

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Tŷ Hywel and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 27 June 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 – 13.35)

(Page 1)

Attached Documents:

LJC(6)-19-22 – Paper 1 – Statutory instruments with clear reports

Made Negative Resolution Instruments

2.1 SL(6)210 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2022

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

(13.35 – 13.45)

Made Negative Resolution Instruments



3.1 SL(6)212 – The Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022

(Pages 2 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-19-22 – Paper 2 – Draft report

3.2 SL(6)214 – The Health Protection (Notification) (Wales) (Amendment) Regulations 2022

(Pages 4 – 6)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-19-22 – Paper 3 – Draft report

LJC(6)-19-22 – Paper 4 – Letter from the Minister for Health and Social Services to the Llywydd, 14 June 2022

Affirmative Resolution Instruments

3.3 SL(6)213 – The Welsh Language Standards (No. 8) Regulations 2022

(Pages 7 – 8)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-19-22 – Paper 5 – Draft report

4 Common frameworks

(13.45 – 13.50)

4.1 Correspondence from the Public Accounts and Public Administration Committee to the Minister for Economy and the Minister for Finance and Local Government: Late Payment and Procurement Provisional Common Frameworks

(Pages 9 – 15)

Attached Documents:

LJC(6)-19-22 – Paper 6 – Letter from the Public Accounts and Public Administration Committee to the Minister for Economy and the Minister for Finance and Local Government, 23 June 2022

5 Inter-Institutional Relations Agreement

(13.50 – 13.55)

5.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Animal Welfare (Miscellaneous Amendments) Regulations 2022

(Page 16)

Attached Documents:

LJC(6)-19-22 – Paper 7 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 20 June 2022

6 Papers to note

(13.55 – 14.00)

6.1 UK Government Bill of Rights

(Pages 17 – 19)

Attached Documents:

LJC(6)-19-22 – Paper 8 – Written Statement by the Counsel General and Minister for the Constitution and the Minister for Social Justice, 22 June 2022

LJC(6)-19-22 – Paper 9 – Letter from the Lord Chancellor and Secretary of State for Justice, 22 June 2022

6.2 Correspondence from Wales Environment Link, Healthy Air Cymru and Greener UK to the First Minister: Wales needs access to environmental justice
(Pages 20 – 22)

Attached Documents:

LJC(6)-19-22 – Paper 10 – Letter from Wales Environment Link, Healthy Air Cymru and Greener UK to the First Minister, 22 June 2022

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting
(14.00)

8 Consolidation Acts of the Senedd: The role of the responsible committee

(14.00 – 14.20) (Pages 23 – 56)

Attached Documents:

LJC(6)-19-22 – Paper 11 – Briefing

LJC(6)-19-22 – Paper 12 – Standing Order 26C: Consolidation Acts of the Senedd

LJC(6)-19-22 – Paper 13 – Guidance to support the operation of Standing Order 26C on Consolidation Bills

9 Legislative Consent Memoranda on the Online Safety Bill: Consideration of draft report

(14.20 – 14.35) (Pages 57 – 61)

Attached Documents:

LJC(6)-19-22 – Paper 14 – Draft report

10 The EU-UK Trade and Cooperation Agreement

(14.35 – 14.45) (To Follow)

Attached Documents:

LJC(6)-19-22 – Paper 15 – Draft response to the House of Commons

European Scrutiny Committee

Statutory Instruments with Clear Reports 27 June 2022

SL(6)210 – [The Cancellation of Student Loans for Living Costs Liability \(Wales\) Regulations 2022](#)

Procedure: Made Negative

These Regulations make provision for students, who receive a living costs loan from the Welsh Ministers for academic year 2022/23 in respect of a full-time undergraduate course, to benefit from a reduction in the balance of their loan of up to £1,500 when they start repaying their loan. This will not be in the form of a cash lump sum; rather the balance of an individual's loan will be reduced by the appropriate amount the day after a borrower's first repayment is made.

A student can only receive a partial cancellation once; they cannot receive a partial cancellation in respect of academic year 2022/23 if they have already received a cancellation in respect of any previous academic year. A student will not be entitled to a partial cancellation if there are any outstanding charges or penalties or if they are in breach of their loan agreement or any regulations made under section 22 of the Teaching and Higher Education Act 1998.

Parent Act: Teaching and Higher Education Act 1998

Date Made: 09 June 2022

Date Laid: 13 June 2022

Coming into force date: 01 August 2022



Agenda Item 3.1

SL(6)212 – The Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022

Background and Purpose

Under powers derived from section 537A of the Education Act 1996, Welsh Ministers may make regulations specifying persons (“Prescribed Persons”) with whom they may share data about school pupils.

The Prescribed Persons are listed in regulation 5(2) of the *Education (Information About Individual Pupils) (Wales) Regulations 2007* (the “2007 Regulations”). The list includes, amongst others: local authorities, Qualifications Wales and the Education and Skills Funding Agency.

These [Regulations](#) amend the 2007 Regulations to add the Universities and Colleges Admissions Service (“UCAS”) to the list of Prescribed Persons.

The Explanatory Memorandum provides that the purpose of the amendment is to allow Welsh Ministers to share the FSM (free school meals) data of school leavers with UCAS to “aid university admissions in ensuring [that] offers are made to disadvantaged learners, and [that] participation to higher education is widened”. It further provides that the amendment is necessary to establish a legal basis under data protection legislation for such data sharing.

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

This amendment has been deemed urgent in order to have data in place for universities to use in the clearing and confirmation process in August. Therefore any consultation would not take place at a formative stage in the policy development [...] and therefore was not viewed as appropriate in this case.

Whilst the Explanatory Memorandum explains the relative urgency for the Regulations, it does not explain why they have become urgent. It is not clear from the Explanatory Memorandum why the Regulations were not made sooner, in anticipation of the university clearing process in August.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 June 2022



Agenda Item 3.2

SL(6)214 – The Health Protection (Notification) (Wales) (Amendment) Regulations 2022

Background and Purpose

The Health Protection (Notification) (Wales) Regulations 2010 (“the 2010 Regulations”) place obligations on various persons for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination.

These Regulations amend the 2010 Regulations by:

- adding “monkeypox” to the list of diseases and syndromes in Schedule 1 for which there is a duty upon medical practitioners to notify a relevant local authority if a patient they are attending is believed to have such a disease or syndrome.
- adding “monkeypox virus” to the list of causative agents in Schedule 2 for which there is a duty upon operators of diagnostic laboratories to notify a relevant local authority if they identify an agent, or evidence of such an agent, in a human sample.

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 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 Eluned Morgan MS, Minister for Health and Social Services, in a [letter](#) to the Llywydd dated 14 June 2022.



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

"Not adhering to the 21-day convention allows these Regulations to come into force at the earliest opportunity in response to the current outbreak of monkeypox in the UK. It will oblige any medical practitioners to notify the proper officer of the relevant local authority of any suspected cases of monkeypox. In addition, diagnostic laboratories will be obliged to report if they identify monkeypox virus as a causative agent."

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:

"As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place"

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 June 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 5



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

14 June 2022

Dear Elin

The Health Protection (Notification) (Wales) (Amendment) Regulations 2022

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument has not adhered to the 21 day convention. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the Regulations have been registered.

This statutory instrument amends Schedule 1 (Notifiable Diseases and Syndromes) and Schedule 2 (Causative Agents) to the Health Protection (Notification) (Wales) Regulations 2010 to include monkeypox and monkeypox virus respectively. Officials consider that these amendments are appropriate given the risks to public health posed by the current outbreak of monkeypox in the UK.

Not adhering to the 21-day convention allows these Regulations to come into force at the earliest opportunity in response to the current outbreak of monkeypox in the UK. It will oblige any medical practitioners to notify the proper officer of the relevant local authority of any suspected cases of monkeypox. In addition, diagnostic laboratories will be obliged to report if they identify monkeypox virus as a causative agent.

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

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
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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.

SL(6)213 – The Welsh Language Standards (No. 8) Regulations 2022

Background and Purpose

The Welsh Language (Wales) Measure 2011 (“the Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993.

The Welsh Language Standards (No. 8) Regulations (“the Regulations”) specify service delivery standards; policy making standards; operational standards; and record keeping standards. The Regulations make the standards specifically applicable to a person listed in Schedule 6 (“the bodies”). The Welsh Language Commissioner is authorised to issue Compliance Notices to those bodies in relation to the standards specified, subject to certain exceptions set out in regulation 3(2). Those bodies are:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health and Social Care

These Regulations follow the Welsh Language Standards (No.7) Regulations 2018 (“the 2018 Regulations”), which specified standards in relation to the conduct of Local Health Boards, National Health Service Trusts in Wales, Community Health Councils and the Board of Community Health Councils in Wales. Usually a number in the name of one of a series of Statutory Instruments refers to the number made in the particular year. In this case the number refers to the whole series of Standards Regulations, continuing on from the 2018 Regulations, in the same manner as commencement orders are numbered.

These Regulations use the Welsh alphabet in the Welsh version and the English version, because of the nature and subject matter of the Regulations. This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers.

The Welsh Ministers held a public consultation on draft Welsh Language Standards Regulations between 16 March 2020 and 2 October 2020. Due to the Covid pandemic, the



consultation was extended so that all those with an interest in the draft Regulations had an opportunity to share their views. The Regulations will come into force on 31 October 2022, should the Senedd approve the draft Regulations.

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.

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

Each Schedule is introduced by a specific regulation, and each Schedule refers back to that specific regulation. However, the Schedules to these Regulations refer back to the incorrect regulations.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

21 June 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Pack Page 8

Legislation, Justice and Constitution Committee

Vaughan Gething MS Rebecca Evans MS
Minister for Economy Minister for Finance and Local Government
Welsh Government Welsh Government

23 June 2022

Dear Ministers,

Common Frameworks – Procurement and Late Payment

Thank you for your letters dated 25 February 2022 and 1 March 2022, respectively, addressing the Committee's initial queries on the Late Payment and Procurement Provisional Common Frameworks (the frameworks).

Having considered your respective responses, the Committee has the following observations about the frameworks and the approach to the frameworks more generally.

Dispute resolution and policy divergence

- In its letter, the Committee asked you about the impact of each framework on making law and policy in Wales. In your responses, you noted that neither framework constrained the powers of the Welsh Government or the Senedd. In relation to the Procurement framework, you told the Committee that the purpose of the framework is to "consider any impact of policy divergence on the other nations and not for the purpose of consultation or decision-making". The Committee understands the inter-governmental agreement that UK-wide frameworks to replace the EU rule book would be freely negotiated between the four UK governments and that these would be designed to manage divergence between the four administrations. The Committee notes that both frameworks include sections on decision-making and setting processes for governments to make decisions jointly in areas of devolved competence. In the event of another government disagreeing with a Welsh

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Government proposal, or vice versa, a dispute can be raised. However, the Committee is keen to ensure that in practice this could not constrain both the Welsh Government or the Senedd, beyond the internal market provisions within the frameworks.

- The Welsh Government should explain how it assessed the risks and benefits of entering into these common frameworks, including any potential limits to its regulatory autonomy, beyond those which existed within the EU rule book these replace.

- The Welsh Government should explain how the decision-making processes in both frameworks will work in practice.

- The Committee is keen to ensure that, by setting joint decision-making processes, the frameworks could not be used to limit the role of the Senedd in making law and policy for Wales, beyond the restrictions within the EU rule book they replace. As an example, if a Member wishes to table legislation within the scope of the Procurement framework, the Welsh Government would be subject to a commitment to notify or consult other governments three months in advance of introduction. It's unclear at present how stakeholders would be able to engage in the joint decision-making processes established by the frameworks, or whether this changes the provisions existing under the preceding EU rule book.

- The Welsh Government should seek to include a commitment to ongoing stakeholder engagement if devolved Welsh legislation is tabled which falls within the scope of the two frameworks.

- It is recommended that the Welsh Government seeks intergovernmental agreement that neither framework will lead to a dilution in the role of parliaments and stakeholders in making law and policy that falls within the scope of either framework, beyond the restrictions applying to the previous EU rule book.

- The Welsh Government should explain how it will ensure the frameworks do not limit the role of the Welsh Government, the Senedd or stakeholders in Wales when making law and policy in Wales, beyond the restrictions applying to the previous EU rule book.

- The Committee welcomes the commitment to notify the Senedd when disputes on frameworks are escalated to Ministers, however neither framework sets timescales for dispute resolution. The Late Payments framework also provides for actions under dispute to be paused.

- The Committee would welcome an explanation as to why time limits are not currently specified in the dispute resolution process, what the implications of this are and whether the Welsh Government

considers they should be. The Committee would also welcome an explanation as to why the Procurement framework does not also provide for actions under dispute to be paused.

- It's noted that the Intergovernmental Relations Review is now complete, with agreement that disputes can be escalated from frameworks to a new inter-ministerial dispute resolution process.
- The Committee is concerned the complaint handling and adjudication provisions specified within the Frameworks are insufficient to resolve policy divergence between UK nations. The importance of a robust dispute resolution is of particular importance to the Welsh economy, which is dependent on the export of products and services to other UK nations. The risk of disputes occurring is heightened by ongoing inter-governmental tensions surrounding post-Brexit constitutional arrangements.

- The Welsh Government should seek intergovernmental agreement to update each framework to reflect the outcome of the Intergovernmental Relations Review. We note that neither framework offers a role for independent advice or arbitration in dispute resolution.

- The Welsh Government should seek intergovernmental agreement to amend these frameworks to allow governments to seek independent advice or arbitration via a strengthened dispute resolution process.

- The Committee notes that the Intergovernmental Relations Review provides for the governments to seek third party advice on disputes escalated to inter-ministerial level, but does not require disputes to be resolved by binding arbitration. The Welsh Government should set out how it will mitigate any risks arising from the lack of an independent inter-ministerial dispute resolution process in these frameworks areas, in the absence of a strengthened dispute resolution process.

General

- The Committee notes that the Welsh Government carried out a "light touch" stakeholder engagement exercise on the contents of the Procurement framework, whilst a summary on the Late Payment framework was provided to stakeholders.

- The Welsh Government should provide the Committee with a list of stakeholders in Wales consulted about each framework, with a summary of their comments.

- The Welsh Government's commitment to reporting annually on the frameworks is welcomed. It's noted that any future reporting on frameworks is expected to be made public.

- The Welsh Government should seek intergovernmental agreement that any joint reports will be published. Even if such an agreement is not secured, the Welsh Government should confirm that it will commit to unilaterally publishing annual reports on each framework.

- The Welsh Government's commitment to notify the Senedd and stakeholders of upcoming review points is also welcomed, with Senedd and stakeholder recommendations to be considered as part of the review process. The recommendation of the Constitutional Frameworks scrutiny committee of the House of Lords that Government should report to parliaments following the conclusion of their reviews, and that an open stakeholder consultation should be conducted as part of the first review process is noted.

- The Committee recommends that the Welsh Government seeks intergovernmental agreement to amend the frameworks to ensure that their commitments to reporting are reflected in the frameworks. It is also recommended that intergovernmental agreement is sought to include the House of Lords recommendations on reporting to parliaments following each review, and that the frameworks should include open stakeholder consultations following the first review process, as part of the frameworks.

Procurement

- The framework states that the agreed principle for common frameworks on the management of common resources does not apply to procurement, meaning that governments will not take this principle into account when assessing policy proposals. Your explanation is that this principle doesn't apply because "the opportunity for sharing resources is not applicable". However, other frameworks suggest a broader reading of this principle, suggesting that it relates to shared environmental resources, not just government property.

- The Committee recommends that the Welsh Government seeks intergovernmental agreement that the respective governments of the United Kingdom have regard to the management of common resources when making decisions through the framework.

- The framework sets out new processes for decision-making and your comments that the framework will offer the same scope for divergence as under EU law are noted.

- The Welsh Government should set out how it will ensure the framework offers no less scope for divergence than would have been possible in the EU.

- The Committee asked you whether the Social Partnership and Public Procurement Bill fell within the scope of the framework's decision-making process, to which you responded that other governments had been informed about the Bill.

- The Welsh Government should seek intergovernmental agreement to amend the framework to clarify that its decision-making processes only apply to changes which go beyond matters applying under preceding EU law.

- The Committee recommends that the Welsh Government should inform the Senedd where any policy or legislative proposal is subject to the framework's decision-making processes.

- A core principles of the framework is to ensure the proper functioning of the UK internal market. Your comments that governments will consider the impact of divergence in procurement policy on cross-border areas through the framework are noted.

- The Committee welcomes the commitment to considering the impact of divergence in procurement policy. The Committee recommends that the Welsh Government sets out how it will consider the impact of any divergence in procurement law and policy on businesses operating across borders.

- In response to our question on the impact of the UK Subsidy Control Act for public procurement in Wales, you noted that you did not have sufficient detail to know at this stage and that much will depend on the secondary legislation and guidance accompanying the Bill. The Committee is concerned about this lack of clarity, particularly as the Senedd withheld its consent for the Bill.

- The Welsh Government should keep the impact of the Subsidy Control Act on procurement in Wales and decision-making through the framework under review and inform the Senedd of any interaction between the respective governments on this.

- One of the intentions of the framework is to ensure compliance with international obligations and to enable the negotiation and implementation of international agreements. In your response, you provided some information on UK-EU and international activity under the framework and this information is noted.

- The Welsh Government should report on any UK-EU and international activity within the scope of the framework as part of the regular reports on the framework, with details on recent Welsh Government activity, details of common stances agreed with other parties for the purposes of international engagement, and information about upcoming international development or obligations that would fall within the scope of the framework.

Late Payment

- The Committee asked you about the links between this framework and the Procurement framework, noting UK Government plans to make changes to the late payment policy as part of wider procurement reforms. We note your response that there is no link between procurement and late payment and that changes to late payment policies in procurement reforms will be taken through the procurement framework. The Welsh Government should set out how it will ensure late payment officials are involved in discussions on any relevant proposed reform to procurement law.

- One of the functions of the framework is to ensure the functioning of the UK internal market, whilst acknowledging policy divergence between the nations. The Committee notes concerns that the UK Internal Market Act 2020 could affect this framework.

- The Welsh Government should explain the impact of the Internal Market Act 2020 on late payment policy, including any risks to the practical effect of Welsh legislation and policy. It should also confirm whether any exclusions from the Act would be requested.

- The Committee recommends that the Welsh Government should seek intergovernmental agreement to update the framework to acknowledge any interaction with the Internal Market Act 2020 and facilitate a process for agreeing relevant exclusions from that Act.

- The frameworks are intended to manage changes to retained EU law. The Committee notes that the UK Government has announced plans to allow changes to be made to retained law more quickly and easily. The UK Government has also said that changes in framework areas would be taken through the frameworks, however your response noted that it was "too early to say" what process would be used.

- The Welsh Government should confirm whether a process has now been agreed upon or when it is anticipated, and what this involves.

- It's noted that one of the purposes of the common frameworks programme is to ensure compliance with international obligations and to ensure that international agreements can be implemented and negotiated. Despite this, your response stated that international obligations are "not considered" under this framework.

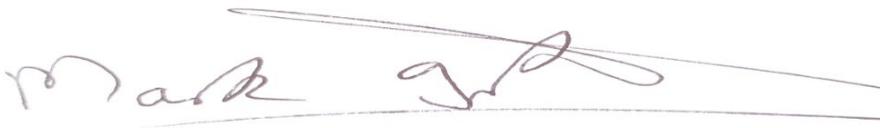
- The Committee recommends that the Welsh Government monitors any implications from international obligations for late payments policy and keep the Senedd informed of any action to implement international obligations.

- The Committee noted in its letter that the framework was inconsistent on the subject of review dates; however clarity has been provided in the Welsh Government's response.

- The framework should be corrected to reflect the information contained in the Welsh Government's response to the Committee.

A copy of this letter has been provided to the Senedd's Legislation, Justice and Constitution Committee, the House of Lords Common Frameworks Scrutiny Committee, the House of Commons Public Accounts and Constitutional Affairs Committee, the Scottish Parliament Economy and Fair Work Committee, and relevant officials in the Northern Ireland Assembly.

Regards,

A handwritten signature in black ink, appearing to read 'Mark Isherwood', is written over a horizontal line.

Mark Isherwood MS
Committee Chair



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-0037-22

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

huw.Irranca-Davies@senedd.wales

20 June 2022

Dear Huw,

The Animal Welfare (Miscellaneous Amendments) Regulations 2022

Further to my letter of 27 April, notifying the Committee I would be giving consent to the Secretary of State for Environment, Food and Rural Affairs to lay The Animal Welfare (Miscellaneous Amendments) Regulations 2022, I wish to clarify these regulations will be made under the affirmative procedure and not the negative procedure.

The Regulations have now been laid before Parliament under the affirmative procedure, where they will be debated and approved before they can be made. The debate has not yet been scheduled. I will issue a Written Statement once the Regulations have been made.

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

Regards,

Lesley Griffiths AS/MS

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

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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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE UK Government Bill of Rights

DATE 22 June 2022

BY **Mick Antoniw, Counsel General & Minister for the Constitution
and Jane Hutt MS, Minister for Social Justice**

The UK Government has today introduced a Bill of Rights in the House of Commons.

The Welsh Government did not have advanced sight of the contents of the Bill, except for five clauses, which were provided at the end of last week. There has been very little engagement with the Welsh Government since the UK Government closed its consultation at the end of March.

We set out our substantial concerns about this Bill in our [formal response](#) to the consultation. As we said then, the Welsh Government is opposed to any proposal to replace the Human Rights Act. It is our view that this action would be part of a concerted effort to dilute the rights of the people of Wales and the UK.

We understand there was a very large response to this consultation, and we know that many others have expressed their concerns that the UK Government's proposals represent a serious regression on human rights in the UK, at a time when it has never been more important to uphold international law. The consultation report has only just been published so we have not yet had time to consider it.

Although the Deputy Prime Minister has said that the UK will remain a signatory to the European Convention on Human Rights, it seems clear that the intention is to undermine the Convention by increasing the rights of UK Ministers and reducing the power of UK courts, as well as the European Court of Human Rights, to enforce the rule of law and hold Ministers to account.

We will of course study the Bill very carefully and have previously told the Deputy Prime Minister that we are willing to continue dialogue as it progresses through Parliament. Nevertheless, the process followed by the UK Government has been totally unsatisfactory, not least in relation to engagement with the Devolved Governments.



OFFICIAL

Huw Irranca-Davies
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

22 June 2022

Dear Huw,

INTRODUCTION OF THE BILL OF RIGHTS

I am pleased to confirm that today the Government is delivering on our manifesto commitment to overhaul the Human Rights Act and replace it with a Bill of Rights.

This country has a long and proud tradition of freedom which our Bill will enhance, for example, in respect of free speech and recognition of the role of jury trial. Equally, over the years mission creep has resulted in human rights law being used for more and more purposes, with elastic interpretations that go way beyond anything that the architects of the Convention had in mind. Following careful consideration of the responses to the Government's consultation on the Bill of Rights, these reforms reinforce our tradition of liberty whilst curtailing the abuses of human rights, restoring some common sense to our justice system, and ensuring that our human rights framework meets the needs of the society it serves.

The measures in the Bill of Rights will:

- 1. Strengthen the right to freedom of speech.** We are attaching greater weight to freedom of speech, defined as the exchange of ideas, opinions, information and facts, as a matter of utmost public interest, and widen the responsibility for attaching this greater weight to all public authorities.
- 2. Recognise the right to jury trial.** The Bill recognises the right to trial by jury under, and subject to, the framework set by Parliament and the Scottish and Northern Ireland legislatures.
- 3. Limit courts' powers for certain rights.** Human rights, especially Article 8, have been used to frustrate the deportation of criminals. The Bill will apply when a court considers deportation laws, especially those that may seek in the future to make it more difficult for foreign criminals to use Article 8 to appeal their deportation. It will set out that the legislation must be found compatible with those rights if it meets a new test which the Bill of Rights sets out. This will restore credibility to the system and ensure we can protect the public by deporting those who pose a serious threat.
- 4. Reduce burdens on public authorities.** We are limiting the imposition of positive obligations on our public services without proper democratic oversight. We will make clear that when public authorities are giving clear effect to primary legislation, they are not acting unlawfully. We will do this by restricting UK courts' power to interpret legislation, as we propose to do for section 3 above. This will deliver greater certainty for public services to do the jobs entrusted to them, without the constant threat of having to defend against expensive human rights claims.
- 5. Ensure that public protection is given due regard in interpretation of rights.** The Bill contains a provision that obliges all those who interpret Convention rights to consider the need to reduce

the risk to the public from convicted criminals serving a custodial sentence. This will support the Government's proposed reforms to the Parole Board and strengthen the Government's hand in fighting Article 8 claims from terrorists opposing their placement in Separation Centres.

6. **Limit the Bill's territorial jurisdiction.** Domestic and Strasbourg case law has extended beyond the intent of the Convention's drafters. The Bill excludes extraterritorial jurisdiction for military operations abroad.
7. **Implement a permission stage to ensure trivial cases do not undermine public confidence in human rights.** The introduction of a permission stage will ensure that courts focus on serious human rights claims and places responsibility on the claimant to demonstrate that they have suffered a significant disadvantage before a human rights claim can be heard in court.
8. **Recognise that responsibilities exist alongside rights.** We are recognising that responsibilities exist alongside rights and ensure that the appropriateness of paying damages to those who have infringed the rights of others are considered.
9. **Strengthen domestic institutions and the primacy of UK law.** The Bill empowers UK courts to apply human rights in a UK context, affirming the Supreme Court's independence from the Strasbourg Court. It will make explicit that the UK Supreme Court is the ultimate judicial arbiter.
10. **Increase democratic oversight.** The Bill makes sure that the balance between our domestic institutions is right, by repealing section 3 to ensure that UK courts can no longer alter legislation contrary to its ordinary meaning and the overall purpose of the law.
11. **Enhance Parliament's role in responding to adverse Strasbourg rulings.** The Bill enhances the role of Parliament in responding to adverse Strasbourg judgments against the UK. The Bill also affirms Parliament's supremacy in the making of laws.

The issues addressed by the Bill of Rights affect the whole of the UK, and any changes must be made on a UK-wide basis. We will ensure that the framework applies equally, whilst also allowing for difference in how the framework is applied and implemented across the UK. During the consultation period I visited Wales, Scotland and Northern Ireland to discuss our proposals and we will continue to engage with the Devolved Administrations, civil society and relevant stakeholders across the UK.

Yours sincerely



RT HON DOMINIC RAAB MP

Open Letter to the First Minister of Wales June 2022

Wales needs access to environmental justice

Dear First Minister,

In June 2021, the Senedd declared a nature emergency. In response, the Welsh Government promised to bring forward legislation to establish statutory targets for nature's recovery, alongside an independent body to hold public authorities to account on their environmental commitments. Almost a year on, there is no clarity on when this will be done. We, the undersigned, call on the Welsh Government to bring forward these important new laws, for the people and wildlife of Wales, without further delay.

The Welsh Government's welcome commitment to a new environmental watchdog was first made in 2018 and has often been repeated, but is yet to be realised. When the UK was a member of the EU, the oversight and enforcement provided by European institutions protected our environment and enabled citizens to raise complaints, free of charge. This often led to investigation and court action, including on air quality and nature protection.

Replacement arrangements are now in place elsewhere in the UK, in the shape of Environmental Standards Scotland and The Office for Environmental Protection (which will enforce environmental law in Northern Ireland and England). Both have been legally vested, put teams in place, consulted on strategies and provide a clear route for people to raise concerns if they consider a public authority is failing to comply with or implement environmental law. Access to environmental justice – an international right – is supported by these processes.

In Wales, while there are temporary arrangements in place, there are no legal powers, no public strategy and no easily navigable (or even, easy to find) website. Still, the first annual report published by the Interim Environmental Protection Assessor for Wales

on 1st June demonstrates that there is concern about how our environmental laws are being used.

Wales can ill afford to fall behind in matters of environmental protection: one in six of our species is at risk of being lost from Wales, and only a fraction of our best nature sites on land and at sea are reported to be in good condition. Over 1600 people die early each year due to air pollution. The continued delay in passing laws to protect and improve our environment undermines people's right to environmental justice and is diminishing the reputation of the Welsh Government as a world leader on sustainable development.

Clean air, clean water and thriving nature are central to people's health and well-being. Wales' environment and its citizens deserve environmental justice – for this, we need robust legislation to drive recovery, as well as the tools to hold government to account, so that current and future generations benefit from a healthy environment.

Yours sincerely,

Roger Thomas	Chair of Wales Environment Link
Joseph Carter	Chair of Healthy Air Cymru / Head of Asthma + Lung UK Cymru
Alun Pritchard	Director of RSPB Cymru
Shaun Spiers	Chair of Greener UK
Rachel Sharp	Director of Wildlife Trusts Wales
Anne Meikle	Director of WWF Cymru
Chris Mills	Chair of Afonydd Cymru
Jason Reeves	Head of Policy at the Chartered Institute for Ecology and Environmental Management (CIEEM)
Angela Charlton	Director of Ramblers Cymru
Kit Stoner	Chief Executive of Bat Conservation Trust
John Harold	Director, Snowdonia Society
Nicola Hutchinson	Director of Conservation for Plantlife (Cymru).
Haf Elgar	Vice Chair of Healthy Air Cymru/ Director of Friends of the Earth Cymru
Ruth Billingham	Head of Campaigns and Public Affairs at Living Streets Cymru

Lowri Jackson	Head of Policy and Campaigns at the Royal College of Physicians Wales
Christine Boston	Director of Sustrans Cymru
Gwenda Owen	Engagement Officer at Cycling UK Cymru
Angela Charlton	Director of Ramblers Cymru
Gareth Cunningham	Head of Conservation Wales at Marine Conservation Society
Natalie Buttriss	Director of Coed Cadw Woodland Trust Wales

Supported by all WEL members



Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

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26C. STANDING ORDER 26C – Consolidation Acts of the Senedd

Form and Introduction of Consolidation Bills

- 26C.1. A Consolidation Bill is a Bill introduced by a member of the government for the purpose of consolidating existing primary legislation, secondary legislation, and common law.
- 26C.2. A Consolidation Bill may:
- (i) restate existing legislation with any changes of structure, language or format appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice;
 - (ii) clarify the application or effect of existing law;
 - (iii) remove or omit provisions which are obsolete, spent or no longer of practical utility or effect;
 - (iv) make minor changes to existing law for the purposes of achieving a satisfactory consolidation; and
 - (v) make other changes to the law which the Law Commission of England and Wales recommends are appropriate for inclusion within a Consolidation Bill;
 - (vi) include appropriate transitional and savings provisions, and consequential amendments and repeals of existing legislation (including amendments to ensure the existing legislation continues to operate correctly in relation to England).
- 26C.3. The Presiding Officer, having consulted the Business Committee, may issue written guidance to Members on the interpretation of Standing Orders 26C.1 and 26C.2, and the operation of Standing Order 26C generally.
- 26C.4. A Consolidation Bill may be introduced on a working day in a sitting week.
- 26C.5. A Consolidation Bill must be introduced by being laid.
- 26C.6. A Consolidation Bill must not be laid unless it is in proper form in accordance with any determinations made by the Presiding Officer.
- 26C.7. A Consolidation Bill must on its introduction be accompanied by a statement in English and Welsh by the Presiding Officer which must:
- (i) indicate whether or not the provisions of the Consolidation Bill would be, in his or her opinion, within the legislative competence of the Senedd; and

- (ii) indicate any provisions which, in his or her opinion, would not be within the legislative competence of the Senedd and the reasons for that opinion.

26C.8. A Consolidation Bill must be introduced in both English and Welsh.

Documentation to Accompany a Consolidation Bill

26C.9. At the same time as the Member in charge introduces a Consolidation Bill, he or she must also lay an Explanatory Memorandum which must:

- (i) state that in his or her view the provisions of the Consolidation Bill would be within the legislative competence of the Senedd;
- (ii) set out the reasons for introducing the Consolidation Bill;
- (iii) state that the Consolidation Bill contains no provisions other than those permitted under Standing Order 26C.2;
- (iv) include tables showing the origins of provisions in the Consolidation Bill, and the destinations in the Consolidation Bill of the existing provisions it consolidates;
- (v) explain how the Consolidation Bill makes any changes of the kind permitted under Standing Order 26C.2(ii) to (v);
- (vi) summarise objectively what each of the provisions of the Consolidation Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Consolidation Bill;
- (vii) confirm that the provisions of the Consolidation Bill give rise to no additional significant expenditure payable out of the Welsh Consolidated Fund, and where it gives rise to additional expenditure, set out the best estimates for this;
- (viii) set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Consolidation Bill (a “justice impact assessment”), in accordance with section 110A of the Act; and
- (ix) where the Consolidation Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.

26C.10. The Explanatory Memorandum to the Consolidation Bill must state precisely where each of the requirements of Standing Order 26C.9 can be found within it, by means of an index or otherwise.

26C.11. The Consolidation Bill must be accompanied by a statement by the Member in Charge, based on the advice of the Counsel General (where the Member in Charge is not the Counsel General) and, where relevant, the Law Commission, endorsing the accuracy of the Explanatory

Memorandum and certifying that in the Member in Charge's view the Bill is a Consolidation Bill within the meaning of Standing Order 26C.1 and 26C.2.

Responsible Committee

26C.12. In proposing the remits of committees under Standing Order 16.2 or 16.3, the Business Committee must ensure that there is a committee (referred to within Standing Order 26C as "the responsible committee") with responsibility for the functions specified in Standing Order 26C.

Timetable of Consideration of a Consolidation Bill

26C.13. The Business Committee must establish and publish a timetable for the consideration of a Consolidation Bill, except for any stage taken in plenary (which must be arranged under the provisions of Standing Order 11.12).

26C.14. The Business Committee may make such subsequent changes to a timetable established under Standing Order 26C.13 as it considers appropriate but must give reasons for such changes.

Initial Consideration

26C.15. Once a Consolidation Bill has been introduced, the Business Committee must refer the Consolidation Bill to the responsible committee for initial consideration.

26C.16. Once the Business Committee refers the Consolidation Bill to the responsible committee under Standing Order 26C.15, that responsible committee must consider and report on whether the Bill should proceed as a Consolidation Bill.

26C.17. In considering whether a Bill should proceed as a Consolidation Bill or not, the responsible committee may consider:

- (i) whether the Committee is satisfied that the scope of the consolidation is appropriate;
- (ii) whether the Committee is satisfied that the relevant enactments have been included within the consolidation;
- (iii) whether the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;
- (iv) whether the Bill consolidates the law clearly and consistently;
- (v) any other matters it considers relevant to Standing Order 26C.

26C.18. Not earlier than five working days after either:

- (i) the responsible committee has reported on whether the Bill should proceed as a Consolidation Bill; or

- (ii) the deadline by which the responsible committee is required to report has been reached,

the Member in charge of the Bill may propose that the Senedd agree that the Bill should proceed as a Consolidation Bill.

- 26C.19. If the Senedd agrees that the Bill should proceed as a Consolidation Bill, the Bill proceeds to Detailed Committee Consideration.
- 26C.20. If the Senedd does not agree that the Bill should proceed as a Consolidation Bill, the Bill falls.
- 26C.21. Initial Consideration is completed when the Senedd agrees that the Bill should proceed as a Consolidation Bill or the Consolidation Bill falls at Initial Consideration.

Detailed Committee Consideration

- 26C.22. Detailed Committee Consideration must be undertaken by the responsible committee.
- 26C.23. Detailed Committee Consideration starts on the first working day after Initial Consideration is completed.
- 26C.24. At least 15 working days must elapse between the start of Detailed Committee Consideration and the date of the first meeting at which the responsible committee considers amendments to the Consolidation Bill.
- 26C.25. A Consolidation Bill may be amended in Detailed Committee Consideration proceedings.
- 26C.26. Amendments to be considered at Detailed Committee Consideration proceedings may be tabled by any Member, from the first day on which Detailed Committee Consideration starts.
- 26C.27. Amendments are to be disposed of in the order in which the sections and schedules to which they relate arise in the Consolidation Bill, unless the committee considering Detailed Committee Consideration proceedings has decided otherwise.
- 26C.28. Only a Member who is a member of the committee considering Detailed Committee Consideration proceedings may participate in those proceedings for the purpose of:
 - (i) moving or seeking agreement to withdraw an amendment; or
 - (ii) voting.
- 26C.29. An amendment tabled by a Member who is not a member of the committee considering Detailed Committee Consideration proceedings, may be moved by a member of the committee.
- 26C.30. When all amendments at Detailed Committee Consideration proceedings have been disposed of, any member of the committee may without notice move that the committee consider further amendments

at further Detailed Committee Consideration proceedings. Such a motion may not be debated or amended.

- 26C.31. If a motion under Standing Order 26C.30 is agreed to, any member of the government may table amendments to the Consolidation Bill to be moved at the further Detailed Committee Consideration proceedings.
- 26C.32. Amendments under Standing Order 26C.31 are only admissible if, in addition to the criteria in Standing Order 26C.85, they are for the purpose of clarifying a provision of a Consolidation Bill (including ensuring consistency between the English and Welsh texts) or giving effect to commitments given at the earlier Detailed Committee Consideration proceedings.
- 26C.33. Where any amendment is tabled to a section of or schedule to the Consolidation Bill, once the final amendment to that section or schedule has been disposed of, that section or schedule as amended, or otherwise, is deemed to be agreed by the committee for the purpose of Detailed Committee Consideration proceedings.
- 26C.34. If no amendment is tabled to a section of or schedule to the Consolidation Bill, then that section or schedule is deemed agreed by the committee for the purpose of Detailed Committee Consideration proceedings.
- 26C.35. Detailed Committee Consideration is completed when the last amendment has been disposed of or the last section or schedule has been deemed agreed, whichever is the later.
- 26C.36. After the completion of Detailed Committee Consideration proceedings, the responsible committee must report on the outcomes of its detailed consideration, and whether in its view the Consolidation Bill should proceed to Detailed Senedd Consideration or to Final Stage.
- 26C.37. If a Consolidation Bill is amended at Detailed Committee Consideration proceedings, the Member in charge must prepare a revised Explanatory Memorandum, unless the committee considering Detailed Committee Consideration proceedings resolves that no revised Explanatory Memorandum is required.
- 26C.38. Any revised Explanatory Memorandum prepared under Standing Order 26C.37 must be laid at least five working days before the date of Final Stage proceedings or, where relevant, the first Detailed Senedd Consideration proceedings.

Detailed Senedd Consideration

- 26C.39. If the responsible Committee at Detailed Committee Consideration reports that the Senedd should consider amendments at Detailed Senedd Consideration, the Consolidation Bill proceeds to Detailed Senedd Consideration, unless a motion that the Consolidation Bill should proceed directly to Final Stage is agreed by the Senedd.

- 26C.40. If the responsible committee has reported on the Detailed Committee Consideration of the Consolidation Bill and has recommended that the Consolidation Bill proceed to Final Stage, or if the deadline for the committee to report has passed, the Consolidation Bill proceeds to Final Stage, unless a motion that the Senedd consider amendments at Detailed Senedd Consideration is agreed by the Senedd.
- 26C.41. The Senedd must consider a motion tabled under Standing Order 26C.39 or 26C.40. Such a motion may be tabled by any Member, and may be debated but not amended.
- 26C.42. Detailed Senedd Consideration starts either:
- (i) two sitting weeks after the responsible Committee at Detailed Committee Consideration reports that the Senedd should consider amendments at Detailed Senedd Consideration (and no motion under Standing Order 26C.39 that the Consolidation Bill should proceed directly to Final Stage is agreed by the Senedd in the meantime); or
 - (ii) the day after a motion under Standing Order 26C.40 that the Senedd consider amendments at Detailed Senedd Consideration is agreed by the Senedd.
- 26C.43. At least 15 working days must elapse between the start of Detailed Senedd Consideration and the date of the first meeting of the Senedd that considers Detailed Senedd Consideration proceedings.
- 26C.44. Detailed Senedd Consideration proceedings of a Consolidation Bill must be considered by the Senedd in plenary.
- 26C.45. A Consolidation Bill may be amended in Detailed Senedd Consideration proceedings.
- 26C.46. Amendments to be considered at Detailed Senedd Consideration proceedings may be tabled by any Member from the first day on which Detailed Senedd Consideration starts.
- 26C.47. The Presiding Officer may select those amendments which are to be taken at Detailed Senedd Consideration proceedings.
- 26C.48. The Presiding Officer may in exceptional circumstances accept an amendment at Detailed Senedd Consideration proceedings of which less notice has been given than is required under Standing Order 26C.83. Such an amendment is referred to as a “late amendment”.
- 26C.49. Amendments are to be disposed of in the order in which the sections and schedules to which they relate arise in the Consolidation Bill, unless the Senedd has decided otherwise on a motion of the Minister with responsibility for government business.
- 26C.50. The Senedd may, on a motion without notice of the Minister with responsibility for government business, agree to one or more time-limits

that are to apply to debates on amendments (as they have been grouped by the Presiding Officer).

- 26C.51. If a motion under Standing Order 26C.50 is agreed to, debates on those groups of amendments must be concluded by the time-limits specified in the motion, except to the extent considered necessary by the Presiding Officer:
- (i) as a consequence of the non-moving of an amendment leading to a change in the order in which groups are debated; or
 - (ii) to prevent any debate on a group of amendments that has already begun when a time-limit is reached from being unreasonably curtailed.
- 26C.52. When all amendments selected at Detailed Senedd Consideration proceedings have been disposed of, any member of the government may without notice move that the Senedd consider further amendments at further Detailed Senedd Consideration proceedings. Such a motion may not be debated or amended.
- 26C.53. If a motion under Standing Order 26C.52 is agreed to, any member of the government may table amendments to the Consolidation Bill to be moved at the further Detailed Senedd Consideration proceedings.
- 26C.54. Amendments under Standing Order 26C.53 are only admissible if, in addition to the criteria in Standing Order 26C.85, they are for the purpose of clarifying a provision of a Consolidation Bill (including ensuring consistency between the English and Welsh texts) or giving effect to commitments given at the earlier Detailed Senedd Consideration proceedings.
- 26C.55. Where any amendment is tabled to a section of or schedule to the Consolidation Bill, once the final amendment to that section or schedule has been disposed of, that section or schedule as amended, or otherwise, is deemed agreed by the Senedd for the purpose of Detailed Senedd Consideration proceedings.
- 26C.56. If no amendment is tabled to a section of or schedule to the Consolidation Bill, then that section or schedule is deemed agreed by the Senedd for the purpose of Detailed Senedd Consideration proceedings.
- 26C.57. Detailed Senedd Consideration is completed when the last amendment has been disposed of or the last section or schedule has been deemed agreed, whichever is the later.

Final Stage

- 26C.58. A motion that the Consolidation Bill be passed may be tabled by any Member, but may not be considered until either:
- (i) at least 2 sitting weeks after either:

- (a) the responsible committee has reported on Detailed Committee Consideration of the Consolidation Bill and has recommended that the Consolidation Bill should proceed to Final Stage; or
- (b) the deadline for the responsible committee to report has passed;

(and no motion under Standing Order 26C.40 that the Senedd should consider amendments at Detailed Senedd Consideration is agreed by the Senedd in the meantime); or

- (ii) at least 5 working days after either;
 - (a) a motion that the Consolidation Bill should proceed directly to Final Stage is agreed by the Senedd under Standing Order 26C.39; or
 - (b) the completion of Detailed Senedd Consideration proceedings, where undertaken.

- 26C.59. A motion under Standing Order 26C.58 must be tabled at least one working day before it is debated.
- 26C.60. A motion that a Consolidation Bill be passed may not be amended.
- 26C.61. No motion that a Consolidation Bill be passed may be moved unless the text of the Consolidation Bill is available in both English and Welsh.
- 26C.62. No motion that a Consolidation Bill be passed may be moved until the Presiding Officer has stated, in accordance with section 111A(3) of the Act, whether or not in the Presiding Officer's view any provision of the Consolidation Bill relates to a protected subject matter.
- 26C.63. Where the Presiding Officer has made a statement that in the Presiding Officer's view any provision of the Consolidation Bill relates to a protected subject matter, the Bill is only passed if the number voting in favour of it is at least two-thirds of the total number of Senedd seats.
- 26C.64. A recorded vote must be taken on a motion that a Consolidation Bill be passed.
- 26C.65. No motion under Standing Order 12.31(ii) may be moved in any Final Stage proceedings.

Reconsideration of Consolidation Bills Passed

- 26C.66. Any Member may by motion propose that the Senedd reconsider the Consolidation Bill if:
- (i) the Supreme Court decides on a reference made in relation to the Consolidation Bill under section 112 of the Act that the Consolidation Bill or any provision of it would not be within the legislative competence of the Senedd; or

- (ii) an order is made in relation to the Consolidation Bill under section 114 of the Act.

- 26C.67. If the Senedd agrees to a motion under Standing Order 26C.66, Reconsideration Stage starts on the first working day after that motion is agreed to by the Senedd.
- 26C.68. Standing Orders 26C.43 to 26C.47 and 26C.49 to 26C.57 apply to Reconsideration Stage proceedings. References to “Detailed Senedd Consideration” and “further Detailed Senedd Consideration” should be construed as references to “Reconsideration Stage” and “further Reconsideration Stage” accordingly.
- 26C.69. A Consolidation Bill may not be amended at Reconsideration Stage unless in addition to the criteria in Standing Order 26C.82(i), (ii) and (iv), and in the opinion of the Presiding Officer, the amendments are solely for the purpose of resolving the issue which is the subject of:
- (i) the decision of the Supreme Court; or
 - (ii) the Order under section 114 of the Act.
- 26C.70. After all amendments have been disposed of at Reconsideration Stage proceedings, and subject to Standing Order 26C.71, any Member may without notice move that the Senedd approves a Consolidation Bill amended on reconsideration. Such a motion may not be amended and a recorded vote must be taken on the motion.
- 26C.71. No motion that a reconsidered Consolidation Bill be approved may be moved until the Presiding Officer has stated, in accordance with section 111A(3) of the Act, whether or not in the Presiding Officer’s view any provision of the Consolidation Bill relates to a protected subject matter.
- 26C.72. Where the Presiding Officer has made a statement that in the Presiding Officer’s view any provision of the Consolidation Bill relates to a protected subject matter, the Consolidation Bill is only passed if the number voting in favour of it is at least two-thirds of the total number of Senedd seats.

Reconsideration of Bills Rejected

- 26C.73. Any Member may by motion propose that the Senedd reconsider the Consolidation Bill if the Supreme Court decides on a reference made under section 111B(2)a of the Act in relation to a Consolidation Bill rejected by the Senedd, that no provision of the Consolidation Bill that is subject to the reference relates to a protected subject-matter.
- 26C.74. If the Senedd agrees to a motion under Standing Order 26C.73, Reconsideration Stage starts on the first working day after that motion is agreed to by the Senedd.
- 26C.75. A Consolidation Bill reconsidered in accordance with Standing Order 26C.73 may not be amended.

- 26C.76. At Reconsideration Stage in accordance with Standing Order 26C.73, any Member may table a motion that the Consolidation Bill be approved. Such a motion may not be amended and a recorded vote must be taken on the motion.
- 26C.77. No motion under Standing Order 26C.76 may be moved until the Presiding Officer has stated, in accordance with section 111A(3) of the Act, whether or not in his or her view any provision of the Consolidation Bill relates to a protected subject-matter.

General Provisions in Relation to Amendments to Consolidation Bills

- 26C.78. Standing Orders 26C.79 to 26C.87 apply to amendments in Detailed Committee Consideration, Detailed Senedd Consideration proceedings or on Reconsideration, except that Standing Order 26C.82(iii) does not apply to amendments on Reconsideration.
- 26C.79. The Presiding Officer must determine the proper form of amendments to a Consolidation Bill.
- 26C.80. No amendment, other than a late amendment, may be considered unless it has been tabled at least five working days before it is considered.
- 26C.81. Any Member may add his or her name to an amendment (other than a late amendment) by notifying the Clerk at any time until the end of the working day before the amendment is due to be considered.
- 26C.82. An amendment is not admissible if:
- (i) it is not in its proper form in accordance with Standing Order 26C;
 - (ii) it is not relevant to the Consolidation Bill or the provisions of the Consolidation Bill which it would amend;
 - (iii) it would cause the Bill to cease to be a Consolidation Bill as defined by Standing Orders 26C.1 and 26C.2; or
 - (iv) it is inconsistent with a decision already taken at the Stage at which the amendment is proposed.
- 26C.83. An amendment may be tabled to an amendment and, if selected, must be disposed of before the amendment which it would amend and Standing Orders 26C.78 to 26C.87 must apply accordingly.
- 26C.84. Subject to Standing Order 26C.28, an amendment (other than a late amendment) may be withdrawn by the Member who tabled it at any time before the day on which it is considered but only with the unanimous agreement of any Members who have added their names to the amendment. If such agreement is not obtained, the amendment becomes an amendment in the name of the Member who first added

his or her name to the amendment and who does not agree to the amendment being withdrawn.

- 26C.85. The chair of a committee considering Detailed Committee Consideration proceedings or the Presiding Officer, as the case may be, may group amendments for the purposes of debate as he or she sees fit. An amendment debated as part of a group may not be debated again when it comes to be disposed of.
- 26C.86. If a Member who tabled an amendment does not move the amendment when that amendment comes to be debated, the amendment may be moved:
- (i) in Detailed Committee Consideration proceedings, by a member of that committee; or
 - (ii) in Detailed Senedd Consideration proceedings or on Reconsideration, by any other Member.
- 26C.87. An amendment which has been moved may be withdrawn by the Member who moved it, but only:
- (i) in a committee considering Detailed Committee Consideration proceedings, if no member of that committee objects; or
 - (ii) in Detailed Senedd Consideration proceedings or on Reconsideration, if no Member objects.

Her Majesty's and Duke of Cornwall's Consent

- 26C.88. If a Consolidation Bill contains any provision, or is amended so as to include any provision, that would, if contained in a Bill for an Act of the United Kingdom Parliament, require the consent of Her Majesty, or the Duke of Cornwall, the Senedd must not debate the question whether the Consolidation Bill be passed (or approved following Reconsideration) unless such consent to such a provision has been signified by a member of the government at a meeting of the Senedd.

Notification of Royal Assent to Acts of the Senedd

- 26C.89. The Clerk must notify the Senedd of the date of Royal Assent to an Act of the Senedd.

Fall, Rejection or Withdrawal of Bills

- 26C.90. Subject to Standing Order 26C.73, if a Consolidation Bill falls or is rejected by the Senedd, no further proceedings may be taken on that Consolidation Bill, and another Consolidation Bill which, in the opinion of the Presiding Officer, is in the same or similar terms must not be introduced under this Standing Order in the same Senedd within the period of 6 months from the date on which the Consolidation Bill fell or was rejected.

- 26C.91. A Consolidation Bill falls if it has not been passed or approved by the Senedd before the end of the Senedd in which it was introduced.
- 26C.92. A Consolidation Bill may be withdrawn at any time by the Member in charge but must not be withdrawn after Initial Consideration except with the agreement of the Senedd.

Guidance to support the operation of Standing Order 26C on Consolidation Bills

Issued by the Llywydd under
Standing Order 26C.3 following
consultation with the Business
Committee

October 2021



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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Contents

Consolidation Bills	3
The purpose of a Consolidation Bill	3
The extent of what a Consolidation Bill may do	3
Documentation to accompany a Consolidation Bill	4
Annex to the guidance	5
Standing Order 26C.2(i)	5
Standing Order 26C.2(ii)	7
Standing Order 26C.2(iii)	9
Standing Order 26C.2(iv)	10
Standing Order 26C.2(v)	13
Standing Order 26C.2(vi)	13

Consolidation Bills

- 1.** A Consolidation Bill may be introduced by a member of the Government for the purpose of consolidating existing primary legislation, secondary legislation, and common law (Standing Order 26C.2).
- 2.** This guidance is issued by the Llywydd under Standing Order 26C.3 and is intended to be read alongside Standing Order 26C generally, and Standing Order 26C.2 especially. It provides further detail on the nature of consolidation bills and the extent to which they may revise, update and change existing law.

The purpose of a Consolidation Bill

- 3.** The purpose of a Consolidation Bill is to improve access to the law by:
 - bringing together all, or most, of the (generally primary) legislation on a specific subject or topic to improve accessibility, and
 - modernising its form and drafting, to make it easier to understand and apply.
- 4.** The purpose of a Consolidation Bill is not to bring about policy reform of any significance. Developing and scrutinising a Consolidation Bill should therefore be a legal, technical process that focusses on the consolidation of the existing law rather than the merits of the policies enshrined in it.

The extent of what a Consolidation Bill may do

- 5.** A Consolidation Bill may result in proposed legislation which looks very different to the original text. In order to present the existing law that applies in Wales in a modern and accessible form, it may be appropriate to make significant presentational changes that do not change the effect of that law.
- 6.** A Consolidation Bill may propose changes to the law only of the types stipulated in Standing Order 26C.2. Further detail on the provisions of Standing Order 26C.2, together with relevant examples of what those provisions mean in practice, are included in the Annex to this guidance.

Guidance to support the operation of Standing Order 26C on Consolidation Bills

Issued by the Llywydd under Standing Order 26C.3 following consultation with the Business Committee

7. The process of consolidation is complex and likely to reveal inconsistencies and anomalies in existing legislation. A modern and accessible restatement of existing law may also necessitate, or benefit from, minor amendments. Such amendments may, however, only be minor and should not be contentious. Any other change falling outside of this definition must be pursued through a reform Bill and considered by the Senedd following the usual legislative procedure under Standing Order 26.

Documentation to accompany a Consolidation Bill

8. At the same time as the Member in charge introduces a Consolidation Bill, he or she must also lay an Explanatory Memorandum (EM) which includes those things specified in Standing Order 26C.9. One of those provisions (SO 26C.9(iv)) requires the EM to include tables of origin and destination in order to help explain how the law has been re-presented. The EM must also include drafters' notes explaining the approach that has been taken in drafting the Bill. In addition a set of Explanatory Notes to each Consolidation Bill must be prepared.

Annex to the guidance

Details of the provisions contained in Standing Order 26C.2 – with examples of use:

Standing Order 26C.2(i)

A Consolidation Bill may restate existing legislation with any changes of structure, language or format that are considered appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice

1. Changes permitted under Standing Order 26C.2(i) may include:
 - a. renumbering and rearranging provisions (for example, dividing or combining existing sections or Parts, or moving material between sections and Schedules);
 - b. expressing provisions in a way that reflects their actual legal effect (for example adopting terminology that reflects devolution and other transfers of functions that have taken place since the existing legislation was passed);

Examples:

- in addition to devolution and transfer of functions, the Consolidation Bill should be expected to reflect all other legal changes that have altered the meaning of the existing legislation. For example, wherever the maximum fine that a magistrates' court could impose for an offence would have been £5,000 before 12 March 2015, it was converted into an unlimited fine by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. So earlier provisions creating liability to a maximum fine of £5,000 would now be restated as creating liability to "a fine";
- there may have been changes in the law since the existing legislation was enacted, which mean that the words that are required to achieve a particular legal effect are different from those that were required when

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the existing legislation was drafted. For example, the Legislation (Wales) Act 2019 reversed the presumption that Acts of the Senedd do not bind the Crown, so the provision that needs to be made to ensure that a Consolidation Bill binds the Crown to the same extent as the original legislation is likely to be different.

- c. changing the language of legislation that exists only in English to facilitate the production of a coherent bilingual Bill;
- d. adopting gender neutral language and modernising language in any other way (including by omitting redundant wording);
- e. adding, removing or changing labels and headings;

Examples:

- a Consolidation Bill may replace labels used in existing legislation with ones that give a better sense of what is being referred to. For example, the Law Commission has noted that planning legislation uses a number of labels that might be regarded as misleading or uninformative, such as “planning contravention notice” and “appointed person”;
 - existing legislation may use labels and headings that are not needed in a restatement of the law for Wales because their only purpose is to distinguish between “English” and “Welsh” cases. Labels of this kind may be removed or replaced with more suitable terms;
 - legislation may contain labels that are no longer useful because of changes in circumstances. For example, the Law Commission have observed that the distinction between a “local planning authority” and a “mineral planning authority” in planning legislation is not needed in Wales because they are always the same authority (whereas they may be different under the two-tier system of local government that still applies to most of England).
- f. adding new tables, formulae or other ways of presenting information;
 - g. adding navigational aids such as overviews and signposting provisions (including signposts to legislation not included in the consolidation but relevant to it);

- h. setting out in full provisions of other legislation that are incorporated into the consolidated legislation;

Example:

- if Act A provides that certain provisions of Act B apply to it, it will often be more accessible to repeat those provisions in full in the restatement of Act A (particularly if any modifications are needed to make them work properly in the context of Act A).
- i. adding, removing or changing punctuation or conjunctions; and
- j. correcting typographical errors, incorrect cross-references and similar obvious mistakes.

2. ‘Current drafting practice’, as referred to in Standing Order 26C.2, means the legislative drafting practice for the time being used by the Office of the Legislative Counsel.

Standing Order 26C.2(ii)

A Consolidation Bill may clarify the application or effect of existing law

3. If the application or effect of existing provisions is unclear (because their drafting creates doubt or ambiguity, such as uncertainty about when a period of time ends or about which bodies are subject to a duty), a Consolidation Bill may clarify the intended meaning, for example by spelling out more clearly when a particular provision or definition applies. Where the existing legislation is bilingual, clarification may include reconciling any ambiguities in either language or both.

4. Clarification may involve filling in gaps in the legislation, for example by including definitions of terms that the existing legislation does not define, or by spelling out that the application of a provision is limited to the particular cases in which it is relevant.

Example:

- this may include clarifying the effect of transfers of functions “in relation to Wales” by providing a clearer territorial limit in a Consolidation Bill

Guidance to support the operation of Standing Order 26C on Consolidation Bills

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(and a corresponding territorial limit in any enactment which forms part of the consolidation but which will continue to apply to England after the Consolidation Bill is passed).

5. Clarification of intent may also involve rectifying the position where the wording of existing provisions does not reflect the meaning they are understood to have in practice, or where different enactments make provision about the same matter which is or may be contradictory.

Example:

- the Co-operative and Community Benefit Societies Act 2014 (a consolidation Act of the UK Parliament) removed a requirement for there to be “special reasons” for registering a society, to reflect how the provisions were applied in practice and were originally intended to be applied. This was not about inconsistency in the legislation itself.

6. Where a Consolidation Bill seeks to clarify the meaning of existing provisions in any of the ways outlined above, it should do so in the way that best reflects the meaning that the provisions are understood to have, or that the legislature is believed to have intended.

7. A Consolidation Bill may also incorporate the effect of case law about the meaning of the existing legislation, or rules of common law that are closely related to the statutory provisions, in order to provide a more complete restatement of the existing law. A Consolidation Bill is not intended to codify free-standing rules of common law, but it may be appropriate to incorporate case law that affects the operation of existing legislation, for example by clarifying its meaning or by expanding or limiting its effect in a way that is not set out on its face.

Example:

- in restating an offence of possessing salmon caught at a time when fishing was not permitted, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 included a defence which had not been set out in the previous legislation but which had been recognised by the courts.

Standing Order 26C.2(iii)

A Consolidation Bill may remove or omit provisions which are obsolete, spent or no longer of practical utility or effect;

8. Omitting a provision means it may be repealed for Wales and/or not included in the Consolidation Bill;

9. There is some overlap between obsolete provisions, spent provisions, and provisions which are no longer of practical utility or no longer of practical effect. In general:

- a. an obsolete provision would include a provision which is out-of-date, for example because it is about bodies, persons or things which are no longer in existence or use;
- b. a spent provision is one which applies to a situation which can no longer exist, such as a provision conferring a function which cannot be used again (for example, because the original legislation provided for one action to be taken and this has been done, or the conditions for use can no longer be met); and
- c. a provision no longer has practical effect if, in practice, circumstances have rendered the provision irrelevant or unnecessary. This includes:
 - i. provisions which are no longer necessary as legal provision is available elsewhere (either within the Consolidation Bill or in other legislation applicable in Wales) which has an equivalent legal effect.
 - ii. provisions that were never commenced and there is no likelihood that they ever will be commenced in Wales; or if the provision was commenced but never used and there is no prospect of the provision being used in Wales; or it was commenced and used, but has not been for a significant period and there is no expectation of future use; or the provision may have been superseded by other Acts, provisions or circumstances (Note: although powers are given to Ministers, 'likelihood' here is not just whether current Ministers might intend to use a power, but whether there is a realistic likelihood of the power being used by any government.)

Examples:

- the Town and Country Planning Act 1990 contains various provisions about pre-1948 breaches of planning control that were relevant when the first Town and Country Planning Act came into force. The Law Commission have observed that most of these no longer have any practical effect and could be omitted from a consolidation;
- the Housing Act 1985 (a consolidation Act of the UK Parliament) repealed a previous power to amend local Acts, as 15 years had passed without the power being exercised;
- the Co-operative and Community Benefit Society Act 2014 (a consolidation Act of the UK Parliament) did not replicate provisions of the Industrial and Provident Societies Act 1965 which referred to people who had made a nomination under the Act before 1 January 1914, on the basis that nobody who had made such a nomination would still be alive in 2014;
- the uncommenced repeal of “or (2)” in section 60(3) of the Industrial and Provident Societies Act 1965 Act was not reproduced in the Co-operative and Community Benefit Society Act 2014 as there was no intention of commencing the repeal (the repeal was contained in a 1992 Act);
- the Co-operative and Community Benefit Societies Act 2014 removed a specific offence of making a false statutory declaration on the basis that there was already a general offence of making false statutory declarations that covered the same conduct.

Standing Order 26C.2(iv)

A Consolidation Bill may make minor changes to existing law for the purposes of achieving a satisfactory consolidation;

10. This could include:

- a. resolving inconsistencies in the application of the law in different cases, where the reasons for a difference are no longer applicable or cannot be identified;

Examples:

- removing or reconciling inconsistencies in regulation making powers across different provisions;
 - ensuring that where a matter is dealt with on the face of one Act, but by subordinate legislation in another Act, both can be dealt with in primary or secondary legislation (as may be appropriate);
 - ensuring like cases are treated in the same way in the Consolidation Bill, for example by reconciling any inconsistencies between provisions which have come from different enactments or by extending general provisions or definitions in one of the existing Acts to cover all of the enactments being consolidated;
 - in cases where notice must be given in writing, and some existing legislation states the requirement for writing expressly but some does not, the requirement to give notice in writing can be set out in all of the provisions (or none of them if it is so obvious as to not need stating).
- b. correcting mistakes or anomalies in the legislation;
- c. ensuring the consolidated legislation would be compatible with the Convention rights. This may include incorporating the effect of case law which has rendered the existing provision(s) compatible with Convention rights; or amending or omitting an existing provision or making new provision where it is clear such a change is necessary to ensure that the law is compatible with the Convention;
- d. providing that the consolidated legislation will operate correctly in relation to Wales taking account of any cross-border issues between England and Wales;

Example:

- the consolidation of legislation relating to the National Health Service in England and Wales reproduced the law separately for England and Wales in the National Health Service Act 2006 and the National Health Service (Wales) Act 2006. Both Acts provided a territorial limit for the

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exercise of functions and made provision about certain cross-border issues.

- e. ensuring consistency in and between the English language and Welsh language texts of the Bill;
- f. moving provisions from subordinate legislation to primary legislation (and occasionally from primary to subordinate legislation) or changing the form of subordinate legislation or the procedure that applies to it, to improve the consistency or coherence of the relevant body of legislation;

Examples:

- where provisions about a particular issue are contained partly in primary legislation and partly in subordinate legislation, it may be appropriate to move provisions from one level to the other, so that everything about that issue is in the same place. For example, if regulations or orders deal with an important issue affecting how the legislation works, material in the regulations or orders might be more appropriately restated in the Bill;
- where there is a power to use subordinate legislation to modify the operation of primary legislation, and all the necessary modifications have already been made, it may be appropriate to incorporate the modifications into the restatement of the primary legislation, and the power to make modifications may not be needed;
- where forms or other points of detail are set out in primary legislation, it may be appropriate to provide for them to be specified in regulations instead, particularly if they are likely to need regular updating. Or it may be appropriate simply to require people to use forms published by Ministers or other public bodies, rather than including the forms in legislation;
- it may be appropriate to replace powers to make directions of general application (as opposed to directions addressed to specific individuals) with powers to make regulations;
- where an existing power to make subordinate legislation is not subject to any Senedd procedure, but such a power would nowadays be

expected to attract Senedd procedure, a Consolidation Bill may restate the power with an appropriate procedure. A Consolidation Bill may also remove other inconsistencies and anomalies in procedural provisions.

Standing Order 26C.2(v)

A Consolidation Bill may make other changes to the law which the Law Commission of England and Wales recommend are appropriate for inclusion within a Consolidation Bill

11. Under Standing Order 26C.2(v) changes to the law which do not fall within the other paragraphs of that Standing Order may be included in a Consolidation Bill on the recommendation of the Law Commission. For a change to be made under paragraph (v), the Law Commission must not only recommend that the change is made, but must also identify the change as one that it would be appropriate to make in a Consolidation Bill.

12. Paragraph (v) does not mean that Consolidation Bills can be used to give effect to all law reform proposals made by the Law Commission. It is only intended to cover changes to the law which it would be convenient to make at the same time as consolidating the existing law. Such changes should not involve significant new policy nor be controversial. Examples of this type of change could include amending a set of procedural requirements to ensure that they work better in practice, or simplifying them to remove redundant steps from the procedure.

Standing Order 26C.2(vi)

A Consolidation Bill may include appropriate transitional and savings provisions, and consequential amendments and repeals of existing legislation (including amendments to ensure the existing legislation continues to operate correctly in relation to England);

13. Standing Order 26C.2(vi) includes:

- a. making consequential amendments to legislation that is not incorporated, or is incorporated only in part, in the Consolidation Bill.

Guidance to support the operation of Standing Order 26C on Consolidation Bills

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This includes making sure that the legislation left behind continues to operate satisfactorily with no change in legal effect (or no more change than is required by the consolidation). It may involve making extensive amendments to the legislation to remove provisions that apply to Wales and to make clear that some or all of its provisions will in future apply only to England;

- b. providing a power to make further consequential amendments to legislation that are needed as a result of the consolidation;
- c. repeals necessary to deal with consolidation, including repeals of obsolete and spent provisions, and missed amendments and repeals (i.e. ones which should have been included in earlier Acts);
- d. savings and transitional provisions.

Agenda Item 9

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

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