners and issues. The intention is that the Commission, in deciding how to exercise these and related functions, takes account of ALN considerations and in turn makes decisions which help to support the effective operation of the ALN system.

One of the matters to which regard must be had by the Commission when securing the provision of further education and training, is the facilities that may reasonably be secured by other persons (section 93(1)(f)). Since local authorities will have ultimate responsibility for securing specialist provision for young people with ALN where that is necessary (as explained above), section 93(1)(f) expressly states that the provision that may reasonably be secured by others, includes provision secured by local authorities under the 2018 Act.

The detailed arrangements for implementing the ALN reforms for post-16 are currently being finalised. This includes the transfer of responsibility for securing post-16 specialist provision for learners with complex needs to Local Authorities. To provide clarity and transparency of approach it is important that the implementation of the post-16 aspects of the 2018 Act and the implementation of the Bill provisions continue to be developed in a joined up and co-ordinated way.

¹ There are also similar duties on the governing bodies of maintained schools about meeting the needs of their registered pupils (including any who are over compulsory school age) who have ALN.

² See section 14 of the 2018 Act and the Additional Learning Needs (Wales) Regulations 2021, regulations 6 – 10.

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Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

31 March 2022

Dear Huw

Supplementary Legislative Consent Memoranda on the Building Safety Bill

As you'll be aware, the Supplementary Legislative Consent Memoranda (No.3 and No.4) on the Building Safety Bill were remitted to the Local Government and Housing Committee for scrutiny. You'll be aware that we also considered the LCM and SLCM (No.2) in the autumn term of 2021.

Our report on the LCM and SLCM (No.2) was published on 15 December 2021 and we wrote to you on 17 December 2021 to highlight the concerns raised by some Members during our consideration, and asked that you consider these concerns in relation to your work on LCMs.

We considered the SLCM (No.3) and SLCM (No.4) at our meetings on 9 February and 9 March respectively and published our report on these supplementary legislative consent memoranda on 29 March. At the 9 March meeting, we agreed to write to you to further emphasise our concern about the limited scrutiny available when considering legislative consent memoranda compared with primary legislation. Following this, we learned that a further supplementary legislation consent memorandum, (No. 5), would be laid ahead of the reporting deadline and debate on 29 March. You'll be aware that this was subsequently laid on 25 March. We were therefore not able to consider the SLCM (No. 5) at our meeting on 23 March, but discussed the matter and agreed that it was disappointing that there wouldn't be sufficient time to consider the SLCM.


With the number of legislative consent memoranda that have been laid by the Welsh Government since the first LCM in July 2021, the changes to the legislative framework in Wales are substantial and



as a Committee we agree that this is significant legislation that hasn't been subject to detailed scrutiny. In our report published on 15 December 2021, we said that the Minister for Climate Change had responded to some Members' concerns about using provisions in a UK, rather than Senedd, Bill, by highlighting the "expedient and timely" nature of using legislative consent memoranda rather than primary legislation. However with the number of further supplementary consent memoranda that have been laid since the first LCM, we are unconvinced by this earlier assertion from the Minister.

I would be grateful if your Committee could take these concerns into consideration in any communications with the Llywydd and the Welsh Government in relation to your own work on the use of LCMs and SLCMs.

Yours sincerely



John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

—
**Equality and Social Justice
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Huw Irranca-Davies MS
Chair, Legislation and Justice Committee

7 April 2022

Dear Huw

Equality and Social Justice Committee inquiry: experiences of the criminal justice system

The Equality and Social Justice Committee has agreed to hold a series of spotlight inquiries to better understand the experiences of different groups of people in the criminal justice system in Wales. Our first one-day inquiry, which we are intending to schedule in June 2022, will explore the extent of speech, language and communication needs amongst young people who have offended, or are at risk of offending in Wales. The terms of reference for this initial short inquiry are set out on our [web pages](#).

I am drawing this work to your attention in light of your Committee's remit. Our inquiry will naturally focus on areas related primarily to equality and social justice. However, if you would like us to incorporate any specific issues into our consideration, or should you or Members of your Committee wish to be involved in any of this work, then I would be happy to explore opportunities to do so.

We will of course keep you informed of the outcome of our inquiry.

Yours sincerely



Jenny Rathbone
Chair, Equality and Social Justice Committee



Cangen Cymru  Wales Branch

OPEN EVIDENCE BASE TO UNDERPIN THE INDUSTRY RESPONSE TO THE 'TECHNICAL CONSULTATION ON THE DRAFT NON-DOMESTIC RATING (AMENDMENT OF DEFINITION OF DOMESTIC PROPERTY) (WALES) ORDER 2022

Wales Tourism Alliance, UKHospitality Cymru & PASC UK

8th April 2022

UKHospitality represents over 740 companies operating around 100,000 venues across the breadth of hospitality within England, Scotland, and Wales. In Wales, our members are responsible for the employment of around 140,000 people directly and a further 40,000 supply chain employees indirectly. UKHospitality Cymru represents the whole industry with one voice- from small independents to large multi-national sites, embracing the self-catering, serviced accommodation, F&B, events, attraction and leisure sectors and the supply chain. Many of our independent pubs and restaurant Members have letting rooms

PASC UK is the largest sector association representing the professional self-catering sector in England and Wales. It has over 1300 Members including over 60 agencies and represents over 50,000 letting properties. Our focus is on a level playing field across the whole sector for both taxation and health and safety compliance and to help our sector become more sustainable and more profitable.

Wales Tourism Alliance: The tourism industry membership of the WTA reflects the whole of Wales; national, regional and local representative bodies and businesses. Through its member organisations and forums resting within its general membership, this amounts to around 7,000 working operators and means WTA contacts and representatives are found in every part of Wales.

Contents

1. Introduction
2. Process
3. Welsh Government Evidence
4. Our Evidence
5. Conclusion

Appendix 1 - Analysis of the Original Consultation responses

Appendix 2 - Owner Case Studies

1) Introduction

The announcement, on the 2nd of March 2022, of the proposal to raise the occupancy criteria by 160% to 182 days came as a shock to the tourism industry in Wales. It particularly came as a blow to small self-catering businesses (furnished holiday lettings or FHLs) which are the most directly affected.

As we have heard from officials in Visit Wales, this threshold was proposed on the basis of its own occupancy data (Tourism Cross Party Group meeting, 30/03/2022), and from the results of the original consultation on local taxes for second homes and self-catering accommodation (25 August to 17 November 2021).

Nevertheless, we note that the consultation carried out by Welsh Government last year (25 August to 17 November 2021; “the Original Consultation”) secured only **nine** responses which agreed with the proposal of 182 days.

The majority of respondents to that consultation proposed an increase to the HMRC threshold of 105 days occupancy.

As the primary, independent representatives of the industry, this is the occupancy threshold we recommend.

The majority response to the ‘Original’ Consultation was not reflected in the proposals put forward in the current technical consultation. Despite responses which clearly challenge assumptions made on the back of officials’ occupancy data, we see that the latter has prevailed - and without explanation.

We take this opportunity to submit our own detailed evidence, supplied by over 1500 businesses across Wales, to demonstrate directly why reliance on one set of pre-covid occupancy data is an unsafe way for Welsh Government to proceed.

Our methodology and summarised findings are set out in Section 3.

Briefly, through our research, we have received survey responses from **almost a quarter of Wales’s estimated 6000 self-catering operators (across around 8000 properties)**. We have also, as requested, sought detailed case studies and received over 400 in less than four days. A good selection of these are provided in Appendix 2: Owner Case Studies.

These clearly show that the proposal to raise the thresholds will cause genuine hardship, particularly to those families whose properties are restricted to commercial use only. Subject to GDPR considerations, we are content for you to see all the submissions.

In short, the real-time submissions to our consultation do not align with the historic data collected by officials. This is unsurprising. While we all wish for a speedy recovery from the acute challenge of covid, it has a long tail.

As well as providing evidence for this consultation on technical detail, respondents have also articulated their nervousness about the fragility of current bookings and the sustainability of recovery in the face of

- The vast increase in energy costs. The average commercial tariff for electricity across these businesses was 14.5 pence per unit in April 2021, it is now in excess of 60 pence per unit with some being forced to even higher tariffs
- The crisis in Ukraine
- The cost-of-living crisis (which affects them and their potential customers)
- Renewed competition from overseas
- Continued staffing shortages and increased costs of employment
- Procurement costs; and
- VAT returning to 20%

These threats are chronic in their nature and the timing of these proposed changes could not be worse

There is, as you know, further disquiet across the wider visitor economy in Wales relating to other Welsh Government policy proposals:

- Tourism tax,
- NDBR,
- LTT,
- school year.

As each affects the consequences of the others, we ask Welsh Government to make it plain how they are managing and assessing these inter-related impacts.

The evidence we have collated, from over 1500 responses, demonstrates the disproportionate and damaging economic impact the proposed new occupancy threshold will have on the self-catering sector, both on individual livelihoods as well as collectively on communities.

It also demonstrates that a change that applies across the whole of Wales will not achieve the Welsh Government's stated aim of achieving a greater pool of affordable housing in those communities where a high proportion of second homes has contributed to purchase prices beyond the reach of local people.

2) Process

(A) LIMITED WELSH GOVERNMENT EVIDENCE BASE

We have made our observations of the original Consultation process in **Appendix 1** whereby the proposal for 182 days has been based on the least number of responses. There appears to be an over reliance on WG occupancy data in preparing the technical document.

Welsh Government officers have confirmed that they have not relied on Wales tourism accommodation occupancy surveys post 2019 because of the economic impact caused by the Pandemic. However, according to a verbal assurance from Welsh Government Officials pre-2019 occupancy figures have been utilised.

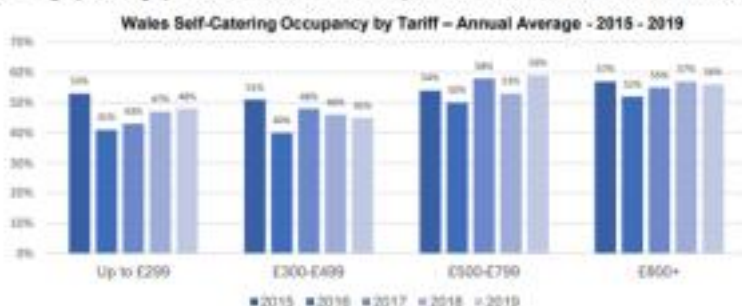
These survey reports provide trend information however we believe that the sample size is too small and potentially flawed - *The self-catering sample is usually around 300 - 500 operators* - the effect of the weighting for certain regions or size bands can therefore be exaggerated.

Wales Self-Catering Occupancy by Tariff

This section of the report outlines annual average unit occupancy rates by tariff for the period between 2015 and 2019.

Wales (Overall) - Annual Average - 2015 - 2019

Properties in the tariff band £500-£799 achieved the highest annual average unit occupancy rate (59%) in 2019, – an increase of six percentage points when compared with 2018. The lowest annual average unit occupancy rate (45%) was found in those charging between £300 and £499 – 1% below the figure recorded in 2018. The only year-on-year drops between 2018 and 2019 was found in the £300-£499 and £800+ tariff bands where occupancy was a single percentage point lower in 2019 than in 2018 (46% in 2018 down to 45% in 2019 and 57% down to 56%).



Even the Occupancy data from pre-2019 from the Welsh Government's own published research of 2018 and 2019, of the average occupancy by region, shows that South East Wales has average occupancy below 50% for both years, and mid-Wales was 48% average occupancy in 2018, and 52% in 2019, across a limited sample. However, if you look at the occupancy by tariff, on the above graph, the cheaper half of the four price bands have NEVER achieved average occupancy rates over 50% in the last 4 years.

While value, quality and spend are (usually) drivers of Welsh Government tourism policy, where we have seen balance in the past is an understanding that lower-income families should not be prejudiced by that. Wales inevitably faces competition from lower-price offers from within the UK and overseas, we would like to see everyone enjoy more holidays at home. This proposal could also see the complete loss of these lower priced offerings during the peak season.

These are the individuals and families who will be hit the hardest by the cost-of-living crisis. They will be thinking about whether to take a holiday at all. Taking out the cheaper end of the FHL offer as a result of this policy reduces the offer to lower-income households. As these properties are more likely to lie outside the coastal hotspots, taking them out of the market also reduces the scope for growing tourism in the less popular inland destinations.

To be utilising this pre-covid occupancy data to make a decision which will have such a seismic impact on the Self-Catering industry in Wales is, we believe, flawed. In order to make such a large change in the legislature this decision needs the due process of a full economic impact assessment.

(B) VOLUME AS A DETERMINANT

As you will have heard us say on other occasions, we too are keen to distinguish between FHL businesses and second homes/casual lets. While we responded to the Original Consultation on its own terms, there is a question in the first place about defining a business as "a business" based solely on volume of trade. We would be interested in hearing from Welsh Government of other types of business which are defined in this way, and how the decision was reached in the case of FHLs.

The setting of an artificial benchmark based on volume goes against over twenty years of Welsh Government policy and experience. Welsh Government tourism strategies have, **correctly**, concentrated on value, quality and spend - not volume - for good reasons. They have identified the following:

- Our number one strength - the countryside, natural and outdoor attractions - being at the same time our number one weakness, making Wales more weather dependent than any other home nation
- Discouraging over-tourism in high traffic "honey pot" areas.

Much of Wales's infrastructure and local communities cannot handle volume over value.

In order to gain volume to meet the new threshold, FHLs will make the unwelcome decision to drop prices at a time when business costs are rising.

The reactions in the feedback that we have received and across wider social media suggests that many are already being forced to consider lowering their prices, just at a time of spiralling costs being forced upon their businesses.

We all should be driving for a greener, more sustainable tourism economy for Wales, not trying suddenly to chase volume which goes against all that has gone before, as business are forced to hit an artificially high threshold of let days to avoid punitive taxation.

'The most popular motivations for coming to Wales were to enjoy the country's natural landscape mentioned by almost eight in ten visitors'.

(Wales Visitor Survey – Welsh Govt – 2019).

Due to the lack of wet weather attractions for young families we have been concentrating on higher paying couples – ‘the over 55s and affluent young actives for the shoulder months. This has meant great investment in good value quality accommodation and other supplementary products in the shoulder months with success.

‘Couples were more likely to visit Wales during the shoulder months than the peak season in 2019 (at 40% shoulder and 31% peak respectively), while the reverse was true for families with young children (at 29% peak and 17% shoulder). Families with young children accounted for 30% of Welsh staying visitors but only 24% of staying visitors from the rest of the UK.’

(Wales Visitor Survey – Welsh Govt – 2019).

The most recent figures demonstrate this –

In order to grow volume whilst maintaining quality will mean businesses spending more to promote their business. This means offering uncompetitive prices compared to comparable properties (in competitor destinations) which are not subject to this and other Welsh Government price-inflating policies. Even without the new pressures referred to in the Introduction, lowering costs remains an inherent risk as *guaranteeing* occupancy levels is still not possible.

Margins are squeezed further in autumn and winter, as smaller number of visitors expects to pay less when running costs are higher. Occupancy is reduced to mainly Friday and Saturday bookings due to poor weather and reduced opening hours for secondary seasonal businesses and attractions.

Therefore, to make up the additional volume is not possible as there is little or no market for most Sundays to Thursday, with many operators already offering up to 40% discount (Airbnb, 2022) on these days.

‘Almost two thirds of UK staying visitors in the shoulder months (65%) described their trip as a short break’

(Wales Visitor Survey – Welsh Govt – 2019).

Indeed, the self-catering sector has invested heavily over the last ten years to build value over volume in order to increase spend precisely because our peak season is so limited and opportunities to spend are limited. Many investing in ancillary facilities to create micro destinations (e.g spa facilities).

“ABC1 and travelling with children, C2DE are most likely to have been based in one location during their trip (at 90% and 91% respectively, compared with 84% of visitors overall”).

(Wales Visitor Survey – Welsh Govt – 2019).

Rural or even isolated coastal properties are unlikely to be based near attractions and therefore not attractive to young families staying for a week, especially outside of the peak school holiday season.

It is a non sequitur that these proposals will help develop the tourism sector as a year-long sector...by ensuring more nights spent in Wales will help develop the sector and also allow new money to be spent in our communities outside the main tourist season.

We cannot agree with this. We suggest that businesses lowering pricing to try to hit artificially high targets will not invest while the spectre of the consequences of missing the 182-day threshold hangs over them.

Even on Welsh Government's own 50% pre-covid occupancy figure, it is unrealistic to suggest that the very modest budget made available to Visit Wales would help a significant number of at-risk businesses raise occupancy levels to the point of survival post April 2023.

Further, whilst there have been some great successes in recent years (such as transforming North Wales into the Adventure Capital) this new technical order will take real effect from 1st April 2023 and there is no conceivable way in which in-door attractions, from high streets to theme parks, can be developed within twelve months in order to build up the sheer number of businesses that will fall short of the 182-day threshold.

Finally, if you look at the occupancy by tariff, the cheaper half of the Welsh Government's four price bands have **NEVER** achieved average occupancy rates over 50% in the last 4 years.

While value, quality and spend are (usually) drivers of Welsh Government tourism policy, where we have seen balance in the past is an understanding that lower-income families should not be prejudiced by that. While Wales inevitably faces competition from lower-price offers from within the UK and overseas, we would like to see everyone enjoy more holidays at home.

These are the individuals and families who will be hit the hardest by the cost-of-living crisis. They will be thinking about whether to take a holiday at all. Taking out the cheaper end of the FHL offer as a result of this policy reduces the offer to lower-income households. As these properties are more likely to lie outside the coastal hotspots, taking them out of the market also reduces the scope for growing tourism in the less popular inland destinations.

On a per person per night basis FHLs offer astonishingly good value for money.

(C) A SECOND HOMES ISSUE?

We do not underestimate the need for new, efficient affordable homes and we certainly do not condone second homeowners not paying a fair contribution to local taxes.

However, in framing these proposals in terms of the second homes debate, it has not been possible to identify how Welsh Government has examined the full impact on the wider visitor economy in Wales and how much if that is reliant on a buoyant self-catering sector.

We are not aware of any Economic Impact Assessment of these proposals, either on risk-taking owners and their businesses or the cumulative effect on jobs in tourism, hospitality and local retail.

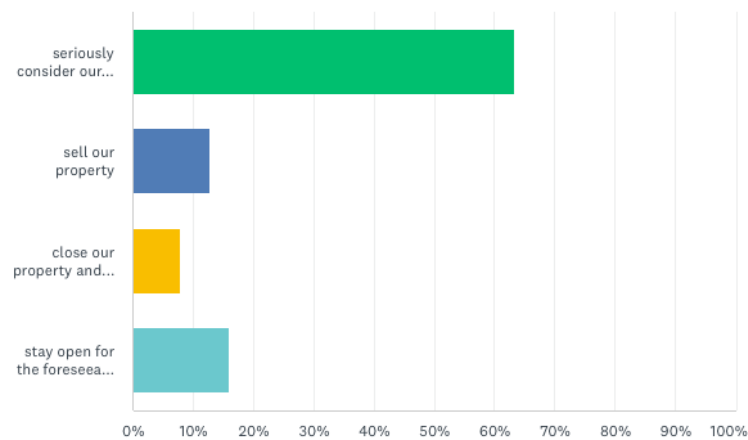
We understand that Welsh Government has to balance priorities, but we have not been able to identify any attempt to find such a balance. This is difficult to understand when the economic health of individual communities (let alone more widely) is an essential element in their sustainability and wellbeing.

The assertion is that belief that this will only be an issue for "some" businesses." Our evidence shows that the quantum of that "some" is much greater than pre-covid figures might suggest - and that was 50%.

Our research shows a completely different picture. Only 16% currently think that they can work with the 182-day threshold.

If the current proposals from the Welsh Government come into effect, (182 days let to go onto Business Rates or pay a possible 300% premium on Council Tax) what impact will it have? We will need to: (Please answer only one)

Answered: 1,029 Skipped: 183



Where our evidence does align with Welsh Government's is the finding that the majority - though nowhere near 50% - of businesses that are able to meet the threshold are in the coastal "hotspot" communities. These are also the communities most severely affected by high property prices.

There are businesses within those hotspots that will still have difficulty meeting the thresholds.

However, the majority of FHLs that will not be able to meet the thresholds lie outside these hotspots in parts of Wales where second homes play a much smaller role in the question of local affordability (see Brooks report) and where there is potential for tourism growth without tipping the balance against community wellbeing.

They will either close or fall into the council tax regime if planning permission allows. Some may survive the change of status but will add to the corpus of properties identified as second homes rather than as businesses. Welsh Government will not want to be credited with creating more "second homes".

Others will fall into a council tax regime where local authorities have adopted higher council tax premiums for second homes. Some of these less popular areas are in the same local authority area as hotspots, but they will still have to pay the elevated premiums.

Businesses which close will not necessarily release affordable residential property onto the market. Those units on an owner's own property or with commercial-only planning permission will close or fall into the council tax regime.

Policy consultation clearly outlined the policy objectives, none of which have any bearing on properties that are legally unable to be used as permanent accommodation, such as properties restricted by planning conditions to holiday only use. Whilst planning is a different area to taxation, Welsh Government have a duty to consider the presence and impacts of the market and wider legislation. Welsh Government have shown no evidence linking such properties to the stated policy objectives. There is therefore no reasonable justification for including such properties within the scope of this legislation.

The research reports commissioned by Welsh Government omitted to even mention how such properties already positively assist in deflecting visitor demand away from normal domestic housing (conversions to holiday-lets) and thereby act towards the stated policy objectives currently.

There are also other restrictions for example: the catchment of the River Teifi in Wales is currently under a SSSI with Natural Resource Wales. All developments that pose an increase in phosphates into the watercourse are not being approved. The Local Authority is not allowing uplift of commercial premises onto residential within the catchments. Has the WG consulted the NRW over the proposed increase of phosphates as a result of these new policies?

<https://www.ceredigion.gov.uk/resident/planning-building-control-and-sustainable-drainage-body-sab/phosphates-on-the-teifi-river-sac/?fbclid=IwAR2N24FxqdNtoUc68B17wKzxEgooN-BkLV1Y8jsMWzKwXQEnMwdghriPI7E>

Therefore, if you are in this area, you would not be able to change from holiday lets permissions to residential because of the uplift in occupancy. It specifically says holiday accommodation. Basically because of the fragility of the local environment.

Owners who do decide to sell will not be looking to sell at an undervalue, especially if they have invested in the standard of the property. They will advertise their properties in parts of the country where incomes are higher and sell to people from outside the area for whom the higher price and higher tax costs are not a deterrent.

It will shut out new entrants to the self-catering industry in those parts of Wales where there is under-tourism and no threat to community identity or cohesion (see the Brooks report).

The proposal will discourage the bringing back into use of empty properties, especially those where mortgage valuations are low compared to asking price, and where renovation/maintenance costs are too high in comparison to the size and value of the property. We suggest that the NDR threshold and council tax proposals will both stifle investment in older properties, undermining the purpose for which these changes have been proposed.

All this applies to second homeowners but, more crucially, it applies to FHLs which lose their business status because of these proposals.

While some of these properties will have been bought by non-locals to run as businesses, some will be owned by local people through inheritance or investment. These proposals could mean local families having to give up their erstwhile businesses in favour of providing a new second home to wealthy outsiders.

This is not the effect on affordability, community sustainability and security of the Welsh language that Welsh Government is seeking.

3) Our Evidence

Over the years we have gathered a great deal of data into the self-catering sector in Wales. It is a richly diverse sector, offering a wide variety of product, from castles to glamping, from luxury beach retreats to bunkhouses in the mountains, from farm stays to city living and everything in between. All are intrinsically different and operate their own business models. There is no one size fits all.

Demand varies across all parts of Wales; some hotspots are incredibly busy whereas some inland areas are quiet and peaceful.

What the evidence and feedback has shown us is that a simple over-arching high threshold simply cannot be met by many 100% legitimate businesses (FHLs).

Many of these businesses have invested substantially in their offer, and by doing so in Welsh tourism as a whole. These very businesses are now under serious threat from the proposed 182-day threshold.

In addition, the sector, having mainly survived the incredibly bruising effects of the pandemic, where any reserves were used up to simply survive, with huge impacts on mental health in the sector are now entering another perfect storm. The market is going 'soft' as the impact of the devastating war in Ukraine and the

massive increases in energy and insurance prices has brought continued uncertainty to the sector and bookings begin to slow right down.

This is not a time to try and drive these businesses to massively higher occupancy. This will only be done in the short term by reduced pricing and offers. Surely not the image that we all want for a vibrant Welsh Visitor Economy? We should be continuing with the long-standing Government tourism policy of **Value not Volume**.

Trying to drive up visitor nights in one sector alone is not a strategy and is most likely to impact adversely in the areas that need it least; the hotspots where we are already suffering from 'over-tourism' as they are top of the visitors list. Extending the season has always been the nirvana of all tourism strategies: Few have really made any real impact on substantially increasing seasons outside the holiday and good weather boundaries.

Unreasonable Notice Period: Welsh Government have stated in correspondence to self-catering property owners that "**..self-catering properties should aim to meet the new criteria during the year beginning on 1 April 2022, so that they can meet the evidence requirements from 1 April 2023**"

The scale of that change requires owners to re-plan their businesses, adapting marketing, operational, investment and financial practices in order to achieve the new criteria. All already have bookings for this year based on their current business and availability strategy. These changes could bring a high risk of financial failure to these businesses and force owners to move away from their current target market, changing their propositions, primarily pricing to achieve substantially higher bookings. Given this season has already started and they already have bookings based their original business strategy, and given the business changes would need time to effect, it is unreasonable to place this burden, impacting this season's business when the legislation has not yet been passed.

Whilst we acknowledge Visit Wales's quality promotion work on this issue at the moment, and we wish it success, unless Welsh Government is prepared to guarantee this with financial pay-outs in the event of market failure due to the introduction of this threshold, it is an unproven claim that hard work by Visit Wales with the industry will create the necessary demand to avoid the need for compensation. There has not even been a pilot study.

Below we set out illustrative highlights and lowlights from our research into the sector, whilst giving you GDPR-compatible access to the full reports.

Case Studies into the Impact of the proposed 182-Day threshold.

At a Cross Party Meeting on the 30th March 2022, we were asked if we could provide some 10-20 case studies into the impact that the proposed threshold would have on businesses.

We put out a call on Friday 1st April with a four-day deadline, so that we could have them in time for this report and collate them for the Appendix. We received well over 400 responses and have been able to include over 200 in the time allowed.

The Case Studies can be found in Appendix 2.

There are some really heart-rending studies. The overall impact of the proposed threshold is to create fear, uncertainty, and doubt, adding to mental health pressures already exacerbated by the experience of the pandemic and the new pressures referred to in the Introduction.

Please analyse these studies and you will see the unintended consequences of the proposed threshold. Businesses that the Welsh Government have funded to diversify from farming will be ruined, owners will lose their homes, businesses, and income as a result of this proposal.

You will see that the case studies confirm who is actually captured by these proposals. They are not the higher-income second homeowners whose contribution to the community and economy is minimal. These are small micro-businesses, no burden on the state, working hard to earn a legitimate living from hospitality. Many have no option but to do short-term letting as they are limited by planning consents.

If this measure is carried through as proposed, any property, outside a hotspot, limited to only operate as a holiday let will become a blighted property. How will that help rural communities in particular?

Larger properties, bunkhouses, specialised charities and adventure accommodation are almost totally reliant on the weekend trade and will never be able to make the threshold. Converted redundant farm buildings and glamping will struggle too, with very few able to meet this threshold, with potentially dire consequences for them.

Even those that can make the 182-day threshold currently are frightened by the prospect of the impact of heavily increased marketing by their peers, most likely at discounted prices, driving their occupancy down to below the threshold.

None of us want to see headlines of businesses closing, people losing their livelihoods, their job and their homes, so **please read** the real impact for so many, contained in the Case Studies.

PASC UK, WTA and UK Hospitality Cymru Survey on the 182-day threshold: Methodology & Key Findings

The full report can be seen here: <https://bit.ly/3KqRx6z>

With little time from the announcement of the Welsh Governments intention to increase the threshold from 70 days to 182 days on the 2nd of March and closing of the Consultation on this on the 12 April, the first thing that we did was to commission a survey to assess the impact of this proposal.

This survey ran for ten days and generated 1212 responses. This is the largest self-catering sector only survey in Wales. Only 16% of respondents believe that they will be able to carry on.

This is lowest confidence indicator we have seen, even at the peak of the pandemic.

The key findings from this report were that a much smaller proportion of the sector achieves the 50% occupancy, or 182-day rate proposed than published by official figures.

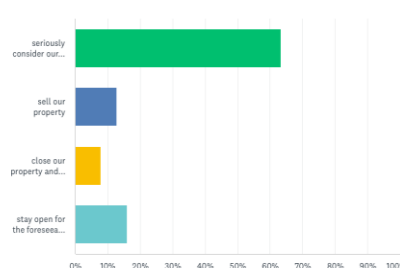
Key data points emerging from this survey of which there were 1212 respondents:

- 40% said properties were in high demand areas, 60% in medium or low demand areas
- 31% of owners generated over 50% of their income from short term lettings
- 85% of properties are on the Non-Domestic Rating list
- 32% have specific Planning Permissions to ONLY operate as short term lets
- 10% have a limit on how many days they can let in a given year

- 34% said that they were currently able to make the 182-day threshold
- 43% never use the properties personally
- 40% said that they closed for 3 weeks a year for maintenance
- 26% spend more than £10k annually in their economy, with a further 22% spending £7.5k
- 50% of all respondents felt that the 105-day threshold was the best solution, 13.5% want it to stay at 70 days and only 7.5% supported 182 days or more
- 63% are seriously considering their future in this sector and only 16% showing any confidence moving forwards.

If the current proposals from the Welsh Government come into effect, (182 days let to go onto Business Rates or pay a possible 300% premium on Council Tax) what impact will it have? We will need to: (Please answer only one)

Answered: 1,029 Skipped: 183



This is an unparalleled threat level for any business sector, especially at this time, and we urge readers of this report to read the Appendix of Owner Case Studies.

Membership Survey by Mid Wales Tourism

Mid Wales Tourism undertook an early survey to test the water in relation to the proposal. They received 148 responses. It was decided that a further, more detailed survey needed to be undertaken to establish a more in-depth body of evidence which could be added to. The initial headline results:

- 75% were NDR Exempt / 19% NDR Not Exempt / 6% Not NDR registered.
- 80% will be able to reach the 252 days available but 80% not reach the 182 days let
- **Out of the 148 businesses who responded to the survey 80 said they would be forced to close (54%)**
- 39% of those stating they would close are NDR registered (Not Exempt)
- 70% of multi businesses said they would be able to reach the 252 days available but not the 180 days let / 50% have said that it would close their business.

With 80% returning that they would not be able to make the threshold this initial survey was an alarming result.

For the full survey results: <https://eu.jotform.com/report/22062488996707004>

Impact upon Mental Health of owners.

In April 2021. Just as Covid Restrictions were beginning to ease across Hospitality, PASC UK in Conjunction with other organisations in Wales (See below) carried out a Survey on how effective Grant support had been in the pandemic. We took the opportunity towards the end of the survey to ask respondents if they had suffered any mental health issues as a result.

Please bear in mind that the purposes of accuracy, all respondents were required to give their name address and contact details so that any data provided could be cross checked.

Over 46% of respondents have either had signs of mental health or are experiencing some form of anxiety or depression.

This was also borne out by the telephone support calls received at the PASC UK office during the pandemic.

PASC UK & ASSC UK-WIDE SECTORAL SURVEY INTO SELF-CATERING FEEDBACK ON FUNDING AND GRANT SUPPORT

Introduction

- The Professional Association of Self-Caterers (PASC-UK) and the Association of Scotland's Self-Caterers (ASSC) are the leading source of knowledge on short-term letting and holiday homes in the UK and Scotland respectively.
- As a UK wide approach, the ASSC and PASC UK seek to harness empirical data about the self-catering sector across the UK in order to be able to inform the UK and devolved governments in terms of future policy decisions.
- A UK-wide sectoral survey was conducted in March 2021 relating to eligibility and access to the various packages of economic support from the UK, Scottish and Welsh Governments in response to the COVID-19 pandemic.
- The results offer valuable insights into the experiences and problems faced by the UK's self-catering operators in accessing the support required to safeguard their businesses during the Covid-19 pandemic.

Survey Overview

- PASC UK and the ASSC gathered data about the grant schemes, due to many self-catering operators highlighting concerns about the eligibility criteria associated with the grants from the UK, Scottish and Welsh Governments in particular, as well as inability to access the Coronavirus Job Retention Scheme or Self-Employed Income Support Scheme from the UK Government.
- PASC UK and ASSC ran an online survey consisting of a series of sector specific questions. This was publicised via PASC UK and ASSC newsletters, as well as via social media channels.
- The online survey elicited 1395 responses from self-caterers in England, Scotland and Wales, from both PASC, ASSC members and non-members alike, across the UK's local authority areas.
- 59% of responses were from members of PASC UK or the ASSC. 41% of responses were from non-members.
- With special thanks to the Wales Tourism Alliance, North Wales Tourism, Visit Pembrokeshire, Tourism Alliance, SW Tourism Alliance and the FHL Business Support Group for circulating the survey throughout Wales.

Summary

It is hoped that the survey results will inform greater discussion regarding the support provided to self-catering operators in the UK during the Covid-19 pandemic.

Some of the key findings include:

- A good proportional split of responses were from across the UK, predominantly from **rural locations** with 47.38% being from England, 38.63% from Scotland and 15.63% from Wales.
- NOTE: the survey did not extend to operators in Northern Ireland due to limitations in sources for circulation.
- The majority of self-catering businesses have been running for at least 6 years. A large proportion of self-catering businesses have been running for 11 to 20 years or more, with some operating over 40 years.
- **Over 46% of respondents have either had signs of mental health or are experiencing some form of anxiety or depression, there is evidence of the impact of the Covid-19 crisis being felt across the sector.**
- Currently there is a mixed picture in terms of business confidence, with 38% of respondents being somewhat optimistic and 20% somewhat pessimistic and almost 27% taking a neutral view at the moment, not knowing what to expect.

The Full report is available here:

<https://www.pascuk.co.uk/reports/> Where it can be downloaded. Look for this icon.



The Economic Impact of the Self-Catering Sector on the Welsh Economy

In August 2021 PASC UK published the most extensive report into Welsh Self-catering, utilising live booking data from numerous booking platforms plus visitor surveys.

The full report can be found on this page and downloaded:

<https://www.pascuk.co.uk/reports/>



Key highlights were as follows:

Wales



Gross Visitor Spend by Item (Wales)



£87.2m
Accommodation fees



£13.4m
Travel to and from property



£7.7m
Food and drink
(in local shops)



£27.5m
Food & drink
(bars, cafes & restaurants)



£4.4m
Outdoor recreation and other sport



£49.7m
Visitor attractions



£5.5m
Travel during stay



£15.1m
Food and drink
(in supermarkets)



£7.2m
Other shopping

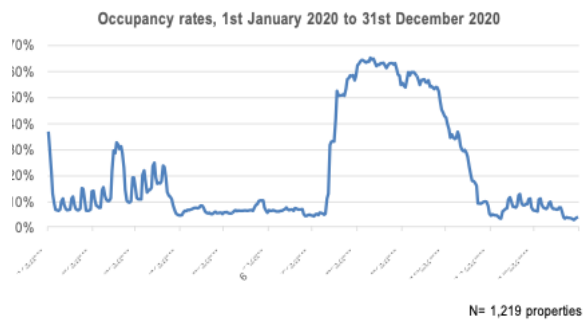
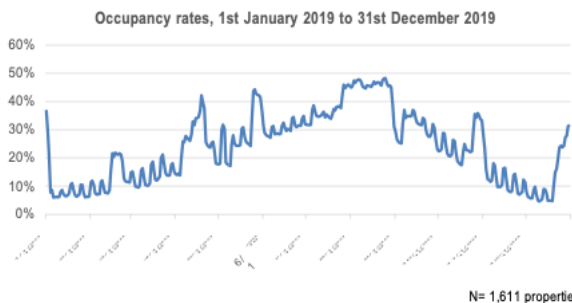


Areas with the greatest number of properties

1. Dyfed (3,130)
2. Gwynedd incl. Conwy (2,520)
3. Anglessey (735)
4. Powys (690)
5. Clwyd (270) & West Glamorgan (270)

In the appendix to this report, you can see the data provided by the booking platforms on actual occupancy. This is based upon paid bookings only.

Wales



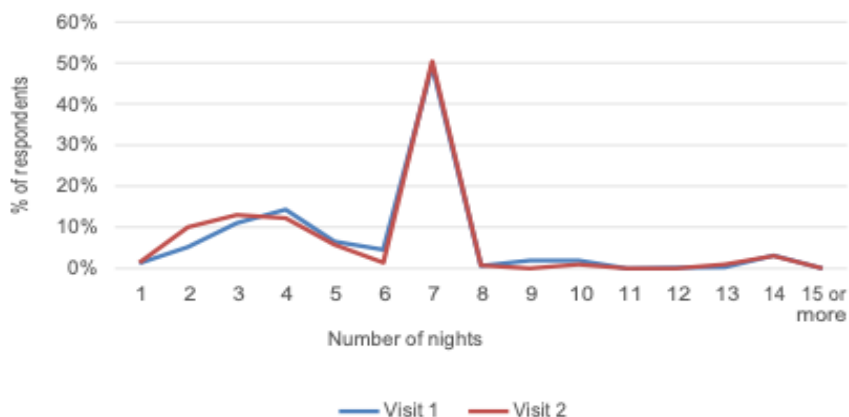
The Short Break Staycations

The popularity of the short break is on the rise, with most operators now only able to sell seven-night stays in peak times, the summer holiday and Whitsun being the most likely. The visitor wants an experience filled two-to-three-night stay. These most commonly have to fit around weekends, making out of season midweeks really hard to fill. If you are in a hot spot area, this will be easier, but for many rural businesses filling midweek for around six months of the year is going to be nigh on impossible.

Visitor characteristics

This section looks at findings from visitors for up to two visits to a self-catering property. Visit 1 is the most recent visit i.e., 2020 and visit 2 is pre-Covid-19 i.e. 2019. On average visitors spent 5.9 nights during visit 1 and 5.7 nights in visit 2. The distribution of responses is shown in Figure 3.3 and demonstrates a very consistent trend between visit 1 and 2.

Figure 3.3: Number of nights stayed per visit



Actual Booking Data across 792 Properties

This spreadsheet shows the number of nights let across the various ‘sleeps’ sizes of properties in Wales. In general terms the larger the property the harder it is to achieve the same occupancy as a smaller property, simply because there are fewer large groups that want to go away together than family sized units.

This is real reason why a one size fits all threshold, at a heightened level, will particularly penalise certain types of business in non-high demand areas.

Sleeps	No of properties	Avg 2019 nights	Avg 2020 nights	Avg 2021 nights	Avg of 2019 £	Avg of 2020 £	Avg of 2021 £
(blank)							
1-5	433	155	96	158	£ 14,611	£ 9,165	£ 17,004
6-10	291	125	80	128	£ 18,205	£ 11,531	£ 20,863
11-15	37	127	78	132	£ 38,503	£ 22,373	£ 43,399
16-20	17	78	44	83	£ 46,078	£ 23,025	£ 46,948
21-25	6	79	44	63	£ 53,865	£ 25,241	£ 35,185
26-30	4	144	48	101	£ 141,148	£ 49,014	£ 119,061
31-35	2	96	21	68	£ 80,657	£ 14,744	£ 72,804
36-40	1	90	31	16	£ 90,324	£ 34,189	£ 23,380
46-50	1	28	22	39	£ 44,220	£ 23,805	£ 59,581
Grand Total	792	140	87	143	£ 18,959	£ 11,336	£ 21,154

This data has been provided by the SuperControl Booking System and shows actual bookings placed and paid for on their system. The vast majority of these are professionally let business who have opted to pay

for a booking system. As can be seen there is not one column of nights let that averages anything close to 182.

Impact of the increased threshold on Women and Carers

We have received some compelling data on the impact of the proposed threshold increase on women, and particularly those who are also carers.

Below we have included some data from a report into this, and it's clear that there is a real issue here. Women play a huge role in this sector, and in most cases are the driving force in these businesses. Many of them have other responsibilities too.

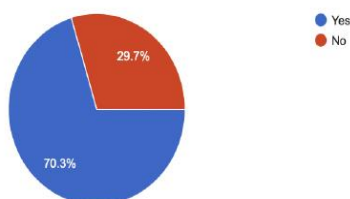
This survey clearly highlights the need for the Welsh Government to carry out a full Economic Impact Study, into the proposed measure, to include what impacts it will have on different parts of society.

Once again, this illustrates how the target of the proposed measure is the wealthy second homeowner, depriving a local from buying a house, yet will have hugely detrimental effects through unintended consequences.

The full report can be accessed here. <https://docs.google.com/forms/d/1iNNZ56ebZi-bBlsgOgRUDWnmFwDOme4v0mIEeLZeTLU/viewanalytics>

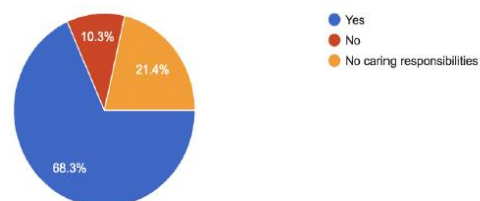
3. Do you have caring responsibilities - perhaps for school-age children, a disabled child/partner or elderly parents?

145 responses



4. Does your self-catering accommodation business have to fit around these responsibilities?

145 responses



5. Conclusion

Our evidence shows many micro locally run family FHL businesses will simply shut down: Some of the buildings will be sold, possibly to buyers outside of Wales because they will not be in the right location or price bracket, others converted back to farm buildings or re-absorbed into owners' own primary residences.

There is a risk that some will be abandoned in an attempt to avoid paying tax on an un-productive building.

As a tool to bring properties back into a market which is affordable to local people, it will not work. Rather it will reduce local owners' ability to earn an income and cause a decline in secondary jobs in hospitality, retail, house maintenance and cleaning etc.

It will not safeguard the Welsh language as these businesses will be lost to wealthier outsiders prepared to meet the higher costs of having a second home or self-catering businesses in Wales.

We recommend that:

- (a) Welsh Government observes the majority response to the Original Consultation and Increase the threshold from 70 Days to 105 Days (that's a 50% increase) and align with FHL HMRC taxation rules;
- (b) We adopt the term 'Holiday Let Businesses' for FHLs that comply with 105 days letting and full HMRC tax compliance;
- (c) Properties that are limited by (i) planning permission to only be short term commercial lets and (ii) lie within the curtilage of an owner's primary residence are not made liable to pay the additional council tax premiums if they do not hit 105 days let;
- (d) Allowances can be made when whatever threshold is finally determined upon, accommodating limitations on availability (as opposed to occupancy) such as, carrying out repairs, property improvements, closure due to ill-health or caring responsibilities. We would be pleased to work with the Welsh Government in determining what these might be;
- (e) We work with Visit Wales to drive quality and nightly yield up to improve profitability and sustainability of this sector of the industry;
- (f) We work with Visit Wales, Welsh Government and other partners to push forward the green, low-zero carbon agenda in the self-catering business sector.

Appendix 1

The Welsh Government 'Local Taxes for second homes and self-catering accommodation' Response evidence:

The Welsh government has proposed legislation that does not reflect the consultation responses, the following analysis of the data presented in the published response document is shown below. In each case, the proposed legislation takes no account of the majority views expressed by those who took part in the consultation, and in many cases creates legislation that represents the opinion of just a tiny fraction of the respondents who took part.

Q. How effective are premiums in addressing housing issues?

A. 79% said little or no effect, 9% said positive effect.

Result: go with the 9% and push forward with the council tax premiums as a means of addressing housing issues

Q. Is current max of 100% appropriate?

A. 64% said appropriate or too high, 20% said too low.

Result: go with the 20% and raise the maximum

Q. Should self-catering accommodation thresholds be higher?

A. 75% said either no change or no support for higher thresholds, 22% supported higher.

Result: go with the 22% and raise the thresholds

Q. If thresholds changed, what should new available to let threshold be? A. 149 replies suggested greater than the current 70 days (15% of respondents), 38 suggested 210 days (4% of respondents).

Result: go with the 15% of all respondents who supported an increase and set the level in line with the 4% of all respondents who suggested 210 days

Q. If thresholds changed, what should new actually let threshold be?

A. 118 replies suggested greater than the current 70 days (12% of respondents), 38 suggested 105 days (4% of respondents), 9 suggested 182 days (0.9% of respondents).

Result: go with the 12% of respondents who supported an increase and set the level in line with the 0.9% of respondents who suggested 182 days

Of keynote are the responses to Q9 'If the self-catering thresholds were to be changed, what do you suggest the new thresholds should be'.

*Of the 155 responses suggesting a rise on the **availability** criterion, 149 proposed thresholds higher than the current 140 days, ranging from 150 to 365 days. The most common specific suggestion was **210 days** a year. The most common specific suggestion for **commercial occupancy** was **105 days**. Only 9 responses supported a range of between 182 days or 6 months (9 responses).*

Chair, Children, Young People, and Education
Committee
Chair, Climate Change, Environment, and Infrastructure
Committee
Chair, Culture, Communications, Welsh Language,
Sport, and International Relations Committee
Chair, Economy, Trade, and Rural Affairs Committee
Chair, Equality and Social Justice Committee
Chair, Health and Social Care Committee
Chair, Legislation, Justice and Constitution Committee
Chair, Local Government and Housing Committee

11 April 2022

Dear Committee Chairs



Welsh Government Draft Budget 2023-24: Engagement

At our meeting on 25 March 2022, the Finance Committee (the Committee) considered its programme of engagement for the forthcoming Welsh Government's Draft Budget 2023-24, ahead of the Committee's Plenary debate on spending priorities, provisionally scheduled for 13 July. I am writing to Chairs of subject committees to share our thinking.



The Committee has agreed to undertake a number of engagement activities prior to the publication of the Draft Budget, in the autumn. These include, a stakeholder event, focus groups held with the general public, and working with the Youth Parliament.



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Stakeholder Event

Following the restrictions over the past two years, the Committee is delighted to be able to return to holding an in-person stakeholder event to hear directly from interested organisations/individuals on the expected draft budget proposals, as well as the Welsh Government's approach to setting the budget and prioritising resources.

Cross-Committee engagement with stakeholders on the budget is crucial to effective scrutiny and therefore I would like to invite Committee Chairs or a Member of your Committee to join the event which will take place on the morning of Wednesday 15 June at Llanhilleth Miners Institute, Abertillery, Blaenau Gwent. If Chairs or Members are interested in attending, please contact the clerking team seneddfinance@senedd.wales by 1 June 2022.

Focus groups with the Welsh public

On behalf of the Committee, the Senedd's Citizens Engagement Team will be holding a series of focus groups on the Draft Budget with the Welsh public. The team undertook a similar exercise last year and will facilitate focus sessions over the summer term, asking the same or similar questions posed last year. The aim of this work is to improve public understanding and engagement with the Welsh Budget process. In addition, over the longer-term we hope to form a longitudinal study to allow the Committee to monitor perspectives and attitudes over time. Participants will be sourced through similar partner organisations to cover the same demographics as last year, and groups will be organised to focus on particular policy areas.

The Citizens Engagement Team will circulate the dates of sessions to all Committees, should any Members wish to participate. This will allow an opportunity for Members to hear first-hand from the citizens of Wales where spending should be prioritised.

Youth Parliament

To further complement our engagement work, the Committee has agreed to work with the Youth Parliament. Members of the Youth Parliament will be invited to take part in their own focus group session before the summer. It is hoped this will allow the best opportunity for Youth Parliament Members to influence the Welsh Government spending priorities.

Finance Committee Plenary Debate on the Welsh Government spending priorities

As mentioned above, the Committee intends to hold a Plenary debate on Wednesday 13 July on the Welsh Government's spending priorities for 2023-24. The outcomes of our engagement work will inform and feed into this debate. We



believe this debate allows the best opportunity for Members to potentially influence the Welsh Government's spending priorities prior to the formulation of the Draft Budget in the autumn.

Approach to Budget scrutiny

I will shortly be writing to Chairs, with regard to the Committee's approach to budget scrutiny, including information on the consultation and timetable. Whilst the Finance Committee's core function is to undertake financial scrutiny of the Welsh Government and associated public bodies, financial scrutiny should be embedded into the scrutiny work undertaken by all Committees. Therefore, I would welcome suggestions from Chairs to explore ways of working collaboratively to ensure the most effective financial scrutiny of the Welsh Government.

If you have any questions about any aspect of the Draft Budget process, please feel free to contact me or the Clerk to the Finance Committee, Owain Roberts, 0300 200 6388, seneddfinance@senedd.wales.

Yours sincerely



Peredur Owen Griffiths MS
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The legislative response by the Welsh Ministers to the coronavirus pandemic**

DATE **11 April 2022**

BY **Eluned Morgan, Minister for Health and Social Services**

The Welsh Government has published a further report on its legislative response to the coronavirus pandemic. It covers the period from 1 September 2021 to 31 March 2022 and includes all subordinate legislation relating to coronavirus made by or on behalf of the Welsh Ministers during this period, not just legislation which originates from the Coronavirus Act 2020.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Coronavirus pandemic legislation: 1 September 2021 to 31 March 2022:
<https://gov.wales/coronavirus-pandemic-legislation-1-september-2021-31-march-2022>

The legislative response by the Welsh Ministers to the coronavirus pandemic – Report to Senedd Cymru

Background

This report covers the period 1/09/2021 to 31/03/2022 and includes all subordinate legislation relating to coronavirus made by or on behalf of the Welsh Ministers during this period, not just legislation which originates from the Coronavirus Act 2020 ('the 2020 Act').

The 2020 Act was passed by the UK Parliament in March 2020 and provided the UK Government and devolved governments with additional powers to respond to the Covid-19 pandemic. The measures in the 2020 Act primarily fall into five categories:

1. **Increasing the available health and social care workforce** – for example, by allowing the temporary registration of suitable NHS staff and social workers, allowing retired staff with the right skills to return to the NHS without a negative impact on their pension and providing additional indemnity cover to key workers as necessary.
2. **Easing and reacting to the burden on frontline staff** – for example, by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork.
3. **Containing and slowing the virus** – by providing Public Health Officers with powers to help control the spread of coronavirus in the UK and powers in relation to limiting events and gatherings.
4. **Managing the deceased with respect and dignity** – by enabling the death management system to deal with potential increased demand for its services.
5. **Supporting people** – for example, by allowing individuals to receive Statutory Sick Pay, and supporting businesses, for example by providing powers that will ensure the governments of the UK are able to support the food industry to maintain supplies.

The provisions in the 2020 Act were the result of significant and collaborative work between all four nations, and cover a range of matters including specific powers for Wales to be exercised by the Welsh Ministers.

The 2020 Act, as originally drafted, was due to expire two years after it was passed, so 25 March 2022. The UK Government is required to review the non-devolved provisions of the 2020 Act every six months and the 2020 Act provides a mechanism enabling provisions to be expired earlier than the planned 2-year expiry or extended beyond the planned 2-year expiry as necessary. In relation to devolved provisions of the 2020 Act however this could not be done without the consent of the devolved governments.

While there is no statutory obligation on the Welsh Ministers to report on the use of these powers, the (then) Minister for Health and Social Services gave an undertaking to the Senedd to do so.

Alongside the powers in the 2020 Act, a wide range of coronavirus-related legislation has been made using pre-existing powers.

Written statements have been issued to inform Members of the making of key coronavirus-related legislation, for example the making of and subsequent amending of the Health Protection (Coronavirus Restrictions) (Wales) (No.5) Regulations 2020 and the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 and also our intention to suspend provisions in the Coronavirus Act 2020 (Suspension: Local Authority Care and Support) (Wales) Regulations 2021.

To help improve the accessibility of Welsh law relating to coronavirus, subordinate legislation made by the Welsh Ministers in response to the pandemic has been published on a single page¹ on the GOV.wales website and statutory instruments also continue to be published on the legislation.gov.uk website.

Coronavirus-related legislation

The tables below outline:

- the use of Welsh Minister powers under the 2020 Act or confirmation none have been used (Table 1);
- the status of the provisions under the 2020 Act (Table 2);
- all other relevant subordinate legislation made (Table 3);
- the principal restriction-related Regulations, including those related to travel, made under the Public Health (Control of Diseases) Act 1984 (Table 3).

¹ <https://gov.wales/coronavirus-law>

Table 1
Welsh Minister powers under the 2020 Act

Provision of 2020 Act	Type of power	Description of provision	Operation of the provision in reporting period	Status at end of reporting period
Section 3 Schedule 2	Regulation	Power to amend Schedule 2 in respect of the emergency arrangements concerning medical practitioners in Wales.	Not required	Expired
Section 15 and part 2 of Schedule 12	Guidance	Power for the Welsh Ministers (paragraph 35) to issue guidance for local authorities on how to undertake the prioritisation of services within the emergency period, and the power to direct some or all local authorities to comply with the guidance.	Adult social services during the Covid-19 pandemic” statutory guidance published https://gov.wales/adult-social-services-during-covid-19-pandemic-guidance . Section 15 and Part 2 of Schedule 12, so far as they relate to Wales were suspended by the Welsh Ministers on 22 March (The Coronavirus Act 2020 (Suspension: Local Authority Care and Support) (Wales) Regulations 2021) and subsequently expired early on 1 August 2021 (The Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021)	Guidance no longer in force
Section 33	Notices	Power to issue notices to modify requirements relating to DBS checks for work in regulated health and social care services;	Not required	Not required
Section 37 and Part 1 of Schedule 16	Direction Guidance	Power to give a “temporary closure” direction to responsible bodies including proprietors and governing bodies of institutions, in respect of schools, registered childcare providers and higher and further education institutions in England or Wales. Also includes a power to issue guidance.	Not required	Not required

Provision of 2020 Act	Type of power	Description of provision	Operation of the provision in reporting period	Status at end of reporting period
Section 38 and Paragraphs 1 and 2 of Schedule 17	Direction Notice Guidance	Power to make directions in connection with the running of the education, training and registered childcare systems in Wales (“a temporary continuity direction”). Also includes a power to issue notices and guidance.	<p>07/01/2021: Modification of School Organisation Code (Wales) Notice 2021</p> <p>10/02/2021: Modification of School Organisation Code (Wales) (No 2) Notice 2021</p> <p>25/02/2021: Modification of School Organisation Code (Wales) (No 3) Notice 2021</p> <p>05/01/2021: Modification of section 3 of the Education Act 1996 (Wales) Notice 2021</p> <p>18/08/20: Disapplication of Changing School Session Times Requirements (Wales) (No 2) Notice 2020</p> <p>29/09/20: Disapplication of Changing School Session Times Requirements (Wales) (No 3) Notice 2020</p> <p>23/10/20: Disapplication of Changing School Session Times Requirements (Wales) (No 4) Notice 2020</p> <p>24/11/20: Disapplication of Changing School Session Times Requirements (Wales) (No 5) Notice 2020</p> <p>27/01/21: Disapplication of Changing School Session Times Requirements (Wales) Notice 2021</p> <p>25/02/21: Disapplication of Changing School Session Times Requirements (Wales) (No 2) Notice 2021</p> <p>27/01/21: Modification of Curriculum Requirements in Wales Notice 2021</p>	<p>Notices expired on 23 July 2021 (at the end of the school year). Two further notices dis-applying parts of the Changing of School Session Times Regulations were issued in January and February to cover the first half of spring term of the 2021-2022 school year.</p> <p>The provision in Section 38 has been extended to 24 September 2022²</p> <p>Not required for childcare</p>

² Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) [Regulations 2022](#).

Provision of 2020 Act	Type of power	Description of provision	Operation of the provision in reporting period	Status at end of reporting period
			01/01/22: Disapplication of Changing School Session Times Requirements (Wales) Notice (No. 7) 2021 01/02/22: Disapplication of Changing School Session Times Requirements (Wales) Notice 2022 Not required for childcare	
Section 51 and Schedule 21	Declaration Designation of public health officers Guidance to public health officers	Power to make declarations of serious and imminent threat in respect of Wales and to designate public health officers to exercise powers in Wales.	Declaration made on the 17 March 2020 ³ Currently no designations of public health officers No guidance	Declaration remains in force
Section 52 and Schedule 22	Direction	Powers to give directions relating to events, gatherings and premises	Not required	Not required
Section 58 and Schedule 28	Direction	Power to give directions to address lack of capacity in respect of the transport, storage and disposal of dead bodies.	Not required ⁴	Not required
Sections 65 to 68	Regulation	Power to postpone local authority elections in Wales and to make further supplementary etc. provision;	The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020	SlS remains in force

³ <https://www.thegazette.co.uk/notice/3546514>

⁴ Section 58 and Schedule 28 were suspended on the 24 September 2021 by the Coronavirus Act 2020 (Suspension: Transportation, Storage and Disposal of Dead Bodies etc.) (Wales) Regulations 2021 (S.I.1042 (W. 244)).

Provision of 2020 Act	Type of power	Description of provision	Operation of the provision in reporting period	Status at end of reporting period
Section 78	Regulation	Power in relation to meetings of specified local authorities	Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020	SIs remain in force but the majority of provisions only applied until 30 April 2021 and some provisions expired on 30 April 2021. New, permanent provisions have applied in Wales since 1 May 2021 in the Local Government and Elections (Wales) Act 2021 and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021
Section 81 and Schedule 29	Regulation	Power to amend Schedule 29 and any enactment for supplementary etc. provision relating to protection from eviction	Coronavirus Act (Assured Tenancies and Assured Short hold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 increased the three month notice period in Schedule 29 for ATs (except ASB grounds) and ASTs to 6 months. Since the last update, The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 3) (Wales) Regulations 2021 (S.I. 2021/1064 (W.251)) extended the “relevant period” until 31 December 2021, and The Coronavirus Act 2020 (Residential Tenancies:	- SIs expired on 24 March 2022.

Provision of 2020 Act	Type of power	Description of provision	Operation of the provision in reporting period	Status at end of reporting period
			Extension of Period of Protection from Eviction (No. 4) (Wales) Regulations 2021 (S.I. 2021/708 (W.178)) further extended the “relevant period” until the end of 24 March 2022. The Minister agreed that the No. 4 Regulations would be allowed to expire on 24 March 2022.	
Section 82	Regulation	Power to alter the relevant period for the purpose of business tenancies protection from forfeiture provision under the Act.	The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021 extended the “relevant period”.	Section 82 has been extended to 24 September 2022 ⁵
Sections 87 to 93	Regulation	Powers in relation to commencement, powers to suspend or revive provisions, powers to alter the expiry date of provisions and other powers to make consequential amendments.	The Coronavirus Act 2020 Commencement No. 1) (Wales) Regulations 2020 – made : 26 March 2020 In force: section 10, Part 1 of Schedule 8, paras 11, 12 and 13 of Schedule 8 and section 15 and Part 2 of Schedule 12 for Wales The Coronavirus (Alteration of Expiry Date) (Wales) Regulations 2022, came into force on 23 March 2022	In force

⁵ Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) [Regulations 2022](#).

Table 2

Coronavirus Act Status

This table sets out the status of provisions in the Coronavirus Act 2020.

Further explanations about the purpose and effect of the 2020 Act can be found on the relevant part of the UK Parliament website – <https://services.parliament.uk/Bills/2019-21/coronavirus.html>.

The 2020 Act also makes provision, in Part 2, for enabling the “switching off” of Part 1 provisions when they are not needed. One such mechanism is the facility for provisions that are in force to be suspended and then subsequently revived, as and when the course of events permits or requires. Where Regulations, or orders, are made under this power they will be available on the <http://www.legislation.gov.uk/> website and will also be included on the GOV.wales website⁶.

The content and format of the table will be reviewed and updated as changes occur.

Part Page 151

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
Interpretation				
1	Meaning of ‘coronavirus’ and related terms	Came into force on Royal Assent	N/A	N/A
Emergency registration of health professionals				
2 Sch 1	Emergency registration of nurses and other health care professionals	Came into force on Royal Assent	N/A	N/A
3 Sch 2	Emergency arrangements concerning medical practitioners: Wales	Expired	N	N/A
Temporary registration of social workers				

⁶ <https://gov.wales/coronavirus-legislation-and-guidance-law#Welshlegislationimposingcoronavirusrestrictions>

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
6 Sch 5	Emergency registration of social workers Wales	Came into force on Royal Assent	N	N/A
Emergency volunteers				
8 Sch 7	Emergency volunteering leave	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 reg.2 (1)(a) – made. These provisions were never in force.	N/A	N/A
9	Compensation for emergency volunteers	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 reg.2 (1)(b) – made. These provisions were never in force.	N/A	N/A
Mental health and mental capacity				
10 Sch 8-11	Temporary modification of mental health capacity legislation	Section 10(1) came into force on 27 March in relation to Wales only ⁷ Schedule 8 (paragraphs 1 - 2 relating to capacity) came into force on 27 March 2020 in relation to Wales only. Schedule 8 (paragraph 11-13 only) relating to the Health Tribunal for Wales came into force on 27 March 2020 ⁹ Schedule 8 (paragraphs 3 - 10 and 14 -16) relating to England came into force on 27 March 2020. Paragraphs 5,6,7,8 and 16 of schedule 8 were expired in relation to England ¹⁰ .		N/A
Health service indemnification				
11	Indemnity for health service activity: England and Wales	Came into force on Royal Assent	N/A	N/A
NHS and local authority care and support				

⁷ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

⁸ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

⁹ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

¹⁰ [Coronavirus Act 2020 \(Expiry of Mental Health Provisions\) \(England and Wales\) Regulations 2020/1467](#)

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
15 Sch 12	Local authority care and support	Section 15 (in relation to Wales) and Part 12 (powers and duties of local authorities) came into force on 1 April 2020 ¹¹ . Expired early 1 August 2021 ¹² .	Notice of intention to suspend on 22 March 2020 on 19 February ¹³	No
Registration of deaths and still-births etc.				
18 Sch 13	Registration of deaths and still-births etc.	Came into force on 26 March 2020 ¹⁴	N	N/A
19	Confirmatory medical certificate not required for cremations: England and Wales	Came into force on 26 March 2020 ¹⁵	N	N/A
Investigatory powers				
22	Appointment of temporary Judicial Commissioners	Came into force on Royal Assent	N	N/A
23	Time limits in relation to urgent warrants Investigatory Powers Act	Came into force on Royal Assent	N	N/A
Fingerprints and DNA profiles				
24	Extension of time limits for retention of fingerprints and DNA profiles	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021)	N	N/A
Food supply				
25	Power to require information relating to food supply chains	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021)	N	N/A

¹¹ [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020/366](#)

¹² <https://www.legislation.gov.uk/ukdsi/2021/9780348222708>

¹³ <https://gov.wales/written-statement-coronavirus-act-2020-suspension-local-authority-care-and-support-wales>

¹⁴ [Coronavirus Act 2020 \(Commencement No. 1\) Regulations 2020/361](#)

¹⁵ [Coronavirus Act 2020 \(Commencement No. 1\) Regulations 2020/361](#)

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
26	Authorities which may require information	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021) force.	N	N/A
27	Restrictions on use and disclosure of information	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021) force.	N	N/A
28 Sch 15	Enforcement of requirement to provide information	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021) force.	N	N/A
29	Meaning of 'food supply chain' and related terms	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2021) force.	N	N/A
Inquests				
30	Suspension of requirement to hold inquests in England and Wales	Came into force on Royal Assent	N	N/A
Disclosure: Wales				
33	Disapplication etc. by Welsh Ministers of provisions	Came into force on Royal Assent	N	N/A
Schools, childcare providers etc.				
37 Sch 16	Temporary closure of educational institutions and childcare premises	Came into force on Royal Assent	N	N/A
38 Sch 17	Temporary continuity: education, training and childcare	Came into force on Royal Assent	N	The provision has been revoked on 1 September 2021
Statutory sick pay				
39	Statutory sick pay: funding of employers' costs	Came into force on Royal Assent	N	N/A

¹⁶ [The Coronavirus Act 2020 \(Alteration of Expiry Date\) \(Wales\) Regulations 2022](#)

Schedule (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
40	Statutory sick pay: power to disapply waiting period limitation	Came into force on Royal Assent	N	N/A
41	Statutory sick pay: modification of regulatory powers	Came into force on Royal Assent	N	N/A
<i>Pensions</i>				
45	NHS pension schemes: suspension of return to work: England and Wales	Came into force on Royal Assent	N/A	N/A
<i>Power to suspend port operations</i>				
50 Sch 20	Power to suspend port operations	Came into force on Royal Assent	N/A	N/A
<i>Powers relating to potentially infectious persons</i>				
51 Sch 21	Powers relating to potentially infectious persons	Came into force on Royal Assent	N/A	N/A
<i>Powers relating to events, gatherings and premises</i>				
52 Sch 22	Powers to issue directions relating to events and premises	Came into force on Royal Assent	N/A	N/A
<i>Courts and Tribunals: use of video and audio technology</i>				
53 Sch 23	Expansion of availability of live links in criminal proceedings	Came into force on Royal Assent	N	N/A
54 Sch 24	Expansion of availability of live links in other proceedings	Came into force on Royal Assent	N	N/A
55 Sch 25	Public participation in proceedings conducted by video or audio	Came into force on Royal Assent	N	N/A

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
56 Sch 26	Live links in magistrates' court appeals and requirements or restrictions imposed on a infectious person	Repealed	N	N/A
<i>Powers in relation to bodies</i>				
58 Sch 28	Powers in relation to transportation, storage and disposal of dead bodies etc.	Came into force on Royal Assent	N	N/A
<i>Postponement of elections: Wales</i>				
65	Elections due to be held in Wales in period March 2020	Came into force on Royal Assent	N/A	N/A
66	Postponement of National Assembly for Wales elections for constituency vacancies	Came into force on Royal Assent	N/A	N/A
67	Power to postpone local authority elections for casual vacancies	Came into force on Royal Assent	N/A	N/A
68	Power to make supplementary etc. provisions	Came into force on Royal Assent	N/A	N/A
<i>Other administrative requirements</i>				
71	Signatures of Treasury Commissioners	Repealed by Coronavirus Act 2020 (EU Regulations 2021/856 made on 17 July 2021)	N	N/A
<i>National Insurance Contributions</i>				
72	Power under section 143 of the Social Security Administration Act 1992	Came into force on Royal Assent	N/A	N/A
73	Power under section 145 of the Social Security Administration Act 1992	Came into force on Royal Assent	N/A	N/A
74	Power under section 5 of the National Insurance Contributions Act 2014	Came into force on Royal Assent	N/A	N/A
<i>Financial assistance for industry</i>				

Section (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
75	Disapplication of limit under section 8 of the Development Act 1982	Came into force on Royal Assent	N/A	N/A
HMRC functions				
76	HMRC functions	Came into force on Royal Assent	N	N/A
Up-rating of working tax credit etc.				
77	Up-rating of working tax credit etc.	Repealed	N	N/A
Local authority meetings				
78	Local authority meetings	Came into force on Royal Assent	N	N/A
Business improvement districts				
79	Extension of BID arrangements: England	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 2020)	N	N/A
80	Extensions of BID arrangements: Northern Ireland	Came into force on Royal Assent	N	N/A
Residential tenancies: protection from eviction				
81 Sch 29	Residential tenancies in England and Wales: protection from eviction	Came into force on Royal Assent	N	N/A
Business tenancies: protection from forfeiture etc.				
82	Business tenancies in England and Wales: protection from forfeiture etc.	Came into force on Royal Assent	N	The provision has been revoked on 1 September 2020
83	Business tenancies in Northern Ireland: protection from forfeiture etc.	Came into force on Royal Assent	N	N/A
General Synod of the Church of England				

¹⁷ Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) [Regulations 2022](#).

St (All Part 1)	Measure	In Force? (Y/N) If yes, give date	Suspended? (Y/N or N/A) If yes, give date	Revived? (Y/N or N/A) If yes, give date
84	Postponement of General Synod election	Repealed by Coronavirus Act 2020 (Early Regulations 2021/856 made on 17 July 20	N	N/A
<i>Information correct as of 31 March 2022</i>				

Table 3

SUMMARY OF CORONAVIRUS RELATED LEGISLATION MADE BY THE WELSH MINISTERS

Date of report: 31 March 2022

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
1.	06/09/2021	Statutory Instrument 2021 No. 996 (W.232)	The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021	Schools Standards and Framework Act 1998
2.	09/09/2021	Non- SI Subordinate Legislation (ref no: WG21-77)	The National Health Service (General Medical Services – Recurring Premises Costs during the COVID-19 Pandemic) (Wales) (Revocation) Directions 2021	National Health Service (Wales) Act 2006
3.	14/09/21	Statutory instrument 2021 No. 1042 (W. 244)	The Coronavirus Act 2020 (Suspension: Transportation, Storage and Disposal of Dead Bodies etc.) (Wales) Regulations 2021	Coronavirus Act 2020
4.	19/09/21	Statutory Instrument 2021 No. 1063 (W. 250)	The Health Protection (Coronavirus, International Travel and Notification) (Wales) (Miscellaneous Amendments) Regulations 2021	Public Health (Control of Disease) Act 1984
5.	20/09/21	Statutory Instrument 2021 No. 1064 (W. 251)	The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 3) (Wales) Regulations 2021	Coronavirus Act 2020
6.	01/10/21	Statutory Instrument 2021 No. 1109 (W. 265)	The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 3) Regulations 2021	Public Health (Control of Disease) Act 1984

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
7.	06/10/2021	Statutory Instrument 2021 No. 1119 (W. 271)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021	Public Health (Control of Disease) Act 1984
8.	08/10/2021	Statutory Instrument 2021 No. 1126 (W. 273)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2021	Public Health (Control of Disease) Act 1984
9.	08/10/2021	Statutory Instrument 2021 No. 1131 (W. 274)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) Regulations 2021	Public Health (Control of Disease) Act 1984
10.	20/10/21	Non-SI subordinate legislation (ref no: WG21-88)	The Directions to Local Health Boards as to the General Dental Services Statement of Financial Entitlements (Amendment) (No. 3) Directions 2021	National Health Service (Wales) Act 2006
11.	29/10/21	Statutory Instrument 2021 No. 1212 (W. 303)	The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021	Public Health (Control of Disease) Act 1984
12.	09/11/21	Statutory Instrument 2021 No. 1247 (W. 319)	The Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021	Representation of the People Act 2000
13.	09/11/21	Statutory Instrument 2021 No. 1248 (W. 320)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 19) Regulations 2021	Public Health (Control of Disease) Act 1984
14.	19/11/21	Statutory Instrument 2021 No. 1291 (W. 326)	The Health Protection (Coronavirus, International Travel and Restrictions) (Wales) (Miscellaneous Amendments) Regulations 2021	Public Health (Control of Disease) Act 1984
15.	23/11/21	Statutory Instrument 2021 No. 1306 (W. 335)	The Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021	Local Government Finance Act 1988

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
16.	26/11/21	Statutory Instrument 2021 No. 1321 (W. 336)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2021	Public Health (Control of Disease) Act 1984
17.	26/11/21	Statutory Instrument 2021 No. 1327 (W. 340)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021	Public Health (Control of Disease) Act 1984
18.	26/11/21	Non- SI Subordinate Legislation (ref no: WG21-95)	Direction under paragraph 29 of Schedule 22 to the Coronavirus Act 2020 – premises of Cinema&Co. Swansea Ltd	Coronavirus Act 2020
19.	26/11/21	Non- SI Subordinate Legislation (ref no: WG21-96)	Designations under paragraph 34 of Schedule 22 to the Coronavirus Act 2020 – premises of Cinema&Co. Swansea Ltd	Coronavirus Act 2020
20.	26/11/21	Statutory Instrument 2021 No. 1329 (W. 342)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2021	Public Health (Control of Disease) Act 1984
21.	27/11/21	Statutory Instrument 2021 No. 1330 (W. 343)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021	Public Health (Control of Disease) Act 1984
22.	29/11/21	Statutory Instrument 2021 No. 1342 (W. 346)	The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021	Public Health (Control of Disease) Act 1984
23.	01/12/21	Statutory Instrument 2021 No. 1354 (W. 352)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021	Public Health (Control of Disease) Act 1984

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
24.	02/12/21	Statutory Instrument 2021 No. 1363 (W. 358)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 21) Regulations 2021	Public Health (Control of Disease) Act 1984
25.	03/12/21	Non- SI subordinate legislation (ref no: WG21-97)	The Primary Care (Contracted Services: Immunisations) (Amendment) Directions 2021	National Health Service (Wales) Act 2006
26.	05/12/21	Statutory Instrument 2021 No. 1366 (W. 361)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2021	Public Health (Control of Disease) Act 1984
27.	06/12/21	Statutory Instrument 2021 No. 1369 (W. 362)	The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 4) Regulations 2021	Public Health (Control of Disease) Act 1984
28.	10/12/21	Statutory Instrument 2021 No. 1407 (W. 366)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 22) Regulations 2021	Public Health (Control of Disease) Act 1984
29.	14/12/21	Statutory Instrument 2021 No. 1433 (W. 371)	The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) (No. 5) Regulations 2021	Public Health (Control of Disease) Act 1984
30.	15/12/21	Statutory Instrument 2021 No. 1456 (W.372)	The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 4) (Wales) Regulations 2021	Coronavirus Act 2020
31.	17/12/21	Statutory Instrument 2021 No. 1468 (W.376)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021	Public Health (Control of Disease) Act 1984

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
32.	21/12/21	Statutory Instrument 2021 No. 1476 (W.378)	The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2021	Education Act 1996
33.	21/12/21	Statutory Instrument 2021 No. 1477 (W. 379)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 24) Regulations 2021	Public Health (Control of Disease) Act 1984
34.	21/12/21	Non- SI subordinate legislation (ref no: WG21-100)	Disapplication of Changing School Session Times Requirements (Wales) Notice (No. 7) 2021	Coronavirus Act 2020
35.	22/12/21	Statutory Instrument 2021 No. 1485 (W.386)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 2021	Public Health (Control of Disease) Act 1984
36.	30/12/21	Statutory Instrument 2021 No. 1490 (W. 390)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 26) Regulations 2021	Public Health (Control of Disease) Act 1984
37.	06/01/22	Statutory Instrument 2022/16 (W. 8)	The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2022	Public Health (Control of Disease) Act 1984
38.	14/01/22	Statutory Instrument 2022/39 (W. 16)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2022	Public Health (Control of Disease) Act 1984
39.	20/01/22	Statutory Instrument 2022/55 (W. 21)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022	Public Health (Control of Disease) Act 1984

<i>Date made</i>	<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>	
40.	26/01/22	Statutory Instrument 2022/75 (W. 27)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 3) Regulations 2022	Public Health (Control of Disease) Act 1984
41.	27/01/22	Statutory Instrument 2022/83 (W. 29)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) Regulations 2022	Public Health (Control of Disease) Act 1984
42.	28/01/22	Non-Statutory Instrument 2022 (ref no: WG22-03)	Disapplication of Changing School Session Times Requirements (Wales) Notice 2022	Coronavirus Act 2020
43.	10/02/22	Statutory Instrument 2022/126 (W. 41)	The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022	Public Health (Control of Disease) Act 1984
44.	16/02/22	Statutory Instrument 2022/142 (W.45)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2022	Public Health (Control of Disease) Act 1984
45.	16/02/22	Statutory Instrument 2022/150 (W. 48)	The Health Protection (Coronavirus, Public Health Information to Travellers and Operator Liability) (Wales) (Amendment) Regulations 2022	Public Health (Control of Disease) Act 1984
46.	23/02/22	Statutory Instrument 2022/178 (W. 58)	The Relaxation of School Reporting Requirements (Wales) (Coronavirus) Regulations 2022	Education Act 1996
47.	24/02/22	Statutory Instrument 2022/180 (W. 59)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 6) Regulations 2022	Public Health (Control of Disease) Act 1984

<i>Date made</i>		<i>Type</i>	<i>Title</i>	<i>Enabling Act(s)</i>
48.	16/03/22	Statutory Instrument 2022 No. 315 (W. 83)	The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers etc.) (Wales) (Revocation) Regulations 2022	Public Health (Control of Disease) Act 1984
49.	21/03/22	Statutory Instrument 2022 No. 348 (W. 86)	The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022	Coronavirus Act 2020
50.	25/03/22	Statutory Instrument 2022 No. 378 (W. 95)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 7) Regulations 2022	Public Health (Control of Disease) Act 1984
51.	25/03/22	Statutory Instrument 2022 No. 388 (W. 97)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2022	Public Health (Control of Disease) Act 1984

Agenda Item 8.7

Ministry
of Justice

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

The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary of
State for Justice

MoJ ref: 96020

12 April 2022

Dear Huw,

INVITATION TO ATTEND THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE

Thank you for your letter of 17 March inviting me to attend the Legislation, Justice and Constitution Committee to discuss the key issues facing me in my role as Lord Chancellor.

Unfortunately, my existing diary commitments mean that I will not be able to attend the Committee around the date you propose. However, I think it is important that the Ministry of Justice engages the Committee on key justice issues and I have asked Lord Wolfson to attend in my place.

Lord Wolfson's office will be in touch with your clerks to make the arrangements.

Yours sincerely



RT HON DOMINIC RAAB MP

Rt Hon Dominic Raab MP
Lord Chancellor and Secretary of State for Justice

17 March 2022

Dear Dominic,

Invitation to give evidence

My **Committee** has been remitted by the Senedd to consider matters in relation to justice in Wales. In November, we took **oral evidence** from Lord Thomas of Cwmgiedd on the report of the Commission on Justice in Wales, and in January we took **oral evidence** from the Counsel General on justice matters within his portfolio. The evidence we heard during these sessions has been very valuable to inform our initial consideration of these matters.

In the meantime, we have considered our future approach to evidence taking. Consequently, we would like to invite you to give evidence to the Committee on key issues facing you in your role as Lord Chancellor. We note the useful session our predecessor Committee undertook with your predecessor **in 2021**, and hope for that engagement to continue. It may be of interest to you that we have also invited representatives from the Law Council of Wales and the Lord Chief Justice to give evidence at separate meetings.

We propose to hold the evidence session on the afternoon of **13 June 2022**. Although our preference would be to meet in person, we would be able to meet in a virtual or hybrid format should that facilitate your attendance.

I would be grateful if you could confirm your attendance to our clerks, via

SeneddLJC@senedd.wales

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Infrastructure Committee
Chair, Committee for the Scrutiny of the First Minister
Chair, Culture, Communications, Welsh Language, Sport, and
International Relations Committee
Chair, Economy, Trade and Rural Affairs Committee
Chair, Finance Committee
Chair, Health and Social Care Committee
Chair, Legislation, Justice and Constitution Committee
Chair, Local Government and Housing Committee

11 April 2022

Dear Chair,

Annual scrutiny of the Future Generations Commissioner: update report

The Equality and Social Justice Committee held its annual scrutiny session with the Future Generations Commissioner on 7 February 2022. Following the session, we agreed to publish a short report highlighting some of the key themes that arose during our scrutiny, which is available online.

We have set ourselves the objective of championing equality, social justice and the well-being of future generations across the Senedd, including its Committees. Our intention is to request a Plenary debate on the issues raised in our report, but in the meantime we would like to draw it to your attention as some of the issues raised warrant further consideration by Members in their scrutiny work.

Yours sincerely,



Jenny Rathbone
Chair, Equality and Social Justice Committee



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The UK Shared Prosperity Fund**

DATE **13 April 2022**

BY **Vaughan Gething MS, Minister for Economy**

Earlier today, the UK Government's plans for the Shared Prosperity Fund (SPF), which replaces EU structural funding, were announced. I want to update Members on our recent negotiations with the UK Government, and what this Fund will mean for Wales.

Since 2016, the Welsh Government has worked intensively to create the strongest possible model for post-EU regional investment in Wales, called our Framework for Regional Investment. This has included co-production with stakeholders, a public consultation, and a project to integrate international best practice with the OECD.

During this time, we also made frequent attempts to engage with UK Ministers on these plans. However, it was not until this month that the UK Government offered a meaningful negotiation in order for the SPF prospectus to be published ahead of the local government pre-election period.

Despite this unfeasible timetable, we attempted to create a partnership approach to this Fund that respects the devolution settlement and aligns with the clearly expressed wishes of people and organisations in Wales on how post-EU funding should be invested and delivered.

Although there has been some movement, the funding plans set out by the UK Government today do not reflect the distinct needs of Welsh communities. We are concerned that too little will reach those communities most in need. The Welsh Government proposed an alternative formula which would distribute funding more fairly across Wales according to economic need, but this was rejected by the UK Government.

The proposed role of the Welsh Government also falls short of a genuine co-decision making function essential to maximising investment and respecting devolution in Wales.

On this basis, it has not been possible to endorse the approach the UK Government is taking on this Fund and we cannot support their decision to redirect economic development funds away from those areas where poverty is most concentrated in particular. This

regressive decision is compounded by the dramatic reduction in the funds Wales would have received had the UK Government delivered its pledge to replace EU funds for Wales in full.

We have discussed these issues with the WLGA throughout these talks and they stress that the SPF should have a greater emphasis on need.

We have made it clear to the UK Government that this has implications for the role the Welsh Government is able to play in the next steps of delivery and implementation and the commitment of our resources.

As a result of the intensive discussions we engaged in, concessions have been made which will see regional allocations to local authorities with plans that require alignment with our Framework for Regional Investment. This demonstrates the strength of the partnership approach that exists in Wales and the certainty it represents despite the volatile, centralising UK context.

Over the next three financial years, the SPF will provide £585m to local authorities in Wales. This includes an allocation to Wales of £101m to deliver a UK adult numeracy programme called Multiply. We remain concerned that this scheme risks duplicating Wales' national curriculum and learning approaches.

While this overall funding package compares relatively favourably to other UK nations, it does not meet the UK Government's commitment to at least match the size of the EU structural funds Wales has previously and would have qualified for.

Put simply, we are facing a loss of more than £1bn in un-replaced funding over the next three years. As a result, there will be hard decisions to make for the Welsh Government and other institutions across business, higher education and further education, and the third sector which have benefitted from EU Structural Funds previously.

We will now work with local government partners and stakeholders to consider how best to maximise the opportunities that exist for programmes that will support our mission to create a stronger, fairer and greener Wales.

I will keep Members updated on further developments.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.



Llywodraeth Cymru
Welsh Government

John Griffiths MS
Chair
Local Government and Housing Committee

Senedd Cymru

SeneddHousing@senedd.wales

19 April 2022

Dear John,

Thank you for your letter of 25 March 2022 regarding the timing of the laying of the Supplementary Legislative Consent Memorandum (SLCM) on the Elections Bill. I note your concerns and it is regretful that both the Local Government and Housing Committee and the Legislation, Justice and Constitution Committee did not have sufficient time to consider the SLCM before the Legislative Consent Motion debate on 29 March 2022. As I mentioned during the debate, this was an unfortunate consequence of the nature of engagement with the Westminster government, and the speed at which we have to deal with issues, amendments and changes.

An SLCM was not laid within two weeks of the amendments being tabled on 11 January as it would not have been possible to reflect the outcome of the Welsh Government's protracted negotiations and discussions with the UK Government in respect of a number of the Bill's provisions. As a result of much positive engagement with the UK Government, we successfully secured the carve out amendments to the Bill and my previous concerns, set out in the original Legislative Consent Memorandum, regarding undue influence, the Electoral Commission, notional expenditure and other political finance measures were addressed by the UK Government.

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

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

I want to again convey my apologies for the short timeframe between laying the SLCM and the Legislative Consent Motion debate. I know this caused the committees immense difficulty in not providing sufficient time to consider the SLCM ahead of the debate and I am sorry you were put in that position. I appreciate all the work that both committees have done in this area and welcome your constructive engagement on this Bill.

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

Yours sincerely,

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

Mick Antoniw AS/MS

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

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

25 March 2022

Dear Huw,

You will be aware that the Welsh Government laid the Supplementary LCM (No.2) on the Elections Bill on 22 March. The Committee discussed this briefly at our meeting on 23 March. We received an oral update on the SLCM from the Senedd's Legal Services, however we are unable to consider a legal advice note or agree a report as we have no further opportunity to meet ahead of the debate on the SLCM, which is scheduled for 29 March.

We are very frustrated by the lack of time available to us to scrutinise the SLCM due to its publication by the Welsh Government so close to the date of the debate, particularly as the SLCM relates to amendments tabled on 11 January and 28 February. As you know, Standing Order 29.2(iii) provides that an LCM (or SLCM) should be laid "normally no later than 2 weeks after the amendments are tabled or agreed to." It is disappointing that in this instance, there was a delay of two months between the amendments being tabled and the SLCM being laid.

The Welsh Government states in the SLCM its rationale for the delay in laying the SLCM:

"Although the usual two week window for laying has passed since the 11 January amendments were tabled, this supplementary memorandum is being laid at this time in order that it may reflect the outcome of our negotiations and discussions with the UK Government in respect of a number of the Bill's provisions including those amendments tabled on 11 January and agreed to the Bill on 17 January."

We are very concerned by the Welsh Government's approach, as the delay in laying the SLCM has left no time for scrutiny by our Committee before it is debated by the Senedd. This situation highlights the importance of laying an LCM in a timely manner. In this case, Senedd committees have been unable to undertake any meaningful scrutiny of what is an important Bill that has direct relevance to

devolved elections in Wales. We are therefore concerned that the Senedd will debate the merits of the legislation without the benefit of being able to consider the report of a relevant committee to inform its view.

Our Committee's view is that it would have been preferable had the Welsh Government laid supplementary LCMs as soon as possible after the laying of the amendments in January and February, as this would have enabled us to scrutinise the provisions.

We acknowledge that Standing Orders have not been breached, as the wording of SO 29.2 provides that an LCM will "normally" be laid no later than two weeks after amendments have been tabled or agreed to. However, we consider that such a delay in laying the SLCM goes against the spirit of SO 29.2, which is intended to ensure that the Senedd has time to consider the relevant provisions of an amended Bill before the next amending stage in the UK Parliament, thereby giving the Senedd the opportunity to possibly influence future amendments to the Bill.

We reported similar concerns in our report on the Leasehold Reform (Ground Rent) Bill, as a delay in laying a supplementary LCM also impeded our scrutiny of that LCM. We hope that sharing our view is useful to your work on the legislative consent process.

Yours sincerely



John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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

seneddljc@senedd.wales

20 April 2022

Dear Huw,

I write to inform you of further changes to the Police, Crime, Sentencing and Courts Bill (“the Bill”), and to outline our response.

On 28 March 2022 the Bill was once again debated in the House of Commons, following amendments tabled by the UK Government on 24 March. A further debate was held on these amendments in the House of Lords on 31 March.

Amendments accepted by the House of Lords on 31 March

Food Crime

The UK Government tabled amendments enabling certain policing powers under the Police and Criminal Evidence Act 1984 to be conferred on food crime officers of the Food Standards Agency and other authorised persons for the purpose of tackling food crime.

Hate Crime

The UK Government tabled a new clause placing a duty on the Secretary of State to prepare and publish a response to the relevant recommendation in the Law Commission’s report ‘Hate Crime Laws’.

This follows the so-called ‘Newlove amendment’ in relation to making misogyny a hate crime. The Commons voted to reject the Newlove amendment on 22 February, but the UK Government tabled this new amendment in response.

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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.

Clauses that are subject to further debate

UK Government sought to make further amendments to the 'Imposing conditions on public processions', 'Imposing conditions on public assemblies' and 'Imposing conditions on one-person protests' clauses of the Bill. The changes mean the threshold for the police to prevent or deal with a protest has now increased, meaning that in order to take action the police need to now show the protest may cause a person to suffer alarm or distress, as opposed to serious unease, alarm or distress.

The amendments will go back to the House of Commons where they will be debated on 25 April, followed by further consideration by the Lords on 26 April.

Welsh Government approach to the latest amendments

As you are aware, Standing Orders require a Legislative Consent Memorandum to be laid "normally" within two weeks of the tabling of UK Government amendments, in this case by 7 April.

I am sure you will recognise that these amendments are not being raised under 'normal' circumstances. It is very unusual to have substantive amendments this late in the legislative process. The Senedd has already voted on four motions concerning this Bill, making its position clear on the policy issues under consideration.

Although we are continuing to make the views of the Senedd known to the UK Government, the timings around Easter recess mean there is no further opportunity for the Senedd to hold another meaningful debate to indicate its view in relation to this Bill in time to influence its outcome.

Given the significance of the Bill I have today laid a [written statement](#) setting out the amendments which have been made. This written statement reaffirms the Welsh Government's position on the amendments, but also highlights once more the votes of the Senedd on the amendments which fall within competence.

I am copying this letter to all Members of the Senedd and Jenny Rathbone MS as Chair of the Equality and Social Justice Committee.

Yours sincerely,

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

Jane Hutt AS/MS

Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Police Crime Sentencing and Courts Bill**

DATE **20 April 2022**

BY **Jane Hutt MS, Minister for Social Justice.**

The UK Police Crime Sentencing and Courts Bill will impact on the lives of people across Wales, and we have fought to ensure that the voice of the Senedd has been heard throughout the legislative process. The Bill is wide-ranging and includes provisions which fall within the legislative competence of the Senedd. We have provided information about those provisions which fall within competence through Legislative Consent Memoranda laid before the Senedd on: 22 March 2021, 28 May 2021, 5 November 2021, 20 December 2021, 7 January 2022, and 28 February 2022. The number of Memoranda laid reflects the complexity of the Bill.

It has been a lengthy process which has resulted in two Legislative Consent Motion debates in the Senedd, held on 18 January and 1 March 2022. In these debates, members voted in line with our recommendations in the Legislative Consent Memoranda as set out above, giving consent for some provisions in the Bill which are within competence of the Senedd (such as the Serious Violence Duty), and withholding consent for other clauses within competence. The Senedd's rejection of the clauses relating to protest and unauthorised encampments underlined the commitment to the right to gather peacefully and protest, and to ensuring people from Gypsy, Roma and Traveller backgrounds are treated fairly and considerately.

It is now a good time to update members on the broader progress of the Bill, and on our response.

On 31 March 2022, the Bill returned to the House of Lords for consideration of the amendments agreed by the House of Commons on 28 March. This was the second phase of the consideration of final amendments stage of the Bill also known as 'Ping Pong'. The Lords voted to accept some UK Government amendments, but also rejected some amendments which will now be subject to further debate.

Amendments accepted by the Lords on 31 March 2022

Food Crime

The UK Government tabled amendments enabling certain policing powers under the Police and Criminal Evidence Act 1984 to be conferred on food crime officers of the Food Standards Agency and other authorised persons for the purpose of tackling food crime.

These amendments will provide increased enforcement in relation to food-related crime and are welcomed.

Hate Crime

The UK Government tabled a new clause placing a duty on the Secretary of State to prepare and publish a response to the relevant recommendation in the Law Commission's report 'Hate Crime Laws'.

This follows the so-called 'Newlove amendment' in relation to making misogyny a hate crime. The Commons voted to reject the Newlove amendment on 22 February, but the UK Government has tabled this new amendment in response. The Lords voted to accept this amendment on 31 March.

I am disappointed with the outcome on this new amendment. I have said before: misogyny must be treated as a hate crime and this sits well with our approach to Violence Against Women and Girls. Whilst a review of the Law Commission's recommendation is welcome, it does not go far enough in addressing what is a very real and immediate issue. Making misogyny a hate crime as part of the Bill would have been an opportunity to add to the work we are already doing to eradicate violence against women and girls and to tackle a deep-rooted anti-female culture.

Clauses that are subject to further debate

The UK Government sought to make further amendments to the 'Imposing conditions on public processions', 'Imposing conditions on public assemblies' and 'Imposing conditions on one-person protests' clauses of the Bill. These changes mean the threshold for the police to intervene in a protest has now increased, such that in order to take action the police need to now show the protest may cause a person to suffer alarm or distress, as opposed to serious unease, alarm or distress. The amendments will go back to the Commons where they will be debated on 25 April, followed by further consideration by the Lords on 26 April.

My views regarding these clauses are very clear and unchanged. It is vital people continue to have the right to have their voices heard and express their concerns freely, in a safe and peaceful way. My views were clearly echoed when the Bill was debated on 18 January 2022 and 1 March, where the Senedd voted in line with my recommendation to reject these clauses.

The Senedd have already debated and voted on the Bill on two occasions, voting on four motions. Due to timings regarding the Senedd Easter recess and the UK Government's timetable for the Bill, there is no further opportunity for another meaningful debate to take place in time to influence the outcome of the Bill before it receives Royal Assent. Our issues and concerns with the Bill have been raised and discussed with UK Government and my position on the Bill remains the same. I am content the position of the Senedd on this Bill has been articulated, particularly in the debates held on 18 January 2022 and 1 March. I will continue to ensure the Welsh voice is heard and considered as the Bill moves towards Royal Assent, and onwards into implementation.

This statement is being issued during recess to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Agenda Item 10

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

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Agenda Item 11

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

HEALTH AND CARE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Health and Care Bill (“the Bill”) was introduced in the House of Commons on 6 July 2021. The Bill has concluded its passage through the House of Commons and the House of Lords. The Bill as amended on Report by the House of Lords can be found at:

<https://bills.parliament.uk/publications/45813/documents/1627>

3. On 28 March, the UK Government tabled in the House of Commons an amendment related to ‘organ tourism’ which make provision falling within the legislative competence of the Senedd. This is set out below.

Policy Objective(s)

4. The UK Government’s stated objective is to enact policies set out in the NHS’s recommendations for legislative reform, following the NHS Long Term Plan, and the White Paper, Integration and Innovation: working together to improve health and social care for all. The UK Government says that the Bill builds on the NHS’s own proposals for reform, aiming to make it less bureaucratic, more accountable, and more integrated, and to incorporate lessons learnt from the pandemic.

Summary of the Bill

5. The Bill is sponsored by the Department of Health and Social Care.
6. The key provisions of the Bill cover a number of areas, set out briefly below.
 - a) Addressing of concerns raised by NHS England, such as establishing existing Integrated Care Systems (ICSs) on a statutory footing, formally merging NHS England and NHS Improvement, and making changes to procurement and competition rules relating to health services. The Bill also includes proposals to give the Secretary of State for Health and Social Care powers to direct NHS England and to decide how some other health services are organised. It gives the Secretary of State powers to transfer functions between some of the ‘Arm’s Length Bodies’ that lead, support and regulate healthcare services in England and to delegate other functions of the Secretary of State to those

bodies both in relation to the health service in England, and to intervene in proposed changes to the way health services are delivered.

- b) The Bill does not cover wider reforms of the social care and public health systems, although it does provide for some changes in these areas; ICSs are intended to improve coordination between the NHS and local authority services. For social care, the Bill provides for the Care Quality Commission (CQC) to assess how local authorities in England deliver their adult social care functions and it aims to improve data sharing. There are also measures to streamline how people with ongoing care needs are discharged from hospitals.
- c) Public health measures in the Bill relate to food advertising, food information for consumers and water fluoridation.
- d) The Bill also addresses safety investigations and establishes the Health Services Safety Investigations Body as a statutory body, and makes changes to the system of medical examiners.
- e) Other matters covered by the Bill include the regulation of health and care professionals, the collection and sharing of data (including measures to support the development of new medicine registries), international healthcare, hospital food standards and, included through amendment, creating an offence of virginity testing.

Update on position since the publication of the third Legislative Consent Memorandum

- 7. I laid a third Legislative Consent Memorandum (“Memorandum No. 3”) on 28 January 2022, following the tabling by UK Government of further amendments which made provision falling within the legislative competence of the Senedd. The UK Government amendments were agreed at Lords Committee stage and now form part of the Bill.
- 8. Following this, on 15 February, the provisions in the Bill falling within the competence of the Senedd were subject to a Legislative Consent Motion in the Senedd. The Senedd voted to consent to the Bill.
- 9. The Bill returned to the House of Commons on 28 March for the consideration of amendments.

Changes to the Bill since the publication of the third Legislative Consent Memorandum for which consent is required

- 10. On 28 March, an amendment regarding ‘organ tourism’ was tabled by the UK Government in the House of Commons. The amendment which makes it an offence to pay, or offer to pay for an organ for transplant overseas, makes provision in relation to Wales and is within the legislative competence of the Senedd.

11. The amendment was voted through in the House of Commons on 30 March. The amendment can be found at:

https://publications.parliament.uk/pa/bills/cbill/58-02/0293/amend/health_day_ccla_0330.pdf

12. The amendment is a UK Government amendment tabled in lieu of a new clause, clause 181, to the Bill. This clause was added by non-Government amendment, Lords amendment number 89, tabled at Lords Report stage by Lord Hunt of King's Heath and passed by the Lords on 16 March. The clause was regarded by the UK Government as unworkable and potentially having unintended consequences. The UK Government therefore proposed an amendment in lieu of Lord Hunt's amendment, which would have the same effect as Lord Hunt's amendment in terms of deterring people from seeking to obtain organs abroad unethically but would improve the areas of concern to the UK Government now in the Bill.

13. The detail of the UK Government amendment tabled in lieu of Lord Hunt's amendment is set out below.

Clause 181 – Commercial dealings in organs for transplantation: extra-territorial offences

14. The Human Tissue Act 2004 ("the 2004 Act") makes it a criminal offence to remove or store, for the purposes of transplantation, or to transplant, an organ without consent (section 5, read with section 1 and Schedule 1). It also makes it an offence to pay, or offer to pay, for an organ and to make arrangements for organ purchases (section 32(1)). Section 33 prohibits the removal and use of transplantable material from a living donor unless the requirements of regulations made under that section are met. These offences apply to those who carry out illicit removals and transplants (section 5) and those who make the arrangements for payment (section 32). They do not target the recipient of the transplanted material as such.

15. The 2004 Act applies to England, Wales and Northern Ireland, and covers illicit transplants and their arrangements that take place in this jurisdiction. It also covers cases where a substantial part of the elements of, or the arrangements for, an organ purchase happen in this jurisdiction, even if the arrangements conclude overseas. In relation to Scotland, there are similar provisions in sections 3 (consent), 17 (living donors) and 20(1) (commercial dealings) of the Human Tissue (Scotland) Act 2006.

16. Clause 181 focuses on the issue of commercial dealings in organs and makes it an offence to pay, or offer to pay for an organ overseas. The amendment inserts a new section 32A into the 2004 Act and a new section 20A into the Human Tissue (Scotland) Act 2006 to in effect extend what is already a criminal offence in England, Wales and Scotland to acts of this nature carried on outside the UK.

17. Lord Hunt's amendment sought to criminalise UK citizens who arrange transplants abroad without consent. However that would be much more complicated to achieve because existing offences in relation to consent apply to those carrying out the transplant, and not those who arrange or receive them. There will be very few, if any, situations where there is no financial gain involved and so the UK Government amendment has the effect desired by Lord Hunt, i.e. to deter people from travelling abroad to pay for an organ transplant, but without the complexities of having to prove consent. It also ensures that certain burdensome aspects of Lord Hunt's amendment affecting healthcare professionals, administrators, and those who legitimately receive an organ overseas, are removed.
18. We support this provision to extend to and apply in Wales. Whilst the number of cases of people seeking to pay for an organ overseas is low, this amendment sends an important message that this is unacceptable. Not to support the amendment extending to Wales would mean that this measure will not apply to Welsh residents seeking to pay for organs for transplant abroad and we would be left in the position of seeking another legislative opportunity to achieve the same measure. On this occasion therefore, I believe it is right to agree to the UK Government legislating on behalf of Wales.
19. The amendment falls within the legislative competence of the Senedd.

Welsh Government position on the Bill as amended

20. As set out above, we agree with the UK Government amendment regarding payment for organs for transplant overseas.
21. My position is therefore that I will be able to recommend the consent of the Senedd be given to clause 181 relating to this matter.

Financial implications

22. There are no identified financial implications for Wales in respect of this amendment. The purpose of the amendment is to deter people from travelling abroad to seek unethical, uncontrolled organ transplants. As obtaining transplants in this way could result in unplanned costs to the NHS, seeking to minimise such activity would potentially be of financial benefit to the NHS.

Conclusion

23. I welcome the amendment the UK Government has made to the Bill regarding organ 'tourism' and the provision extending to Wales.
24. I am therefore able to recommend consent to this clause.

Eluned Morgan MS

Minister for Health and Social Services
5 April 2022

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

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