

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Tŷ Hywel and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 26 September 2022	0300 200 6565
Meeting time: 11.30	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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## 1 Introductions, apologies, substitutions and declarations of interest

(11.30)

## 2 Proposed negative instruments that raise no reporting issues under Standing Order 21.3B

(11.30 – 11.35)

(Page 1)

Attached Documents:

LJC(6)-23-22 – Paper 1 – Draft report

### 2.1 pNeg(6)003 – The Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022

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

(11.35 – 11.40)

(Pages 2 – 5)

Attached Documents:

LJC(6)-23-22 – Paper 2 – Draft report

**Made Negative Resolution Instruments**



**3.1 SL(6)236 – The Building Safety Act 2022 (Consequential Amendments)  
(Approved Inspectors) (Wales) Regulations 2022**

**3.2 SL(6)239 – The Local Government Investigations (Functions of Monitoring  
Officers and Standards Committees) (Wales) (Amendment) Regulations 2022**

(Pages 6 – 7)

Attached Documents:

LJC(6)–23–22 – Paper 3 – Written Statement by the Minister for Finance and  
Local Government, 15 July 2022

**3.3 SL(6)240 – The Local Authorities (Model Code of Conduct) (Wales)  
(Amendment) Order 2022**

(Pages 8 – 9)

Attached Documents:

LJC(6)–23–22 – Paper 4 – Written Statement by the Minister for Finance and  
Local Government, 15 July 2022

**3.4 SL(6)241 – The Conduct of Members (Principles) (Wales) (Amendment) Order  
2022**

(Pages 10 – 11)

Attached Documents:

LJC(6)–23–22 – Paper 5 – Written Statement by the Minister for Finance and  
Local Government, 15 July 2022

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

(11.40 – 11.55)

**Made Negative Resolution Instruments**

**4.1 SL(6)233 – The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No.3) Regulations 2022**

(Pages 12 – 18)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 6 – Draft report

**4.2 SL(6)237 – The Education (Student Finance) (Ukrainian Nationals and Family Members) (Miscellaneous Amendments) (Wales) Regulations 2022**

(Pages 19 – 22)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 7 – Draft report

LJC(6)-23-22 – Paper 8 – Letter from the Minister for Education and Welsh Language to the Llywydd, 7 July 2022

**4.3 SL(6)238 – The Agricultural Wages (No.2) (Wales) Order 2022**

(Pages 23 – 26)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 9 – Draft report

**4.4 SL(6)243 – The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022**

(Pages 27 – 37)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 10 – Draft report

LJC(6)-23-22 – Paper 11 – Written Statement by the Minister for Climate Change, 15 July 2022

**4.5 SL(6)247 – The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022**

(Pages 38 – 44)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 12 – Draft report

LJC(6)-23-22 – Paper 13 – Written Statement by the Minister for Climate Change, 16 August 2022

**4.6 SL(6)256 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential and Miscellaneous Amendments) Regulations 2022**

(Pages 45 – 47)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 14 – Draft report

**4.7 SL(6)257 – The Food Information (Amendment of Transitional Provisions) (Wales) Regulations 2022**

(Pages 48 – 50)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 15 – Draft report

**4.8 SL(6)258 – The Non-Commercial Movement of Pet Animals (Amendment) (Wales) (No.2) Regulations 2022**

(Pages 51 – 52)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 16 – Draft report

**Affirmative Resolution Instruments**

**4.9 SL(6)242 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022**

(Pages 53 – 60)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 17 – Draft report

LJC(6)-23-22 – Paper 18 – Letter from the Minister for Climate Change, 18 July 2022

LJC(6)-23-22 – Paper 19 – Written Statement by the Minister for Climate Change, 15 July 2022

**Composite Negative Resolution Instruments**

**4.10 SL(6)244 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2022**

(Pages 61 – 62)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-23-22 – Paper 20 – Draft report

**5 Instrument that raises no reporting issues under Standing Order 21.7**

(11.55 – 12.00)

(Page 63)

Attached Documents:

LJC(6)-23-22 – Paper 21 – Draft report

**5.1 SL(6)234 – Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991**

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

(12.00 – 12.05)

### **6.1 SL(6)227 – The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022**

(Pages 64 – 67)

Attached Documents:

LJC(6)–23–22 – Paper 22 – Report

LJC(6)–23–22 – Paper 23 – Welsh Government response

### **6.2 SL(6)229 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022**

(Pages 68 – 79)

Attached Documents:

LJC(6)–23–22 – Paper 24 – Report

LJC(6)–23–22 – Paper 25 – Welsh Government response

## **7 Written Statements under Standing Order 30C**

(12.05 – 12.10)

### **7.1 WS–30C(6)011 – The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022**

(Pages 80 – 84)

Attached Documents:

LJC(6)–23–22 – Paper 26 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 15 July 2022

LJC(6)–23–22 – Paper 27 – Commentary

## **8 Inter–Institutional Relations Agreement**

(12.10 – 12.25)

**8.1 Written Statement and correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Standing Committee**

(Pages 85 – 87)

Attached Documents:

LJC(6)-23-22 – Paper 28 – Written Statement by the Counsel General and Minister for the Constitution, 12 July 2022

LJC(6)-23-22 – Paper 29 – Correspondence from the Counsel General and Minister for the Constitution, 12 July 2022

**8.2 Correspondence from the Minister for Rural Affairs, North Wales and Trefnydd: The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022**

(Pages 88 – 89)

Attached Documents:

LJC(6)23-22 – Paper 30 – Letter from the Minister for Rural Affairs, North Wales and Trefnydd, 12 July 2022

**8.3 Written Statement and correspondence from the Minister for Economy: Interministerial Group on UK-EU Relationships**

(Pages 90 – 91)

Attached Documents:

LJC(6)-23-22 – Paper 31 – Letter from the Minister for Economy, 14 July 2022

LJC(6)-23-22 – Paper 32 – Written Statement by the Minister for Economy, 14 July 2022

**8.4 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Aquatic Animal Health (Amendment) Regulations 2022**

(Pages 92 – 93)

Attached Documents:

LJC(6)-23-22 – Paper 33 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 20 July 2022

**8.5 Written Statement and correspondence from the First Minister: British–Irish Council Summit in Guernsey**

(Pages 94 – 96)

Attached Documents:

LJC(6)–23–22 – Paper 34 – Written Statement by the First Minister, 21 July 2022

LJC(6)–23–22 – Paper 35 – Letter from the First Minister, 21 July 2022

**8.6 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Inter–Ministerial Group for Environment, Food and Rural Affairs**

(Pages 97 – 99)

Attached Documents:

LJC(6)–23–22 – Paper 36 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 4 August 2022

**8.7 Written Statement and correspondence from the Minister for Economy: Ministerial Forum for Trade**

(Pages 100 – 102)

Attached Documents:

LJC(6)–23–22 – Paper 37 – Written Statement from the Minister for Economy, 9 August 2022

LJC(6)–23–22 – Paper 38 – Letter from the Minister for Economy, 8 August 2022

**8.8 Correspondence from the Minister for Climate Change: The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022**

(Pages 103 – 107)

Attached Documents:

LJC(6)–23–22 – Paper 39 – Letter from the Minister for Climate Change, 19 August 2022

LJC(6)–23–22 – Paper 40 – Letter to the Minister for Climate Change, 25 July 2022



## **9 Papers to note**

(12.25 – 12.40)

### **9.1 Written Statement by the Counsel General and Minister for the Constitution: Statement on the progress of the Independent Commission on the Constitutional Future of Wales**

(Page 108)

Attached Documents:

LJC(6)-23-22 – Paper 41 – Written Statement by the Counsel General and  
Minister for the Constitution, 15 July 2022

### **9.2 Correspondence from the Finance Committee: Historic Environment (Wales) Bill**

(Pages 109 – 110)

Attached Documents:

LJC(6)-23-22 – Paper 42 – Letter from the Finance Committee, 18 July 2022

### **9.3 Correspondence from the Minister for Climate Change: Welsh Government response to the Committee's report on the Legislative Consent Memoranda on the Online Safety Bill**

(Pages 111 – 112)

Attached Documents:

LJC(6)-23-22 – Paper 43 – Letter from the Minister for Climate Change, 27  
July 2022

### **9.4 Correspondence from the Minister for Climate Change to the Llywydd: Data Protection and Digital Information Bill**

(Pages 113 – 114)

Attached Documents:

LJC(6)-23-22 – Paper 44 – Letter from the Minister for Climate Change to the  
Llywydd, 27 July 2022

**9.5 Correspondence from Dr Robert Jones, Wales Governance Centre: Proposal for an inquiry into racial disproportionality within the criminal justice system in Wales**

(Pages 115 – 118)

Attached Documents:

LJC(6)-23-22 – Paper 45 – Letter from Dr Robert Jones, Wales Governance Centre, 28 July 2022

**9.6 Correspondence from the Public Accounts and Public Administration Committee: Welsh Government's Legislative Consent Memorandum on the Procurement Bill**

(Page 119)

Attached Documents:

LJC(6)-23-22 – Paper 46 – Letter from the Public Accounts and Public Administration Committee, 1 August 2022

**9.7 Correspondence from the Secretary of State for Business, Energy and Industrial Strategy; and the First Minister: Trade Union (Wales) Act 2017**

(Pages 120 – 124)

Attached Documents:

LJC(6)-23-22 – Paper 47 – Letter from the Secretary of State for Business, Energy and Industrial Strategy, 1 August 2022

LJC(6)-23-22 – Paper 48 – Letter from the First Minister, 8 September 2022

LJC(6)-23-22 – Paper 49 – Letter to the Secretary of State for Business, Energy and Industrial Strategy, 21 July 2022

**9.8 Written Statement and correspondence from the Counsel General and Minister for the Constitution: Electoral Commission's Evaluation Report of Welsh Electoral Pilots**

(Pages 125 – 127)

Attached Documents:

LJC(6)-23-22 – Paper 50 – Written Statement by the Counsel General and Minister for the Constitution, 2 August 2022

LJC(6)-23-22 – Paper 51 – Letter from the Counsel General and Minister for the Constitution, 2 August 2022

**9.9 Correspondence from the Counsel General and Minister for the Constitution: Follow-up to evidence session, 20 June 2022**

(Pages 128 – 145)

Attached Documents:

LJC(6)-23-22 – Paper 52 – Letter from the Counsel General and Minister for the Constitution, 4 August 2022

LJC(6)-23-22 – Paper 53 – Letter to the Counsel General and Minister for the Constitution, 30 June 2022

**9.10 Correspondence from the House of Lords European Affairs Committee: Inquiry into the future UK-EU relationship**

(Page 146)

Attached Documents:

LJC(6)-23-22 – Paper 54 – Letter from the House of Lords European Affairs Committee, 23 August 2022

**9.11 Correspondence from the Secretary of State for Levelling Up, Housing and Communities: Intergovernmental relations: proposals for UK Bills to legislate in devolved areas**

(Pages 147 – 151)

Attached Documents:

LJC(6)-23-22 – Paper 55 – Letter from Secretary of State for Levelling Up, Housing and Communities, 31 August 2022

LJC(6)-23-22 – Paper 56 – Letter to the Secretary of State for Levelling Up, Housing and Communities, 20 July 2022

LJC(6)-23-22 – Paper 57 – Letter to the Public Administration and Constitutional Affairs Committee, the Constitution Committee and the Constitution, Europe, External Affairs and Culture Committee, 20 July 2022

**9.12 Correspondence from the Minister for Finance and Local Government: Welsh Government's Legislative Consent Memorandum on the Procurement Bill**

(Pages 152 – 162)

Attached Documents:

LJC(6)-23-22 – Paper 58 – Letter from Minister for Finance and Local Government, 1 September 2022

LJC(6)-23-22 – Paper 59 – Letter to Minister for Finance and Local Government, 28 July 2022

**9.13 Correspondence from the Counsel General and Minister for the Constitution:  
Access to justice: Summary of engagement**

(Pages 163 – 171)

Attached Documents:

LJC(6)-23-22 – Paper 60 – Letter from the Counsel General and Minister for the Constitution, 5 September 2022

LJC(6)-23-22 – Paper 61 – Letter to the Counsel General and Minister for the Constitution, 12 July 2022

**9.14 Correspondence from the Counsel General and Minister for the Constitution:  
EU Exit-derived statutory instruments**

(Pages 172 – 174)

Attached Documents:

LJC(6)-23-22 – Paper 62 – Letter from the Counsel General and Minister for the Constitution, 5 September 2022

LJC(6)-23-22 – Paper 63 – Letter to the Counsel General and Minister for the Constitution, 19 July 2022

**9.15 Correspondence from the Counsel General and Minister for the Constitution:  
Intergovernmental agreements**

(Pages 175 – 178)

Attached Documents:

LJC(6)-23-22 – Paper 64 – Letter from the Counsel General and Minister for the Constitution, 5 September 2022

LJC(6)-23-22 – Paper 65 – Letter to the Counsel General and Minister for the Constitution, 19 July 2022

**9.16 Correspondence from the Minister for Climate Change to the Llywydd: The Social Housing (Regulation) Bill**

(Page 179)

Attached Documents:

LJC(6)-23-22-Paper 66 – Letter from the Minister for Climate Change, 8 September 2022

**9.17 Correspondence from the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee: Impact of Brexit on Devolution**

(Pages 180 – 181)

Attached Documents:

LJC(6)-23-22 – Paper 67 – Letter from the Constitution, Europe, External Affairs and Culture Committee, 22 September 2022

**9.18 Correspondence from the Minister for Social Justice and the Counsel General and Minister for the Constitution: Bill of Rights Bill**

(Pages 182 – 183)

Attached Documents:

LJC(6)-23-22 – Paper 68 – Minister for Social Justice and the Counsel General and Minister for the Constitution, 22 September 2022

**10 Motion under Standing Order 17.42 to resolve to exclude the public from items 11 and 12, and items 14 to 20**

(12.40)

**11 International agreements**

(12.40 – 12.50)

(Pages 184 – 189)

Attached Documents:

LJC(6)-23-22 – Paper 69 – Briefing

**12 Monitoring report**

(12.50 – 13.00)

(Pages 190 – 200)

Attached Documents:

LJC(6)-23-22 – Paper 70 – Draft report

Break (13.00 – 13.30)

### **13 Historic Environment (Wales) Bill: Evidence session with the Law Commission**

(13.30 – 14.30)

(Pages 201 – 216)

The Rt Hon. Lord Justice Green, Chair of the Law Commission

Nicholas Paines KC, Law Commissioner for the Law in Wales

Charles Mynors, Lawyer responsible for the Planning Law in Wales project

[Historic Environment \(Wales\) Bill, as introduced](#)

[Explanatory Memorandum](#)

[Explanatory Memorandum: Annex A – Explanatory Notes](#)

[Explanatory Memorandum: Annex B1 – Table of Origins](#)

[Explanatory Memorandum: Annex B2 – Table of Destinations](#)

[Explanatory Memorandum: Annex C – Explanation of changes made to existing provisions \(Drafters' Notes\)](#)

[Explanatory Memorandum: Annex D – Correspondence from the Law Commission](#)

Attached Documents:

LJC(6)-23-22 – Paper 71 – Briefing

### **14 Historic Environment (Wales) Bill: Consideration of evidence**

(14.30 – 14.45)

(Pages 217 – 232)

Attached Documents:

LJC(6)-23-22 – Paper 72 – Letter from the Counsel General and Minister for the Constitution, 17 August 2022

LJC(6)-23-22 – Paper 73 – Letter to the Counsel General and Minister for the Constitution, 19 July 2022

### **15 Legislative Consent Memorandum on the Schools Bill**

(14.45 – 14.55)

(Pages 233 – 240)

[Legislative Consent Memorandum: Schools Bill](#)

Attached Documents:

LJC(6)-23-22 – Paper 74 – Legal advice note

LJC(6)-23-22 – Paper 75 – Letter from the Minister for Education and Welsh Language to the Llywydd, 19 July 2022

**16 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the UK Infrastructure Bank Bill**

(14.55 – 15.05)

(Pages 241 – 250)

[Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) – UK Infrastructure Bank Bill](#)

Attached Documents:

LJC(6)-23-22 – Paper 76 – Legal advice note

LJC(6)-23-22 – Paper 77 – Letter from the Minister for Finance and Local Government, 22 July 2022

LJC(6)-23-22 – Paper 78 – Letter to the Minister for Finance and Local Government, 8 July 2022

**17 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Procurement Bill**

(15.05 – 15.25)

(Pages 251 – 267)

[Supplementary Legislative Consent Memorandum \(Memorandum No. 2\): Procurement Bill](#)

Attached Documents:

LJC(6)-23-22 – Paper 79 – Legal advice note

**18 United Kingdom Internal Market Act 2020: Services exclusions**

(15.25 – 15.35)

(Pages 268 – 276)

Attached Documents:

LJC(6)-23-22 – Paper 80 – Briefing

LJC(6)-23-22 – Paper 81 – Letter from the Minister for Economy, 22 August 2022

LJC(6)-23-22 – Paper 82 – Written Statement by the Counsel General and  
Minister for the Constitution: Legal challenge to the UK Internal Market Act  
2020, 18 August 2022

## **19 Annual report**

(15.35 – 16.05)

(Pages 277 – 321)

Attached Documents:

LJC(6)-23-22 – Paper 83 – Draft report

## **20 Forward work programme**

(16.05 – 16.15)



## Proposed Negative Statutory Instruments with Clear Reports

**26 September 2022**

**pNeg(6)003 - [The Marketing of Seeds and Plant Propagating Material \(Wales\) \(Amendment\) \(EU Exit\) Regulations 2022](#)**

**Procedure: Proposed Negative**

These Regulations make operability amendments to the Seed Marketing (Wales) Regulations 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

The Welsh Government explains in its Explanatory Memorandum that these amendments are “required as a result of the UK’s Exit from the European Union” and that they “amend secondary legislation relating to the marketing of seed and fruit planting material to correct operability deficiencies that were not accounted for in earlier amending instruments.”

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

**Parent Act:** European Union (Withdrawal) Act 2018

**Sift Requirements Satisfied:** Yes



# Agenda Item 3

## Statutory Instruments with Clear Reports 26 September 2022

### **SL(6)236 – [The Building Safety Act 2022 \(Consequential Amendments\) \(Approved Inspectors\) \(Wales\) Regulations 2022](#)**

#### **Procedure: Made Negative**

These Regulations amend the Building (Approved Inspectors etc.) Regulations 2010 to remove references to the requirement for insurance under a scheme approved by the Welsh Ministers in respect of approved inspectors.

The amendments made by these Regulations are consequential on section 48 of the Building Safety Act 2022. That section makes repeals to the Building Act 1984 in respect of insurance requirements for approved inspectors.

**Parent Act:** The Building Safety Act 2022

**Date Made:** 05 July 2022

**Date Laid:** 07 July 2022

**Coming into force date:** 28 July 2022



# Statutory Instruments with Clear Reports

## 26 September 2022

### **SL(6)239 – [The Local Government Investigations \(Functions of Monitoring Officers and Standards Committees\) \(Wales\) \(Amendment\) Regulations 2022](#)**

#### **Procedure: Made Negative**

These Regulations add corporate joint committees (“CJs”) established under Part 5 of the Local Government and Elections (Wales) Act 2021 to the definition of “relevant authority” in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.

These Regulations are part of a package of amendments to legislation that will underpin all CJs and put in place the necessary legislative framework for the effective administration and governance of CJs.

The overall intent is that a CJ will be treated as part of the ‘local government family’ and will be largely subject to the same or similar powers and duties as local authorities in the way that they operate and are governed.

**Parent Act:** The Local Government Act 2000

**Date Made:** 13 July 2022

**Date Laid:** 15 July 2022

**Coming into force date:** 05 July 2022



# Statutory Instruments with Clear Reports

## 26 September 2022

### **SL(6)240 – [The Local Authorities \(Model Code of Conduct\) \(Wales\) \(Amendment\) Order 2022](#)**

#### **Procedure: Made Negative**

This Order amends Part 1 of the Model Code of Conduct as set out in the Schedule to the Local Authorities (Model Code of Conduct) (Wales) Order 2008 to add corporate joint committees established under Part 5 of the Local Government and Elections (Wales) Act 2021 to the list of relevant authorities.

The effect of the amendment would be to make the mandatory Model Code of Conduct applicable to members of corporate joint committees. The Model Code of Conduct governs the conduct of the members of relevant authorities in Wales.

**Parent Act:** The Local Government Act 2000

**Date Made:** 13 July 2022

**Date Laid:** 15 July 2022

**Coming into force date:** 05 August 2022



# Statutory Instruments with Clear Reports

## 26 September 2022

### **SL(6)241 – [The Conduct of Members \(Principles\) \(Wales\) \(Amendment\) Order 2022](#)**

#### **Procedure: Made Negative**

This Order amends article 2 of the Conduct of Members (Principles) (Wales) Order 2001 (“the Order”) to add corporate joint committees established under Part 5 of the Local Government and Elections (Wales) Act 2021 to the list of relevant authorities, making the principles in the Schedule to the Order applicable to members of corporate joint committees.

The Schedule to the Order sets out the principles which govern the conduct of the members of relevant authorities in Wales.

**Parent Act:** The Local Government Act 2000

**Date Made:** 13 July 2022

**Date Laid:** 15 July 2022

**Coming into force date:** 05 August 2022





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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The role of Corporate Joint Committees**

**DATE**            **15 July 2022**

**BY**                **Rebecca Evans MS, Minister for Finance and Local Government**

As the term ends, Ministerial colleagues and I wanted to update the Senedd on the important functions new Corporate Joint Committee (CJCs) will undertake.

The Local Government and Elections (Wales) Act 2021 provides for CJCs as a mechanism for regional collaboration through a more consistent and democratically controlled framework.

I am grateful to Members for this week approving Regulations which, along with a handful of minor ancillary Statutory Instruments, represent the final substantive tranche of legislation to establish the legal framework to provide for these important public bodies.

Four CJCs have been established based on the geographical areas requested by local government reflecting existing regional collaborative arrangements. I see CJCs as one of the most significant, strategic reforms of this Welsh Government, helping to enable and support the delivery of important, specific local government functions at a regional scale where it makes sense to do so.

The regulatory framework for CJCs is designed to provide flexibility and enable local discretion. How a CJC delivers its functions and operates will largely be for determination by its members. This flexibility will enable CJCs to differ between geographical areas to meet the specific needs of their region.

CJCs have significant immediate responsibilities with real impacts for local authorities and people living in their areas. From 30 June 2022 CJCs came under duties to prepare Strategic Development Plans and Regional Transport Plans.

The preparation of Strategic Development Plans by CJCs will enable a more consistent, cost effective and efficient approach to planning. SDPs will deliver more effective planning outcomes for communities by ensuring key issues, development and associated infrastructure is planned for in an integrated and comprehensive way across a wider geographical area.

The Regional Transport Plans will set out policies to provide for safe, integrated, efficient and economic transport facilities and services in the region. These plans must meet the needs of persons living, working, visiting, or travelling through the region. They will also need to be consistent with the Wales Transport Strategy.

This wider regional transport planning is a key element of creating a joined-up and effective bus network. Welsh Government officials are working closely with local authorities on whether proposed new bus planning functions should be transferred from local authorities to CJsCs.

CJsCs also have the power to do anything to enhance or promote the economic well-being of its area. It is our expectation that CJsCs will include city and growth deal governance arrangements alongside other strategic planning for the region.

Local authorities retain the economic well-being powers. Agreements will be made between constituent Local Councils and CJsCs to agree what types of activity in relation to economic wellbeing remains at a local level and what would be best undertaken by the CJC to achieve their regional aspirations and ambitions.

CJsCs provide the legal framework for local authorities to work together on economic development, including the Shared Prosperity Fund (SPF). The Welsh Government does not endorse the UK Government's SPF, which encroaches on our devolution responsibilities and fails to replace EU funding in full. Our *Framework for Regional Investment for Wales*, co-produced with Welsh partners and the OECD, is a guiding policy for the SPF in Wales, which includes the use of CJC structures to deliver replacement EU regional investment funds. This Wales wide and regional approach gives an important strategic framework to support local authorities in their work on regional investment plans to help maximise investment and avoid duplicating efforts and governance.

Two or more CJsCs are able to discharge any of their functions jointly (subject to anything in the regulations or other legislation preventing them doing so) enabling cross-regional working to take place, but within the CJC framework. The OECD project supporting Regional Governance and Public Investment in Wales will include identifying specific areas for cross regional co-operation that the various local authorities would like to support as part of their regional action plans.

I will be meeting each of the four CJsCs to hear about the progress they have made and understand their ambition for regional collaboration. Welsh Government will continue to work with CJsCs to support their ongoing implementation



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**BY**            **Rebecca Evans MS, Minister for Finance and Local Government**

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Four CJCs have been established based on the geographical areas requested by local government reflecting existing regional collaborative arrangements. I see CJCs as one of the most significant, strategic reforms of this Welsh Government, helping to enable and support the delivery of important, specific local government functions at a regional scale where it makes sense to do so.

The regulatory framework for CJCs is designed to provide flexibility and enable local discretion. How a CJC delivers its functions and operates will largely be for determination by its members. This flexibility will enable CJCs to differ between geographical areas to meet the specific needs of their region.

CJCs have significant immediate responsibilities with real impacts for local authorities and people living in their areas. From 30 June 2022 CJCs came under duties to prepare Strategic Development Plans and Regional Transport Plans.

The preparation of Strategic Development Plans by CJCs will enable a more consistent, cost effective and efficient approach to planning. SDPs will deliver more effective planning outcomes for communities by ensuring key issues, development and associated infrastructure is planned for in an integrated and comprehensive way across a wider geographical area.



The Regional Transport Plans will set out policies to provide for safe, integrated, efficient and economic transport facilities and services in the region. These plans must meet the needs of persons living, working, visiting, or travelling through the region. They will also need to be consistent with the Wales Transport Strategy.

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CJsCs also have the power to do anything to enhance or promote the economic well-being of its area. It is our expectation that CJsCs will include city and growth deal governance arrangements alongside other strategic planning for the region.

Local authorities retain the economic well-being powers. Agreements will be made between constituent Local Councils and CJsCs to agree what types of activity in relation to economic wellbeing remains at a local level and what would be best undertaken by the CJC to achieve their regional aspirations and ambitions.

CJsCs provide the legal framework for local authorities to work together on economic development, including the Shared Prosperity Fund (SPF). The Welsh Government does not endorse the UK Government's SPF, which encroaches on our devolution responsibilities and fails to replace EU funding in full. Our *Framework for Regional Investment for Wales*, co-produced with Welsh partners and the OECD, is a guiding policy for the SPF in Wales, which includes the use of CJC structures to deliver replacement EU regional investment funds. This Wales wide and regional approach gives an important strategic framework to support local authorities in their work on regional investment plans to help maximise investment and avoid duplicating efforts and governance.

Two or more CJsCs are able to discharge any of their functions jointly (subject to anything in the regulations or other legislation preventing them doing so) enabling cross-regional working to take place, but within the CJC framework. The OECD project supporting Regional Governance and Public Investment in Wales will include identifying specific areas for cross regional co-operation that the various local authorities would like to support as part of their regional action plans.

I will be meeting each of the four CJsCs to hear about the progress they have made and understand their ambition for regional collaboration. Welsh Government will continue to work with CJsCs to support their ongoing implementation



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**        **The role of Corporate Joint Committees**

**DATE**        **15 July 2022**

**BY**            **Rebecca Evans MS, Minister for Finance and Local Government**

As the term ends, Ministerial colleagues and I wanted to update the Senedd on the important functions new Corporate Joint Committee (CJCs) will undertake.

The Local Government and Elections (Wales) Act 2021 provides for CJCs as a mechanism for regional collaboration through a more consistent and democratically controlled framework.

I am grateful to Members for this week approving Regulations which, along with a handful of minor ancillary Statutory Instruments, represent the final substantive tranche of legislation to establish the legal framework to provide for these important public bodies.

Four CJCs have been established based on the geographical areas requested by local government reflecting existing regional collaborative arrangements. I see CJCs as one of the most significant, strategic reforms of this Welsh Government, helping to enable and support the delivery of important, specific local government functions at a regional scale where it makes sense to do so.

The regulatory framework for CJCs is designed to provide flexibility and enable local discretion. How a CJC delivers its functions and operates will largely be for determination by its members. This flexibility will enable CJCs to differ between geographical areas to meet the specific needs of their region.

CJCs have significant immediate responsibilities with real impacts for local authorities and people living in their areas. From 30 June 2022 CJCs came under duties to prepare Strategic Development Plans and Regional Transport Plans.

The preparation of Strategic Development Plans by CJCs will enable a more consistent, cost effective and efficient approach to planning. SDPs will deliver more effective planning outcomes for communities by ensuring key issues, development and associated infrastructure is planned for in an integrated and comprehensive way across a wider geographical area.

The Regional Transport Plans will set out policies to provide for safe, integrated, efficient and economic transport facilities and services in the region. These plans must meet the needs of persons living, working, visiting, or travelling through the region. They will also need to be consistent with the Wales Transport Strategy.

This wider regional transport planning is a key element of creating a joined-up and effective bus network. Welsh Government officials are working closely with local authorities on whether proposed new bus planning functions should be transferred from local authorities to CJsCs.

CJsCs also have the power to do anything to enhance or promote the economic well-being of its area. It is our expectation that CJsCs will include city and growth deal governance arrangements alongside other strategic planning for the region.

Local authorities retain the economic well-being powers. Agreements will be made between constituent Local Councils and CJsCs to agree what types of activity in relation to economic wellbeing remains at a local level and what would be best undertaken by the CJC to achieve their regional aspirations and ambitions.

CJsCs provide the legal framework for local authorities to work together on economic development, including the Shared Prosperity Fund (SPF). The Welsh Government does not endorse the UK Government's SPF, which encroaches on our devolution responsibilities and fails to replace EU funding in full. Our *Framework for Regional Investment for Wales*, co-produced with Welsh partners and the OECD, is a guiding policy for the SPF in Wales, which includes the use of CJC structures to deliver replacement EU regional investment funds. This Wales wide and regional approach gives an important strategic framework to support local authorities in their work on regional investment plans to help maximise investment and avoid duplicating efforts and governance.

Two or more CJsCs are able to discharge any of their functions jointly (subject to anything in the regulations or other legislation preventing them doing so) enabling cross-regional working to take place, but within the CJC framework. The OECD project supporting Regional Governance and Public Investment in Wales will include identifying specific areas for cross regional co-operation that the various local authorities would like to support as part of their regional action plans.

I will be meeting each of the four CJsCs to hear about the progress they have made and understand their ambition for regional collaboration. Welsh Government will continue to work with CJsCs to support their ongoing implementation

# Agenda Item 4.1

## **SL(6)233 – The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022**

### **Background and Purpose**

The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022 (“these Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred on them by sections 74(1) and 75(1)(b) of the Curriculum and Assessment (Wales) Act 2021 (“the 2021 Act”).

The 2021 Act sets out the legislative framework for a new purpose led curriculum and assessment framework for children and young people from 3 to 16 years old receiving education at:

- maintained schools including maintained nursery schools;
- settings providing Funded Non-maintained Nursery Education (FNNE);
- PRUs; and
- settings providing non-PRU education other than at school arranged by local authorities.

It also makes limited provision for post compulsory education at maintained schools (Part 5 of the 2021 Act).

These Regulations make amendments to secondary legislation required to give full effect to provisions under the 2021 Act and the implementation of the new Curriculum for Wales (“CfW”) from 1 September 2022.

The new CfW will be rolled out for children and pupils in a phased manner. The new CfW will become mandatory for the year groups in schools and other settings as follows:

<b><i>Phased in from:</i></b>	<b><i>School year/learners subject to the CfW</i></b>	<b><i>School year/learners subject to the National (and Local) Curriculum</i></b>
September 2022	Nursery years, reception, year 1 up to year 6 and year 7 for schools/settings which have chosen to implement the new CfW from 2022.	Year 7 of schools/setting which have chosen not to implement the new CfW from 2022; and years 8 to 11.
September 2023	All years up to and including 8	Years 9 to 11



September 2024	All years up to and including 9	Years 10 to 11
September 2025	All years up to and including 10	Year 11
September 2026	Nursery years, reception, and compulsory age learners (years 1 to 11).  In relation to Part 5 of the 2021 Act - those learners in maintained schools in post-16 education (years 12 and 13).	None – the National Curriculum will no longer apply.

These Regulations predominantly make amendments to subordinate legislation made under the Education Act 1996.

Part 1 of these Regulations provides for the commencement of the amendments on 1 September 2022 save as set out in the individual regulations listed in Part 2 and the definition of terminology included in the provisions.

Part 2 makes consequential amendments to other subordinate legislation. For example, amendments within Part 2 amend terminology in regulations so that their provisions align with the 2021 Act, including removing references to “National Curriculum” and the “key stages” and inserting references to “curriculum adopted under the 2021 Act”. It also revokes subordinate legislation not required for the implementation of the CfW, including the Education (National Curriculum) (Exceptions) (Wales) Regulations 1995.

These Regulations also make a minor amendment to the Curriculum and Assessment (Wales) Act 2021 (Transitional and Saving Provision) Regulations 2022.

In addition, these Regulations make two minor amendments to regulation 2 of the Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No.2) Regulations 2022 in response to the Legislation, Justice and Constitution Committee’s report on those regulations. They correct Welsh language definitions appearing in the English text of regulation 2, namely “the 2021 Act” and “head teacher”.

## Procedure

Negative.

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



## Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 19(2)(a), there is a reference to regulation 2(a)(iii) in the National Curriculum (Miscellaneous Amendments) (Wales) Regulations 2016 which is to be omitted. However, there does not appear to be a sub-paragraph (iii) in regulation 2(a) of those Regulations, and it would appear the correct reference should be to regulation 2(a)(ii).

### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 10(7)(a)(ii) inserts a new definition of “key stage” into regulation 3 of The Education (Information About Individual Pupils) (Wales) Regulations 2007 from 1 September 2024. The substituted definition refers to section 103(1) of the Education Act 2002, however section 103 has been repealed by para. 45 of Schedule 2 to the Curriculum and Assessment (Wales) Act 2021 as of 30 April 2021.

### **3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In reviewing these Regulations and the amendments they seek to implement, the Committee notes that in several instances there are inconsistencies with equivalence between the English and Welsh text and, in addition, some of these also include a failure to adhere to the drafting guidelines as set out in *Writing Laws for Wales* (“WLW”). Examples in these Regulations include:

- a. In regulation 7(5)(b)(i)(bb), the form of words used for the amendment does not follow the convention in WLW 7.3(2). Furthermore, the Welsh text does not have any corresponding words for “in its place” when identifying where the new words are to be inserted. As such, it does not follow that the new text will be inserted in exactly the same place as existing text which has been omitted, unlike an amendment that’s described as a substitution. In addition, the amendment in 7(5)(b)(i)(cc) takes a different approach to that in regulation 7(5)(b)(i) (bb) immediately before it.
- b. In regulation 8, in the Welsh text, the translation of the title is incorrect in the body of the regulation as the word that corresponds to “Education” is missing.
- c. In regulation 10(2), in the Welsh text, the words that correspond to “In regulation 3,” that describe the location of where the new definitions should be inserted, are missing from the translation.



- d. In regulation 11(2), in the Welsh text, the new definition of "lleoliad" ("setting") is divided into paragraphs (a) to (d). However, the 2009 Regulations were made when the Welsh alphabet was used for the subdivisions of the translations. Therefore, the new definition of "lleoliad", which will be inserted in those Regulations, should have a final paragraph that is numbered "(ch)" rather than "(d)" to be consistent with the numbering style of the original instrument (see WLW 7.18(2)). In addition, the conjunction after paragraph (c) should be changed from "a" to "ac" as a consequence of that change.
- e. In regulation 11(2), in the Welsh text, there's a conjunction "ac" after the penultimate definition in the list of definitions to be inserted in regulation 2 of the 2009 Regulations. However, there's no conjunction "and" after the penultimate definition in the English text.

## Merits Scrutiny

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

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

In regulation 11(4), the term "the 2009 Regulations" has been used. However, this term has not been previously defined in regulation 11(1) of these Regulations (unlike elsewhere when adopting this approach, for example regulations 7(1) and (6), and 10(1) and (9)). It also has not been defined in regulation 2(1) of these Regulations or, by virtue of regulation 2(2), the 2021 Act.

### **5. 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**

In reviewing these Regulations and the amendments they seek to implement, the Committee notes that in several instances the Welsh Government does not appear to have adhered to its own drafting guidelines, as set out in WLW. The Committee encourages the Welsh Government to adhere to its own standards when drafting legislation. Significant examples of these Regulations include:

- a. In regulation 2(1), "maintained school" is defined for the purposes of these Regulations. However, the term is also defined and given a different meaning in regulations 7(6), 10(9), 14(5) and 15(4) for those particular regulations. It would be helpful if there is a signpost along with the definition in regulation 2(1) to alert the reader and possibly explaining where the definition does or does not apply (see WLW 4.8(5)).
- b. In regulations 9(3), 12, 15(3)(c) and (d), there are instructions to "revoke" specific provisions found within relevant regulations, but elsewhere the term "omit" has been



used. This includes in regulation 15(3)(a) and (c) where a mixture of both “omit” and “revoke” are used as instructions when revoking provisions found within the same regulation. As such the effect could be confusing to the reader, and the drafting guidance of the Welsh Government is quite clear that “revoke” should only be used when revoking the whole of the regulation (such as in regulations 4 and 8) but “omit” should be used when revoking specific provisions within the regulation, but not the whole instrument (see WLW 7.4(1) and (3)).

- c. In regulation 6(2), the amendment is described as being inserted “In regulation 2”. However, regulation 2 of the 2002 Regulations is subdivided into paragraphs about interpretation. Therefore, the description of the amendment isn’t sufficiently precise in describing where the new definition should be inserted in regulation 2 (see WLW 7.7(1)). Later amendments of a similar kind in these Regulations, such as those found in regulation 7(2) and (5)(a), 14(2) and 20, have been more precise in their descriptions when amending a regulation 2 which has subdivisions, and have said “In regulation 2(1)...”.
- d. In regulation 7(2)(a), in both language texts, the definition of “Hwb” does not have the corresponding definition used in the other language in brackets afterwards. Other definitions found in regulation 2(1) of the 2002 Regulations where the same word is used as the definition in both languages, such as “grant” and “mentor”, have still included the corresponding definition in brackets to aid the reader (WLW 4.15(6)).
- e. There are other instances of departure from WLW throughout these Regulations including regulation 7(5)(b)(iii)(aa).

## Welsh Government response

### Technical Scrutiny point 1:

The Welsh Government notes the Committee report and agrees with its conclusion. The reference in regulation 19(2)(a) should be changed from regulation 2(a)(iii) to regulation 2(a)(ii) in both languages. The 2022 Regulations will be amended to address this at the next available opportunity.

### Technical Scrutiny point 2:

The Welsh Government notes the Committee report but disagrees and believes the amendment is appropriate. Section 103(1) of the Education Act 2002 was repealed by paragraph 45 of Schedule 2 to the 2021 Act, but then saved by regulation 3 of SI 2022/111 in particular circumstances. This means that the section 103 repeal has not taken effect in this instance and the substitution made by these 2022 Regulations is therefore required to bring the Education (Information About Individual Pupils) (Wales) Regulations 2007 in line with other amendments reflecting the roll out of the new curriculum.





### **Technical Scrutiny point 3a:**

- The Welsh Government notes the Committee report on the form of words but does not propose to make an amendment. The provision and legislative context support a different approach to the Guidance and the form of words work in law.
- The Welsh Government notes the Committee report on the Welsh language syntax but does not agree. The words “ar ôl “cyrhaeddiad” yn y lle cyntaf y mae’n digwydd” make it clear that the text is to be removed and new text inserted in its place after “cyrhaeddiad”.
- The Welsh Government notes the Committee report on the approach in making amendments, and is of the view that the legislative context and sentence structure supported this approach.

### **Technical Scrutiny point 3b:**

The Welsh Government notes the Committee report and agrees that the missing word should be included in the Welsh name of the SI. The 2022 Regulations will be amended to address this at the next available opportunity.

### **Technical Scrutiny point 3c:**

The Welsh Government notes the Committee report and agrees that the text “yn rheoliad 3” should be included in the Welsh text of regulation 10(2) at the beginning of that provision. The 2022 Regulations will be amended to reflect this at the next available opportunity.

### **Technical Scrutiny point 3d:**

The Welsh Government notes the Committee report and agrees that the Welsh alphabet should be used in the amendment to the subdivisions of the new definition of “lleoliad”, although there is no risk of misinterpretation of the law in this case. The 2022 Regulations will be amended to reflect this at the next available opportunity.

### **Technical Scrutiny point 3e:**

The Welsh Government notes the Committee report and agrees to amend the 2022 Regulations to add a conjunction to regulation 11(2) in the English text at the next available opportunity.

### **Merit Scrutiny point 4:**

The Welsh Government notes the Committee report and agrees with it. The 2022 Regulations will be amended at the next available opportunity so that regulation 11(1) includes the words (“Rheoliadau 2009”) and (“the 2009 Regulations”) after the footnote reference to the title of the Regulations in both the Welsh and English texts.

### **Merit scrutiny point 5a:**



The Welsh Government notes the Committee report on the definition of “maintained school” but does not propose to amend as it believes the definitions provided are clear. The Welsh Government will consider the drafting suggestion in future.

**Merit scrutiny point 5b:**

The Welsh Government notes the point but does not propose to amend as the effect is clear in law.

**Merit scrutiny point 5c:**

The Welsh Government notes the Committee report and agrees that the reference in regulation 6(2) should be to regulation 2(1) and not regulation 2. The 2022 Regulations will be amended to reflect this at the next available opportunity.

**Merit scrutiny point 5d:**

The Welsh Government notes the Committee report but does not propose to amend to include italicised definitions of the same word as “Hwb” is a proper noun (an online system) which does not have a name in a different language and there is no potential for misunderstanding.

**Merit scrutiny point 5e:**

The Welsh Government notes the Committee report but does not propose amendments to the example listed as the drafting style is appropriate to the legislative context and the provision is clear and works in law.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**11 August 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**

## **SL(6)237 – The Education (Student Finance) (Ukrainian Nationals and Family Members) (Miscellaneous Amendments) (Wales) Regulations 2022**

### **Background and Purpose**

These Regulations amend existing student support legislation to:

- make persons granted leave under the Ukraine Scheme, including those persons granted leave outside the immigration rules in connection with the Russian invasion of Ukraine, eligible for student support, home fee status, and the undergraduate tuition fee cap when starting or continuing a course on or after 1 August 2022; and
- make students undertaking an undergraduate distance learning course eligible to apply for Grants for Dependents.

### **Procedure**

Negative

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Jeremy Miles MS, Minister for Education and Welsh Language in a letter to the Llywydd dated 7 July 2022.

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



*"...the 2022 Regulations as laid will come into force before 21 days have elapsed. If the 21 day convention were to be observed, Ukrainian students would experience avoidable delays in accessing support, contrary to Welsh Government policy, placing them at a disadvantage when compared with other students. It could adversely impact the ability to start a course of higher education in the new academic year. This would be an unfortunate and avoidable source of distress, disappointment and harm to students already suffering the trauma of war."*

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 August 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

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**Legislation, Justice and Constitution Committee**



Ein cyf/Our ref MA/JMEWL/2077/22

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

7 July 2022

Dear Llywydd

**The Education (Student Finance) (Ukrainian Nationals and Family Members) (Miscellaneous Amendments) (Wales) Regulations 2022.**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 24 July 2022, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The Education (Student Finance) (Ukrainian Nationals and Family Members) (Miscellaneous Amendments) (Wales) Regulations 2022 (“the 2022 Regulations”) amend:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2014;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017;
- the Education (Student Support) (Wales) Regulations 2018;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

These regulations underpin the system of financial support for students who are ordinarily resident in Wales and taking designated courses of higher education, set out the categories of person who are eligible for home fee status, authorise rules of eligibility in relation to certain awards connected to education and training, and set out the categories of person who are able to benefit from capped tuition fees.

The 2022 Regulations:

- make persons granted permission to stay in the UK by the UK Government under Appendix Ukraine Scheme of the Immigration Rules and those persons granted leave outside the Immigration Rules in connection with the Russian invasion of Ukraine

Bae Caerdydd • Cardiff Bay  
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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.

- eligible for student support, home fee status, and the undergraduate tuition fee cap when starting or continuing a course on or after 1 August 2022; and
- make students undertaking an undergraduate distance learning course eligible to apply for Grants for Dependents.

Access to student support, home fee status, and the undergraduate tuition fee cap delivers the Welsh Government's commitment, as a Nation of Sanctuary, to support people fleeing the war in Ukraine. Those eligible under the Ukraine Scheme will have the opportunity to undertake higher education whilst in the UK, helping to secure their well-being and re-build their life.

The Welsh Government is determined that support be in place for those affected by the war for the start of the 2022/23 academic year on 1 August, and has been working at pace with its delivery partner (the Student Loans Company) to ensure this happens. I made a statement to this effect on 25 May 2022. Unfortunately, emerging operational constraints at the Student Loans Company mean it is not possible to make these amendments precisely in time for the start of the new academic year on 1 August. Rather, the Welsh Government must bring forward the coming into force date to 24 July 2022. In the absence of this change, it would not be possible to accept or process applications for support until after the start of the new academic year.

As such, the 2022 Regulations as laid will come into force before 21 days have elapsed. If the 21 day convention were to be observed, Ukrainian students would experience avoidable delays in accessing support, contrary to Welsh Government policy, placing them at a disadvantage when compared with other students. It could adversely impact the ability to start a course of higher education in the new academic year. This would be an unfortunate and avoidable source of distress, disappointment and harm to students already suffering the trauma of war.

The 2022 Regulations also ensure parity of support for distance learners with those studying on other courses. These amendments are made in order to deliver on a Welsh Government 'Programme for Government' commitment to widen access to childcare amongst those in education.

Policy on Ukraine has been confirmed to stakeholders in a Student Finance Wales Information Notice, in addition to the Written Cabinet Statement I made in May. Policy on GfDs is to be confirmed in another Notice very shortly. Not adhering to the 21 day convention will not adversely affect them – indeed, it is designed to assist those who the 2022 Regulations provide for.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, 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,



**Jeremy Miles AS/MS**

Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

## **SL(6)238 – [The Agricultural Wages \(No. 2\) \(Wales\) Order 2022](#)**

### **Background and Purpose**

This Order revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (Wales) Order 2022.

Part 2 of the Order provides that agricultural workers are to be employed subject to the terms and conditions set out in Parts 2 to 5 of the Order and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about the minimum rates of remuneration that must be paid to agricultural workers. Provision is made for accommodation offset allowance which may be deducted from an agricultural worker's remuneration. Provision is also made for dog allowance, on-call allowance, night work allowance and birth and adoption grants which do not form part of an agricultural worker's remuneration.

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified. Provision is made about calculating the amount of agricultural sick pay that an agricultural worker is entitled to. A payment of statutory sick pay is to count towards an agricultural worker's entitlement to agricultural sick pay.

Part 5 makes provision about an agricultural worker's entitlement to time off. Provision is made about an agricultural worker's entitlement to rest breaks, daily rest and a weekly rest period. Provision is also made specifying the agricultural worker's annual leave year and about the agricultural worker's entitlement to annual leave, holiday pay and about payment in lieu of annual leave. Provision is also made about an agricultural worker's entitlement to be paid bereavement leave.

### **Procedure**

Negative.

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

### **Technical Scrutiny**

The following three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

**1. Standing Order 21.2(iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this**



This Order came into force on 6 August 2022 but it took effect from 1 April 2022; in other words, it had retrospective effect. The previous 2022 Order (i.e. the Agricultural Wages (Wales) Order 2022) also had retrospective effect.

The Explanatory Memorandum states that “delays to making the previous 2022 Order meant this Order could not be progressed to the usual annual timetable”.

We note that the Agricultural Sector (Wales) Act 2014 does not expressly provide that agricultural wages orders can have retrospective effect

The Welsh Government is asked:

- what, if any, issues the retrospectivity of this Order has caused in practice for agricultural workers and their employers, and what unfairness has the retrospectivity caused?
- to confirm whether any arrangements have been put in place to ensure that the next Order will be progressed in a more timely manner, without the need for it to have retrospective effect?

## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Article 2(1) defines “apprenticeship framework” by reference to apprenticeship frameworks that have been published by Lantra. A footnote provides a link to the following webpage: <https://acwcerts.co.uk/web/frameworks-library>. However, the frameworks library on that webpage appears to be empty.

This creates confusion as to the meaning of an important term (“apprenticeship framework”) used in the Order. It also makes the law inaccessible.

The Welsh Government is asked to clarify what is meant by “apprenticeship framework” and how readers can find out what apprenticeship frameworks for the agricultural sector in Wales have been published by Lantra.

The Welsh Government is also asked to confirm that the date of any apprenticeship framework will be clear, so that the Order captures only apprenticeship frameworks that have already been published. This is necessary to avoid the Order capturing **future** apprenticeship frameworks – it is crucial to avoid capturing future apprenticeship frameworks because the content of those frameworks is currently unknown and capturing them in the Order would amount to sub-delegating to Lantra a power to legislate.

## **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Article 10 says that agricultural workers **must** maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment, and that they **must**





inform their employer if they have gained qualifications and experience that enables them to be employed at a different grade.

The Welsh Government is asked to explain how will this **statutory duty** be enforced?

## Merits Scrutiny

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

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

Articles 29, 30 and 31 provide for rest breaks, daily rest periods and weekly rest periods. These articles include new provisions that apply to agricultural workers who are under 18.

However, the Explanatory Memorandum makes no reference to a children's rights impact assessment having been carried out. Under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers must, when exercising any of their functions, have due regard to the requirements of, among other things, Part I of the UN Convention on the Rights of the Child.

Can the Welsh Government confirm it complied with that duty when making the Order and what, if any, were the main issues that arose as part of its consideration of the Convention?

## Welsh Government response

### Technical Scrutiny

#### **Point 1: Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this**

Welsh Government is not aware of any issues or unfairness the retrospective application of the Order has caused in practice for agricultural workers or their employers.

Welsh Government and the Panel agree that the 2023 Order must be made in a timely manner and without retrospective effect. The 2022 (No.2) Order was made later than the usual coming into force date of 1 April due to the delay in making the 2022 Order. It is not anticipated that the delayed making of the 2022 (No.2) Order will delay the making of the 2023 Order.

The next Panel meetings take place on 5 and 6 September 2022, where the draft 2023 Order will be negotiated and agreed prior to consultation with stakeholders. Policy officials have drafted a timetable setting out key milestones and deliverables for the Panel's agreement which will ensure the 2023 Order is made by 1 April 2023, as intended by the Panel.

#### **Point 2: Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation**



Welsh Government has checked the link to the frameworks library and the link is working. It is clear from the frameworks library which frameworks are published by Lantra and the issue date of each of those frameworks.

The definition of 'apprenticeship framework' is "any of the **current** apprenticeship frameworks for the agricultural sector in Wales published by Lantra, or previous versions of the apprenticeship frameworks for the agricultural sector in Wales published by Lantra". Welsh Government considers that the use of the word 'current' makes it clear that it is those apprenticeship frameworks which have been issued before the date the Order comes into force that are taken into account.

**Point 3: Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation**

Article 10 has been included in the Agricultural Wages Order since 2016. It is included to ensure that agricultural employees maintain documentary evidence of qualifications and experience gained by them in order for them to be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade. Welsh Government would not propose to enforce this provision. It is simply the case that if employees do not comply with article 10 and do not maintain documentary evidence of qualifications and experience, they may not be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade.

**Merits Scrutiny**

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

A Children's Rights Impact Assessment was carried out in relation to the Order and it was contained within the Integrated Impact Assessment. No particular consideration was given to articles 29, 30 and 31, as these articles reflect the existing provisions relating to rest periods which are contained within the Working Time Regulations 1998, and which therefore already apply to agricultural employees in Wales.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**25 August 2022**



## **SL(6)243 – The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022**

### **Background and Purpose**

Upon the coming into force of section 239 of the Renting Homes (Wales) Act 2016 (“the 2016 Act”), the majority of existing tenancies will be converted into occupation contracts by virtue of section 240.

At present, where an existing assured or assured shorthold tenancy does not contain a rent variation term, section 13 of the Housing Act 1988 (“the 1988 Act”) allows the landlord to vary the rent by serving a notice on the tenant. If the tenant is unhappy with the notice of variation, they may apply to a rent assessment committee for a determination of the rent for the dwelling. The rent assessment committee will determine the rent in accordance with section 14 of the 1988 Act, and this will become the rent for the dwelling, unless the landlord and tenant agree otherwise.

Sections 104 and 123 of the 2016 Act allow the landlord, under a secure contract or periodic standard contract respectively, to give a notice to the contract-holder varying the rent. The 2016 Act does not include a mechanism for the contract-holder to seek a determination of rent from a rent assessment committee.

The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022 (“the Regulations”) seek to replicate the existing provisions under sections 13 and 14 of the 1988 Act in respect of relevant converted contracts.

An occupation contract is a “relevant converted contract” if, immediately before the coming into force of section 239 of the 2016 Act, it was a tenancy to which section 13 of the 1988 Act applied. A contract-holder under a relevant converted contract will continue to have the right to apply to a rent assessment committee for a determination of the rent, following a rent variation notice from the landlord.

### **Procedure**

Negative

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

### **Technical Scrutiny**

The following nine points are identified for reporting under Standing Order 21.2 in respect of this instrument.



## **1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

The Committee notes that there are inconsistencies between the English and Welsh texts of the Regulations.

In regulation 2, in the definition of “relevant improvement”, in paragraph (a), the words that correspond to “of the Act” are missing from the Welsh text.

There are two grammatical errors in regulation 6 of the Welsh text, which create confusion as to the interpretation of the opening words before paragraph (a):

- The words “gael ei osod” (“to be let”) contain the masculine form of the pronoun “ei”, causing the soft mutation of “gosod” (“let”). As this pronoun is referring back to “annedd” (“dwelling”), a feminine noun in Welsh, the phrase should be “gael ei *gosod*”, because there is no soft mutation after the feminine form of “ei”. The soft mutation indicates that the “ei” is masculine, which creates confusion as to which noun that pronoun replaces.
- The feminine pronoun “hi” is used in “ymwneud â hi” as the translation for “relates” when referring back to “...yr un math o gontract wedi ei drosi perthnasol” (“...the same type of relevant converted contract”). Use of the masculine form of “math” (rather than the feminine “yr un *fath*”) suggests that the masculine pronoun should be used for “relates”, so that it reads “ymwneud *ag ef*”. Use of the feminine pronoun therefore causes confusion as to the interpretation of the provision.

In the form in the Schedule, in question a) of Part 8, the words that correspond to “or licensee(s)” and “or licence” are missing from the Welsh text.

The Welsh Government is reminded that the Welsh and English texts of the Regulations have equal standing, and care must be taken to ensure consistency.

## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 2 provides that “relevant converted contract” has the meaning given by paragraph 15(3) of Schedule 12 to the 2016 Act, which is as follows:

*A converted contract is a relevant converted contract if immediately before the appointed day it was a tenancy to which section 13 of the Housing Act 1988 (c.50) (increases of rent under assured periodic tenancies) applied.*

Regulation 2 then defines “relevant preceding tenancy or licence” by reference to the definition of “relevant converted contract”, and “relevant tenant or licensee” by reference to the definition of “relevant preceding tenancy or licence”.

There are other references to “licence” and “licensee” in other definitions in regulation 2, in regulations 6 and 8 and in the prescribed form in the Schedule.



A converted contract is only a “relevant converted contract” if it was previously a *tenancy* to which section 13 of the 1988 Act applied. It is therefore unclear how a *licence* that is converted to an occupation contract by the 2016 Act could ever be a *relevant* converted contract.

Neither the Explanatory Note nor the Explanatory Memorandum make any reference to the Regulations applying in relation to licences or licensees.

The Welsh Government is asked to explain the basis for including the terms “licence” and “licensee” throughout the Regulations and in the prescribed form.

### **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The definition of “relevant improvement” in regulation 2 appears to be based on the definition set out in section 14(3) of the 1988 Act (“the 1988 Act definition”). The 1988 Act definition refers to an improvement “carried out during the tenancy”. In contrast, paragraph (a) of the definition in regulation 2 refers to an improvement “carried out in relation to the relevant converted contract”. This drafting suggests that, under the Regulations, the improvement is to the terms of the contract, rather than to the dwelling.

As the Regulations seek to continue the application of section 14 of the 1988 Act to relevant converted contracts, it would appear that the drafting of paragraph (a) of the definition in regulation 2 is defective.

The Welsh Government is asked to explain why paragraph (a) of the definition in the Regulations differs from the 1988 Act definition.

### **4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Paragraph (b) of the definition of “relevant improvement” in regulation 2 is unclear.

The 1988 Act definition provides that a “relevant improvement” is one which was either:

- Carried out during the tenancy to which the rent variation relates, or
- Carried out during a previous assured or assured shorthold tenancy within the 21-year period before the date of service of the notice.

Paragraph (b) of the definition in regulation 2 does not appear to have the same effect as the second strand of the 1988 Act definition. In particular, the use of the defined term “relevant preceding tenancy” in paragraph (b)(ii) and (iii) of the definition in regulation 2 causes confusion. A previous tenancy can only be a “relevant preceding tenancy” if it existed before section 239 of the 2016 Act came into force and it became a relevant converted contract on or after section 239 came into force. This means that improvements carried out by the contract-holder during any previous tenancies are not within scope of paragraph (b), whereas these could have been within scope of the equivalent part of the 1988 Act definition.



The Welsh Government is asked to explain why the definition of “relevant improvement” in regulation 2 differs from the 1988 Act definition.

The Welsh Government is also asked to clarify the distinction between paragraphs (a) and (b) of the definition in regulation 2. These paragraphs would appear to cover the same circumstances, unlike the 1988 Act definition which clearly envisaged two separate sets of circumstances.

**5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 6 sets out the assumptions to be made by a rent assessment committee when making a determination of rent for a dwelling under a relevant converted contract. Two aspects of this regulation are unclear:

- The words preceding paragraph (a) refer to the dwelling being let on the open market “under the same type of relevant converted contract”. Use of the defined term “relevant converted contract” does not make sense in this context. It appears that what is meant here (and in paragraph (a) itself) is “an occupation contract of the same type as the relevant converted contract”.
- Paragraph (c) sets out an assumption relating to relevant improvements. There is a lack of clarity as to what may be included in this assumption, particularly when paragraph (c) is read alongside the definitions of “relevant improvement” and “relevant tenant” in regulation 2, and the questions in Part 8 of the prescribed form in the Schedule.

The Welsh Government is asked to clarify its intentions in relation to these assumptions. The Welsh Government is also asked whether it considers that the drafting of regulation 6 is sufficiently clear to enable the reader to understand the meaning of the legislation.

**6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 8(2) amends “regulation 2” of the Rent Assessment Committees (England and Wales) Regulations 1971 (“the 1971 Regulations”). It should instead refer to “regulation 2(2)”, to clearly identify the paragraph of regulation 2 that is being amended.

**7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 8(2)(b) inserts definitions into the 1971 Regulations. The inserted definition of “relevant preceding tenancy or licence” is as follows:

*“relevant preceding tenancy or licence” means a tenancy or licence which existed before the appointed day and which on or after the appointed day became a relevant converted contract;*



However the definition of “the appointed day” in this context, set out in section 242 of the 2016 Act, has not been inserted into the 1971 Regulations.

**8. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 3(3) of the 1971 Regulations relates to the giving of notice of a hearing. Sub-paragraphs (a) and (b) set out the requirements in relation to two specific circumstances, whereas sub-paragraph (c) is a catch-all provision that applies “in every other case”.

Regulation 8(4) of the Regulations inserts the words “relevant tenant or licensee, or relevant contract-holder” into regulation 3(3)(c) of the 1971 Regulations. This makes the catch-all provision overly complex and difficult to understand.

The Welsh Government is asked whether it considered instead inserting a provision between sub-paragraphs (b) and (c) of regulation 3(3), to ensure that the notice requirements of the 1971 Regulations in relation to relevant converted contracts are clear.

**9. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 8(5)(a) purports to replace the words “assured tenancies or agricultural occupancies” in regulation 5(1)(b) of the 1971 Regulations. However the current wording in regulation 5(1)(b) is “assured tenancies or *assured* agricultural occupancies” (emphasis added). It is therefore unclear how the amendment as drafted could take effect.

## Merits Scrutiny

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

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

The Regulations contain fairly complex provisions that will be of interest to contract-holders wishing to challenge a rent variation notice. The Welsh Government is asked whether there will be guidance available to assist contract-holders in understanding their rights under the Regulations.

The prescribed form set out in the Schedule to the Regulations requests information that is clearly highly relevant to a determination by a rent assessment committee. However the form contains very little guidance for contract-holders, who may struggle to answer the questions in sufficient detail (for example, in response to Part 8, the contract-holder may be unaware of the actions of any other former tenant). The Welsh Government is asked whether there will be guidance to accompany the prescribed form.

**11. 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.**



No formal consultation has been carried out in relation to the Regulations. The Explanatory Memorandum provides the following explanation:

*Given the very narrow and technical nature of these regulations, the purpose of which is simply to preserve existing arrangements, it was decided that a traditional consultation approach was unnecessary. Instead, the draft SI was shared with a group of key stakeholders with an interest in these matters and their views were taken into consideration in finalising the regulations.*

The Welsh Government is asked whether the stakeholders consulted on the draft Regulations included representatives of landlords and of tenants.

## **12. 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.**

In a number of places the Regulations fail to follow the drafting guidance set out in Writing Laws for Wales (“WLW”). For example:

- In regulation 2, in the Welsh text, some of the definitions in the list are not ordered correctly according to the Welsh alphabet (WLW 4.15(2)).
- In regulation 8(2)(a) and (c) the form of words should be “for X substitute Y” instead of “replace X with Y” (WLW 7.3(2)).
- In the footnotes, statutory instruments should be referred to by citation rather than full title (WLW 6.10(6) and it is not necessary to repeat citations in subsequent footnotes (WLW 6.10(2)).

The Welsh Government is reminded of the need to follow relevant drafting guidance.

## **Welsh Government response**

### **Technical Scrutiny point 1:**

The Welsh Government thank the Committee for raising these points and will make the appropriate amendments before the Regulations come into force.

### **Technical Scrutiny point 2:**

The Welsh Government has considered technical scrutiny point 2 and respectfully refers the Committee to paragraph 15(3) of Schedule 12, as amended by the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022/795, which provides that:

- (3) A converted contract is a relevant converted contract if—
- (a) immediately before the appointed day it was a tenancy or licence to which section 13 of the Housing Act 1988 (c. 50) (increases of rent under assured periodic tenancies) applied.

The Welsh Government does not therefore consider an amendment is necessary to achieve the intended legal effect.





### **Technical Scrutiny point 3:**

The Welsh Government thank the Committee for raising this point. Whilst the Welsh Government considers that the current drafting does adequately achieve the correct legal effect, amendments will be made to clarify that the improvements referred to, are those carried out in relation to the dwelling which is the subject of the converted contract.

### **Technical Scrutiny point 4:**

The Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force. The amendment will involve re-working the definition of "relevant improvement" so no further clarification is required response to this point.

### **Technical Scrutiny point 5:**

In response to the first bullet point in technical scrutiny point 5 the Welsh Government thank the Committee for raising this point and will make appropriate amendments before the Regulations come into force to bring clarification to the meaning of the legislation.

In relation to the second bullet point in technical scrutiny point 5, the Welsh Government consider that the intended effect is clear, in that any improvement not carried out pursuant to an obligation, or where an obligation arises but is not related to the specific improvement in question, then that improvement is discounted for the purposes of rent determination.

### **Technical Scrutiny point 6:**

The Welsh Government considers that, in practice, the amendments work because it is clear what amendments are required from the context of regulation 8 and the specific reference to the provisions in regulation 2 of the 1971 regulations which require amendment. Therefore, the Welsh Government considers that no further amendments are required.

### **Technical Scrutiny point 7:**

Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force.

### **Technical Scrutiny point 8:**

The Welsh Government does not consider that it is necessary to insert a provision between sub-paras (b) and (c) of regulation 3(3), to ensure that the notice requirements of the 1971 Regulations in relation to relevant converted contracts are clear. The Welsh Government is not of the view that the insertion as drafted, is overly complex or unclear.

### **Technical Scrutiny point 9:**

Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force.

### **Merit Scrutiny point 10:**



The prescribed form largely replicates the current form used by the Residential Property Tribunal (RPT). A guidance booklet is provided by the RPT to accompany this form and the Welsh Government will work with the RPT to make any necessary amendments to this guidance booklet.

**Merit Scrutiny point 11:**

Yes, stakeholders that represent both landlords and tenants were part of the stakeholder consultation group including National Residential Landlords Association, Guild of Residential Landlords, Shelter Cymru, Tenant Participation and Advisory Service, Citizens Advice and National Union of students.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**26 August 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament **Pack Page 34**

**Legislation, Justice and Constitution Committee**



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Implementation of the Renting Homes (Wales) Act 2016: further Subordinate Legislation

**DATE** 15 July 2022

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

Earlier this week the Senedd approved the following pieces of subordinate legislation necessary to fully implement the Renting Homes (Wales) Act 2016:

- ***the Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022;***
- ***the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022; and***
- ***the Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022.***

In addition, on Monday 18 July I will be laying ***the Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022*** (which do not require the approval of the Senedd in plenary).

The purpose of these regulations is to preserve an entitlement which is currently available to certain tenants with an assured or assured shorthold tenancy: namely the ability to refer a rent variation notice from their landlord to a Rent Assessment Committee to seek a rent determination.

These regulations will provide that when existing tenancies which include such a provision convert into occupation contracts this entitlement will carry over, and (as is currently the case) a Rent Assessment Committee will be able to take into account a range of factors to determine what, in its opinion, is an appropriate rent for the dwelling. As is the case with current arrangements, unless the landlord and tenant agree otherwise, the rent determined by the Rent Assessment Committee will be the rent payable under the contract.

I have also re-laid today a revised version of ***the Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022*** which take account of the Senedd's Legislation Justice and Constitution Committee reporting points and include an amendment to the Energy Act 2011 which was omitted from the original version laid on 21 June 2022.

This SI is subject to the Senedd's affirmative procedure which means it will need to be approved by the Senedd in plenary before it can be made. A plenary debate is being scheduled as soon after summer recess as possible, and I will issue a further written statement after that has taken place confirming the outcome of the debate.

I have also published today – in draft form – ***The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022***.

These regulations make saving and transitional provisions in relation to the 2016 Act. The purpose of these regulations is as follows:

- to ensure that where particular processes relating to existing tenancies and licences (for example possession proceedings) have already been commenced on the date at which the 2016 Act comes into force, these processes are able to be concluded in accordance with the provisions of the legislative framework under which they were initiated;
- to ensure that certain entitlements which exist in particular types of current tenancies (for example a request for improvement) are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract, with the correct balance being struck in respect of both parties' rights and obligations; and
- to confirm that certain provisions relating to temporary accommodation will not apply until 12 months after the coming into force of the 2016 Act.

Whilst these regulations do not require the approval of the Senedd in plenary, they are being published in draft form today so that they are available to stakeholders in sufficient time ahead of the 1 December coming into force date. They are not being made in their final form until the Autumn as the final versions will include references to the two Consequential Amendments SIs which have not yet been made: no other changes to these regulations are anticipated. Again, I will publish a further written statement when this SI has been formally made in the autumn.

In August I will be making ***the Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022*** – which are subject to the Senedd's negative procedure, meaning they do not have to be approved by the Senedd in plenary. Again, a further written statement will be issued to advise members when these have been made.

Finally, I will also shortly be making the two Commencement Orders necessary to bring the provisions of the 2016 Act fully into force on 1 December 2022. Again, I will publish a further written statement to alert Members when these have been made.

All of the statutory instruments made this week can be accessed [here](#).

Guidance, and other resources for landlords and tenants on the Renting Homes (Wales) Act and subordinate legislation can be accessed via the Renting Homes Wales website: <https://gov.wales/housing-law-changing-renting-homes>.

# Agenda Item 4.5

## **SL(6)247 – The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022**

### **Background and Purpose**

The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022 (“the Regulations”) make amendments to secondary legislation as a consequence of the provisions of the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

Generally, these amendments either:

- (a) ensure that existing provision in primary legislation continues to have appropriate effect by referencing the relevant occupation contracts alongside references to existing types of tenancies or by including the terminology used in the 2016 Act; or
- (b) where the provisions of the 2016 Act are intended to replace elements of existing law or the existing law is incompatible with that set out in the 2016 Act, by disapplying that law.

The Explanatory Memorandum to the Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

### **Procedure**

Negative.

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

### **Technical Scrutiny**

The following six points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the Welsh language version of the Regulations, in Schedule 1, at the heading of paragraph 3, the word “Regulations” is missing from the translation of the name of the statutory instrument, even though it is correct in the paragraph itself.



## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

In Schedule 1, at paragraph 17(b)(iii)(aa) and (bb), the descriptions are misleading by beginning with the words “in paragraph (a), in the definition of [X].” The drafting suggests that the two definitions appear “in paragraph (a)” which is a subdivision of “paragraph 4(1)” (i.e. “paragraph 4(1)(a)”).

However, there is more than one paragraph (a) in paragraph 4(1) as each definition contains a “paragraph (a)”. Therefore, the words should be drafted in a different order, “in the definition of X, in paragraph (a)”.

The same issue arises in paragraph 17(b)(ix)(aa) and (bb), and 17(b)(xvii)(aa) and (bb).

## **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In Schedule 1, at paragraphs 19(b)(ii) and (iii) the text provides that the inserted text should be “...after “assured **monthly** periodic tenancy” ...”.

But the word “monthly” does not appear in regulation 3(d) and (e) of the 1997 Regulations, only “assured periodic tenancy”.

## **4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

In Schedule 1, at paragraph 19(c)(iv)(ii), the description says “in the words before paragraph (a)”. But there is more than one “paragraph (a)” in Note 3, therefore the description should be described in a more specific manner, as is done elsewhere in paragraph 19(c)(iv)(jj) and other paragraphs which use the words “first paragraph” each time if there is more than one paragraph (a) or (b) in the Note.

## **5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In Schedule 1, in paragraph 20(a), the location of the amendment is referred to as “**paragraph** (a)” however “**sub-paragraph** (a)” is correct. Paragraph 20(b), correctly refers to “sub-paragraph (b)” which shows an inconsistency here.

## **6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In Schedule 1, at paragraph 21(a), in both languages, the equivalent definition should be included in brackets after the new definition “secure contract”, as required by the guidance in paragraph 4.15(6) in Writing laws for Wales.

Secondly, in the English language 2003 Regulations, the word “and” appears after the last but one definition, “the Common Travel Area”. If the new definition “secure contract” is inserted “at the appropriate place in alphabetical order” it will appear at the end of the



present list of definitions. Therefore another provision is required to remove the word “and” in the English text, and a full stop is required instead of a semi colon at the end of the definition of “secure contract”.

## **Merits Scrutiny**

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

## **Welsh Government response**

### **Technical Scrutiny point 1**

#### **Response**

Welsh Government thank the LJCC for raising this point and will make the appropriate amendment before the Regulations come into force.

### **Technical Scrutiny point 2:**

#### **Response**

Welsh Government take the view that the descriptions are not misleading. It is apparent where the amendments are required to be made as the relevant definitions are referenced appropriately. In our view, the amendment achieves the necessary legal effect so no amendment is needed.

### **Technical Scrutiny point 3:**

#### **Response**

Welsh Government thank the LJCC for raising this point and will make the appropriate amendment before the Regulations come into force.

### **Technical Scrutiny point 4:**

#### **Response**

Whilst Welsh Government acknowledges that for consistency purposes, the words “first paragraph” could have been used. However, the Welsh Government is of the view that paragraph 19(c)(iv)(ii) of Schedule 1 is clear as drafted. Although there is a second paragraph (a) in Note 3, the words “assured monthly periodic tenancy” only appear in the words before the first paragraph (a) so there would be no doubt where the insertion is to be made. In our view, no amendment is needed.

### **Technical Scrutiny point 5:**

#### **Response**

Welsh Government are of the view it is clear where the amendment is to be made. However, in order to improve consistency, the appropriate amendment will be made before the





Regulations come into force.

**Technical Scrutiny point 6:**

**Response**

Welsh Government are of the view the amendment is clear and achieves the necessary legal effect. However, the appropriate amendment will be made before the Regulations come into force.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**26 August 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>Laying of a Statutory Instrument making amendments to secondary legislation in consequence of the Renting Homes (Wales) Act 2016, and making of the Commencement Orders to bring the 2016 Act into force on 1 December 2022</b>
<b>DATE</b>	<b>16 August 2022</b>
<b>BY</b>	<b>Julie James, Minister for Climate Change</b>

I have today laid the following statutory instrument before the Senedd:

[\*\*\*The Renting Homes \(Wales\) Act 2016 \(Consequential Amendments to Secondary Legislation\) Regulations 2022\*\*\*](#)

These regulations are technical in nature and make amendments to secondary legislation in consequence of the provisions of the 2016 Act. Generally, these amendments either:

- a. ensure that existing provision in secondary legislation continues to have appropriate effect by –
  - i. referencing the relevant occupation contracts alongside references to existing types of tenancies, or
  - ii. including the terminology used in the 2016 Act,
- or –
- b. where the provisions of the 2016 Act are intended to replace elements of existing law, or the existing law is incompatible with that set out in the 2016 Act, by disapplying that law.

These amendments are necessary to implement the 2016 Act, provide coherence, clarity and ensure consistency of the law.

***The Renting Homes (Wales) Act 2016 (Commencement No. 2 and Consequential Amendments) Order 2022 and the Renting Homes (Amendment) (Wales) Act 2021 (Commencement) Order 2022***

I stated in my previous [Written Statement](#) that I would shortly make and publish the two commencement orders necessary to bring the provisions of the 2016 Act fully into force. I have published these today, which will provide landlords and tenants alike with the certainty of knowing that the Act will come into force from 1 December.

As I have stated previously, guidance, other resources for landlords and tenants on the Renting Homes (Wales) Act and the relevant subordinate legislation can be accessed via the Renting Homes Wales website: <https://gov.wales/housing-law-changing-renting-homes>.

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

## **SL(6)256 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential and Miscellaneous Amendments) Regulations 2022**

### **Background and Purpose**

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”) reforms the law on education and training for children and young people with additional learning needs and renames the Special Educational Needs Tribunal for Wales as the Education Tribunal for Wales.

These Regulations make consequential amendments to the following sets of regulations as a result of certain elements of the 2018 Act coming into force:

- (i) The Education Standards Grants (Wales) Regulations 2002
- (ii) The Education (Admissions Forums) (Wales) Regulations 2003
- (iii) The School Councils (Wales) Regulations 2005
- (iv) The Education (Special Educational Needs) (Wales) Regulations 2002
- (v) The Special Educational Needs Tribunal for Wales Regulations 2012
- (vi) The Selection of the President of Welsh Tribunals Regulations 2017

### **Procedure**

Negative

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

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

#### **1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 3(2)(b), the wording of the provision fails to identify with certainty where in the definition of “learning support assistant”<sup>1</sup> the new text should be inserted.

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<sup>1</sup> in regulation 2(1) of the Education Standards Grants (Wales) Regulations 2002



This is due to the fact that “with” occurs in two places in that definition and therefore describing the text as being inserted after “with” is not sufficient to distinguish between them and precisely identify where the new text is to be inserted.

The error does not occur in the Welsh text of the Regulations.

## **2. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 5(2)(a) provides that the new definitions should be inserted “*at the appropriate places*”.

However, the existing definitions in regulation 2 of the 2005 Regulations<sup>2</sup> are not listed in alphabetical order. Therefore, the “appropriate” place to insert the new definitions in the existing list of definitions is not sufficiently clear.

The error does not occur in the Welsh text of the Regulations.

## **Merits Scrutiny**

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

## **Welsh Government response**

### **Technical Scrutiny**

#### **Point 1: Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The Welsh Government notes and accepts the point raised in the report. Action will be taken to amend the relevant provision at the earliest opportunity as part of the ongoing programme of secondary legislation being made to fully implement the ALNET Act 2018.

#### **Point 2 - Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The Welsh Government notes the point raised in the report. Action will be taken to amend the relevant provision at the earliest opportunity as part of the ongoing programme of secondary legislation being made to fully implement the ALNET Act 2018.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**5 September 2022**

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<sup>2</sup>The School Councils (Wales) Regulations 2005





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**Legislation, Justice and Constitution Committee**

# Agenda Item 4.7

## **SL(6)257 – The Food Information (Amendment of Transitional Provisions) (Wales) Regulations 2022**

### **Background and Purpose**

The Food Information (Amendment of Transitional Provisions) (Wales) Regulations 2022 (“the Regulations”) extend the transitional period for specific food labelling changes resulting from EU Exit. The effect is that certain EU labelling terms and EU addresses will be permitted on the market in Wales for an additional 15 months.

The Regulations amend Welsh domestic legislation and retained EU law as it applies in Wales. The existing transition period for these food labelling changes ends on 30 September 2022. The Regulations extend the end of the transition period to (and including) 31 December 2023.

As a consequence, the requirement and enforcement of specific labelling changes relating to EU exit will apply from 1 January 2024.

These Regulations amend the following:

- The Food Hygiene (Wales) Regulations 2006;
- The Quick-frozen Foodstuffs (Wales) Regulations 2007;
- The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009;
- The Beef and Veal Labelling (Wales) Regulations 2011;
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013;
- The Food Information (Wales) Regulations 2014;
- The Honey (Wales) Regulations 2015;
- The Country of Origin of Certain Meats (Wales) Regulations 2015;
- The Caseins and Caseinates (Wales) Regulations 2016;
- Commission Regulation (EC) No 1825/2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products;
- Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs;
- Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors;
- Commission Implementing Regulation (EU) No 29/2012 on marketing standards for olive oil, and
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for



protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.

## Procedure

Negative

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

## Technical Scrutiny

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 2 states that it amends paragraph (9)(b)(ii) of regulation 17 of the Food Hygiene (Wales) Regulations 2006, however subparagraph (b) does not contain a paragraph (ii).

### **2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 3, which amends regulation 12 of the Quick-frozen Foodstuffs (Wales) Regulations 2007, makes reference to 'sub-paragraph (a)', however it should read 'paragraph (a)' as there are no previous divisions in the regulation.

### **3. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 5, which amends the Beef and Veal Labelling (Wales) Regulations 2011, paragraph (2) incorrectly refers to the title of regulation 4 as '(offences under European legislation)'. The correct title to that regulation is '(offences under retained direct EU legislation)'.

## Merits Scrutiny

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

## Welsh Government response

A Welsh Government response is required in relation to the technical reporting points.





**Legal Advisers**  
**Legislation, Justice and Constitution Committee**  
**20 September 2022**



## **SL(6)258 – The Non-Commercial Movement of Pet Animals (Amendment) (Wales) (No. 2) Regulations 2022**

### **Background and Purpose**

These Regulations amend retained EU law to permit the use of an alternative rabies antibody titre test for pet animals entering Wales from a third country.

The Non-Commercial Movement of Pet Animals (Amendment) (Wales) Regulations 2022 (the "First Regulations") permitted the use of an alternative rabies antibody titre test for pet animals entering Wales from a third country until 1 October 2022. These Regulations authorise that test for a further period of six months commencing on 1 October 2022.

These Regulations also revoke the First Regulations from 1 October 2022.

The Welsh Government's policy rationale, as explained in the Explanatory Memorandum, is that, *"Permitting the use of an additional test will significantly speed up the rabies testing process for pet animals entering Wales at a time when the system faces a significant backlog due to pet animals entering with their owners fleeing from Ukraine. This will reduce the overall burden on quarantine spaces and enable people being reunited with their pets earlier, while also protecting Great Britain's biosecurity, providing protection against associated risks to animal and public health."*

### **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 2 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.**

No regulatory impact assessment has been prepared in connection with these Regulations. The explanatory memorandum notes the following:

*“Officials considered this is an exceptional and urgent situation. The amendments need to be in place as soon as possible to ensure alignment across the UK, and are temporary. Defra have made equivalent regulations for England, which came into force on 1 October 2022, and the Scottish Government are also making equivalent regulations, so these regulations will achieve consistency across GB.”*

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

The explanatory note to the English text of the Regulations confirms, at paragraph 2, that the test authorised by regulation 3 relates to pet animals entering Wales,

*“...from a third country, for a further period of 6 months following the expiry and revocation of The Non-Commercial Movement of Pet Animals (Amendment) (Wales) Regulations 2022”.*

The quoted text does not appear in the Welsh version of the explanatory note. Whilst it is acknowledged that the omitted text does not form part of the Regulations, its absence may result in confusion for a reader of the Welsh text.

## **Welsh Government response**

A Welsh Government response to the second reporting point is required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**20 September 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**

## **SL(6)242 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022**

### **Background and Purpose**

These Regulations make amendments to primary legislation in consequence of the provisions of the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

Generally, these amendments either:

- (a) ensure that existing provision in primary legislation continues to have appropriate effect by referencing the relevant occupation contracts alongside references to existing types of tenancies or by including the terminology used in the 2016 Act; or
- (b) where the provisions of the 2016 Act are intended to replace elements of existing law or the existing law is incompatible with that set out in the 2016 Act, by disapplying that law.

The Explanatory Memorandum to these Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

A draft of these Regulations was laid before the Senedd on 21 June 2022 but subsequently withdrawn on 11 July 2022, following the report of this Committee. An amended version of the draft Regulations was laid before the Senedd on 15 July 2022.

### **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**

The following 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 16(2) inserts the wording “in England” after “dwelling-house” in section 1(1) of the Housing Act 1988. However, the phrase “dwelling-house” appears in two instances in section 1(1) and it is not clear if the wording “in England” should be inserted after one or both of those instances.



This point was previously reported in relation to the earlier draft of these Regulations. In its response of 18 July 2022, the Welsh Government explained that the Regulations had been withdrawn and corrected, including in relation to this specific point. However, it appears that this point has not been rectified.

**2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 18(5)(c)(iv), reference is made to “the Renting Homes (Wales) Act **2106**” (emphasis added). This should instead refer to “the Renting Homes (Wales) Act **2016**” (emphasis added).

**3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 18(5)(i)(i) omits and inserts wording into paragraph 12(2) of Schedule 10 of the Local Government and Housing Act 1989. However, from the wording of the amendment, it is not clear that the inserted wording substitutes the omitted wording. It does not necessarily follow that new text will be inserted in the same place as old text which has been omitted.

Following the Welsh Government’s own drafting guidelines in “Writing Laws for Wales”, the amendment could have been drafted as “for “[*omitted text*]” substitute “[*new text*]”.

**4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 25(9) omits certain wording from section 143E of the Housing Act 1996 (“the 1996 Act”). It appears that paragraph 9(b) of Schedule 29 to the Coronavirus Act 2020 (as amended) (“the 2020 Act”) only required that those provisions *be read* in the way suggested by regulation 25(9), rather than inserting the wording that regulation 25(9) seeks to omit. Regardless, that provision of the 2020 Act expired on 25 March 2022. Clarification is sought as to why regulation 25(9) has been considered necessary.

**5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 29(3) inserts references to contract-holders alongside tenants in two places in section 153 of the Housing and Regeneration Act 2008. There is a third reference to tenants in subsection (7) which has not been amended. Subsection (3), which is amended, requires the Regulator of Social Housing to make arrangements for bringing certain proposals to the attention of its tenants. As subsection (7) requires the Regulator of Social Housing to also make arrangements for bringing agreed proposals to the attention of its tenants, it would appear that subsection (7) also requires amendment to require agreed proposals to the attention of its contract-holders.



**6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 32(3) amends the Energy Act 2011 to exclude a property where the landlord is a community landlord from what is a “domestic private rented property” under section 42 of that Act. The existing provision refers to registered social landlords. As the definition of community landlord under section 9 of the 2016 Act includes additional bodies such as local authorities, it appears that the provision is extended to bodies other than registered social landlords. Clarification is sought as to whether this is the intention of the amendment.

**7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 34, in the Welsh text, the numbering is incorrect on from paragraphs (8) to (12) which are numbered incorrectly as paragraphs (7) to (11).

In addition, in the Welsh text, the earlier correctly numbered paragraph (7) is incorrectly indented right as regards its formatting, along with sub-paragraphs (a) and (b) of that paragraph. Sub-paragraphs (c) and (d) of that paragraph (7) have also been incorrectly numbered as a further pair of sub-paragraphs (a) and (d) in that paragraph.

## **Merits Scrutiny**

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

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

Regulation 1 provides that various parts of regulation 25 are stated to come into force once section 120 of, and various paragraphs of Schedule 8 to, the Housing and Planning Act 2016 come into force. Neither the Explanatory Memorandum nor the Explanatory Notes give any indication as to when these provisions are expected to be brought into force.

This point was previously reported in relation to the earlier draft of these Regulations. In its response of 18 July 2022, the Welsh Government explained that it does not have any information about when the relevant provisions of the Housing and Planning Act 2016 will be brought into force.

**9. 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.**

In reviewing these amendments, the Committee notes that in several instances the Welsh Government does not appear to have adhered to its own drafting guidelines, as set out in “Writing Laws for Wales”. The Committee encourages the Welsh Government to adhere to its own standards when drafting legislation.



**10. 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.**

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to the Regulations notes that:

*“No formal consultation has taken place as these Regulations make only consequential technical amendments.”*

**Welsh Government response**

A Welsh Government response is required in relation to points 1-7 above only.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 September 2022**



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



**Llywodraeth Cymru**  
**Welsh Government**

Ein cyf/Our ref: MA/JJ/2385/22

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

18 July 2022

Dear Huw,

I am writing in relation to the draft Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022.

Further to the Committee's helpful report on the Regulations, the Government withdrew and committed to re-laying a revised set of Regulations, that took into account the Committee's comments. The revised Regulations were laid on 15 July to enable external stakeholders as much time as possible to consider the draft before the 1 December implementation date.

In order to provide clarity to the sector and support their preparations for implementation, I would be grateful if the Committee would consider expediting their scrutiny of the revised Regulations to enable the Plenary debate to take place on 20 September.

I also wish to draw the Committee's attention to a Written Statement I issued on 15 July which informs Members and wider stakeholders of the arrangements for making the remaining Renting Homes SIs. This included the laying on 18 July of The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022 and the publication – in draft form – of the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022. I also intend to lay The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022 in August, and to make the two Commencement Orders required to bring the legislation fully into force on 1 December 2022. A copy of that Statement is available [here](#).

Yours sincerely

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

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

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





Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Implementation of the Renting Homes (Wales) Act 2016: further Subordinate Legislation

**DATE** 15 July 2022

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

Earlier this week the Senedd approved the following pieces of subordinate legislation necessary to fully implement the Renting Homes (Wales) Act 2016:

- ***the Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022;***
- ***the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022; and***
- ***the Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022.***

In addition, on Monday 18 July I will be laying ***the Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022*** (which do not require the approval of the Senedd in plenary).

The purpose of these regulations is to preserve an entitlement which is currently available to certain tenants with an assured or assured shorthold tenancy: namely the ability to refer a rent variation notice from their landlord to a Rent Assessment Committee to seek a rent determination.

These regulations will provide that when existing tenancies which include such a provision convert into occupation contracts this entitlement will carry over, and (as is currently the case) a Rent Assessment Committee will be able to take into account a range of factors to determine what, in its opinion, is an appropriate rent for the dwelling. As is the case with current arrangements, unless the landlord and tenant agree otherwise, the rent determined by the Rent Assessment Committee will be the rent payable under the contract.

I have also re-laid today a revised version of ***the Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022*** which take account of the Senedd's Legislation Justice and Constitution Committee reporting points and include an amendment to the Energy Act 2011 which was omitted from the original version laid on 21 June 2022.

This SI is subject to the Senedd's affirmative procedure which means it will need to be approved by the Senedd in plenary before it can be made. A plenary debate is being scheduled as soon after summer recess as possible, and I will issue a further written statement after that has taken place confirming the outcome of the debate.

I have also published today – in draft form – ***The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022***.

These regulations make saving and transitional provisions in relation to the 2016 Act. The purpose of these regulations is as follows:

- to ensure that where particular processes relating to existing tenancies and licences (for example possession proceedings) have already been commenced on the date at which the 2016 Act comes into force, these processes are able to be concluded in accordance with the provisions of the legislative framework under which they were initiated;
- to ensure that certain entitlements which exist in particular types of current tenancies (for example a request for improvement) are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract, with the correct balance being struck in respect of both parties' rights and obligations; and
- to confirm that certain provisions relating to temporary accommodation will not apply until 12 months after the coming into force of the 2016 Act.

Whilst these regulations do not require the approval of the Senedd in plenary, they are being published in draft form today so that they are available to stakeholders in sufficient time ahead of the 1 December coming into force date. They are not being made in their final form until the Autumn as the final versions will include references to the two Consequential Amendments SIs which have not yet been made: no other changes to these regulations are anticipated. Again, I will publish a further written statement when this SI has been formally made in the autumn.

In August I will be making ***the Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022*** – which are subject to the Senedd's negative procedure, meaning they do not have to be approved by the Senedd in plenary. Again, a further written statement will be issued to advise members when these have been made.

Finally, I will also shortly be making the two Commencement Orders necessary to bring the provisions of the 2016 Act fully into force on 1 December 2022. Again, I will publish a further written statement to alert Members when these have been made.

All of the statutory instruments made this week can be accessed [here](#).

Guidance, and other resources for landlords and tenants on the Renting Homes (Wales) Act and subordinate legislation can be accessed via the Renting Homes Wales website: <https://gov.wales/housing-law-changing-renting-homes>.

## **SL(6)244 – The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2022**

### **Background and Purpose**

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (“the Principal Regulations”), which make provision for the repayment of income-contingent student loans in England and Wales.

Regulation 3(2) makes provision for a temporary reduction of the interest rate on undergraduate loans specified in regulation 21A of the Principal Regulations and Regulation 3(3) makes similar provision in respect of postgraduate degree loans specified in Regulation 21B of the Principal Regulations.

The interest rate is set at 6.3% for the period beginning with 1st September 2022 and ending with 30th November 2022. After that date, the interest rate will revert to the original rate specified in the Principal Regulations.

### **Procedure**

Composite Negative

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament.

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. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

### **Technical Scrutiny**

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

#### **1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh**

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament. As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:



*“The 2022 Regulations are composite regulations. As this instrument will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for it to be made or laid bilingually. Therefore, the 2022 Regulations are made in English only.”*

## Merits Scrutiny

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

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**25 August 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**

## Statutory Instruments with Clear Reports under Standing Order 21.7

**26 September 2022**

### **SL(6)234 – Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991**

#### **Procedure: Draft Negative**

Under section 2B of the Water Industry Act 1991 (as amended by the Water Act 2014), the Welsh Ministers may from time to time publish a statement (SPS) setting out strategic priorities and objectives for Ofwat to follow in carrying out its relevant functions relating to companies wholly or mainly in Wales.

Ofwat must carry out these functions, which include the 5 yearly price determinations in accordance with the SPS. These include the expectations for water company business plans (methodology) which sets the framework for investment and service level priorities and determines water charges. The next price review determination will be in 2024 for the period 2025–2030.

This instrument constitutes the SPS and replaces the current version published in 2017. The SPS sets out a number of ambitions for the water industry in Wales, focussed on supporting the delivery of the Programme for Government, the Water Strategy for Wales and distinct Welsh Government priorities and legislation. These are grouped in 5 key themes – Climate and Nature Emergencies, Environment, Resilience, Asset Health and Customers and Communities.

In accordance with section 2B of the Water Industry Act 1991 key stakeholders were consulted between June 2021 and February 2022. The Explanatory Memorandum provides that consultees were generally supportive of the draft SPS.

**Parent Act:** Water Industry Act 1991

**Date Made:** Not stated

**Date Laid:** 6 July 2022

**Coming into force date:** Not stated



# Agenda Item 6.1

## **SL(6)227 – The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022**

### **Background and Purpose**

These Regulations amend Schedules 2, 3, 8A, 9, 9B and 9C to the Renting Homes (Wales) Act 2016 (“the Act”) and make consequential amendments to the Immigration Act 2016 and the Renting Homes (Amendment) (Wales) Act 2021.

For the purposes of these Regulations:

- Schedule 2 to the Act lists those tenancies and licences that can never be occupation contracts under the Act, despite falling within the general rule set out in section 7 of the Act, which determines whether a tenancy or licence is an occupation contract and therefore subject to the provisions of the Act.
- Schedule 3 to the Act lists a range of occupation contracts which are exempted from the general rule under sections 11 and 12 of the Act that community landlords provide secure contracts.
- Schedule 8A to the Act lists those types of standard contracts which can be ended with not less than two months’ notice under a landlord’s notice or break clause (rather than the six months’ notice period that applies in relation to all other standard occupation contracts).
- Schedule 9 lists those types of contracts which can be ended within the first six months of the occupation date.
- Schedule 9B lists those types of fixed term standard contracts which may be terminated at the end of the fixed term period with two months’ notice by means of a landlord’s notice.
- Schedule 9C lists those fixed term standard contracts which may include a landlord’s break clause, which the Act generally does not permit.

Regulation 2 adds tenancies and licences which relate to bail and probation accommodation as well as to asylum and immigration accommodation to the list in Part 3 of Schedule 2, meaning they will not generally be occupation contracts under the Act.

Regulations 3 to 7 amend Schedules 3, 8A, 9, 9B and 9C to the Act to remove reference to certain types of accommodation provided for asylum seekers etc. from the list of exemptions in each of those Schedules.

Regulation 8 makes a consequential amendment to the Immigration Act 2016 to ensure that when section 4 of the Immigration and Asylum Act 1999 is repealed, paragraph 7(3)(k)(i) of Schedule 2 (as inserted by regulation 2 of this SI) will no longer refer to section 4 of the 1999 Act.



Regulation 9 makes consequential amendments to Schedule 6 to the Renting Homes (Amendment) (Wales) Act 2021, related to the provision in regulations 3 and 5.

## 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

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

### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

These Regulations amend the the Immigration Act 2016 and the Renting Homes (Amendment) Wales Act 2021 in reliance on enabling powers contained in section 255 of the Act.

The italic text at the head of these Regulations and the preamble each refer to sections 256(3) and (4)(h), (i), (la), (m), (mb) and (mc) of the Act, which require that regulations that amend Schedules 2, 3, 8A, 9, 9B and 9C to the Act are subject to the affirmative procedure.

Section 256(5) of the Act requires regulations to be subject to the affirmative procedure where they are made under the Act and amend, modify or repeal any provision of an Act of Parliament or a Measure or Act of the Senedd. It would therefore appear that the italic text at the head of these Regulations and the preamble should also refer to section 256(5) of the Act.

## Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to these Regulations (which also cover the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022) notes that:

*“Due the technical nature of these two SIs and the fact that none of amendments they contain make any substantive changes to policy positions set out in the primary legislation, no formal consultation has been undertaken. However, several of the issues addressed by these amendments were raised with Welsh Government by external*





*stakeholders seeking clarification on the application of the legislation in relation to particular types of accommodation. Detailed discussions have taken place with relevant stakeholders to explore these matters and have informed the development of the amendments.”*

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

These Regulations amend primary legislation, namely the Renting Homes (Wales) Act 2016, the Immigration Act 2016 and the Renting Homes (Amendment) (Wales) Act 2021. The Committee notes that the Legislation, Justice and Constitution Committee of the Fifth Senedd reported on the Renting Homes (Amendment) (Wales) Bill during Stage 1 proceedings. The Report references the existence of Henry VIII powers and the clarifications sought at the time from the Minister in relation to the justification for certain regulation-making powers in that Bill being Henry VIII power. The Minister’s response was:

*“The Schedules to the 2016 Act contain a power for the Welsh Ministers to amend them, as we will need to review the matters contained within those Schedules as the housing landscape evolves over time. We need to have the flexibility to react to those changes and make appropriate provision within the various Schedules, as necessary. The Bill therefore adopts the same approach. The alternative would seem to be regulations which would also amend primary legislation or, alternatively, would need to be read alongside the primary legislation, resulting in detail falling outside of primary legislation into secondary legislation, which can itself attract criticism so far as scrutiny and accessibility of the law issues are concerned.”*

### **Welsh Government response**

A Welsh Government response is required on the Technical Scrutiny point.

### **Committee Consideration**

The Committee considered the instrument at its meeting on 11 July 2022 and reports to the Senedd in line with the reporting points above.



**Government Response: *The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022***

Technical Scrutiny point 1:

The Welsh Government agrees that section 256(5) of the Renting Homes (Wales) Act 2016 should be included in the italic text at the head of these Regulations and in the preamble. I am grateful to the Committee for raising this oversight. As the error is technical in nature, a corrected version will be used on making.

# Agenda Item 6.2

## **SL(6)229 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022**

### **Background and Purpose**

These Regulations make amendments to primary legislation in consequence of the provisions of the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

Generally, these amendments either:

- (a) ensure that existing provision in primary legislation continues to have appropriate effect by referencing the relevant occupation contracts alongside references to existing types of tenancies or by including the terminology used in the 2016 Act; or
- (b) where the provisions of the 2016 Act are intended to replace elements of existing law or the existing law is incompatible with that set out in the 2016 Act, disapply that law.

The Explanatory Memorandum to the Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

### **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**

The following 31 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 10 inserts wording into section 60A of the County Courts Act 1984 (“the 1984 Act”). Section 60A is not yet in force, it will be brought into force when section 191 of the Legal Services Act 2007 comes into force. The Welsh Government is asked to explain why regulation 2 does not state that regulation 10 is to come into force immediately after section 191 of the Legal Services Act 2007 comes into force.

#### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Further in relation to regulation 10, the current wording of section 60A(3) of the 1984 Act refers in paragraph (a) to the Housing Act 1985 (“the 1985 Act”), then goes on in paragraph (b) to refer to “that Act”, meaning the 1985 Act referred to in the previous paragraph (a).



However, regulation 10(2)(a)(i) inserts a new paragraph (aa) which will sit in between the existing paragraphs (a) and (b). The new paragraph (aa) refers to the 2016 Act. When this new wording is inserted it is highly likely that upon first reading these provisions readers will think that the Act referred to in paragraph (b) is the 2016 Act not, as it should be, the 1985 Act. The Welsh Government is asked to provide its view in this regard and confirm whether any steps will be taken to remedy this.

### **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 16(2) inserts the wording “in England” after “dwelling-house” in section 1(1) of the Housing Act 1988. However, the phrase “dwelling-house” appears in two instances in section 1(1) and it is not clear if the wording “in England” should be inserted after one or both of those instances.

### **4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

There are several issues in these Regulations which arise when cross-referring to existing legislation:

- a. Regulation 6(2) refers to Schedule 1 of the Sexual Offences Act 1956 (“the 1956 Act”). However, the 1956 Act has a First Schedule rather than Schedule 1;
- b. Regulation 7 inserts new wording into the Land Compensation Act 1973 (“the 1973 Act”). There are several cross-referencing errors in this regulation:
  - i. Regulation 7(2)(a)(ii) makes a reference to “sub-paragraph (v)” but this should refer to “paragraph (v)”;
  - ii. There is also a typographical error in regulation 7(2)(a)(ii) where the words to be inserted into the 1973 Act should be “or (f)” not “of (f)”;
  - iii. In regulation 7(2)(b)(i) there is reference to “sub-paragraph (e)(iii)”, this should be “paragraph (e)(iii)”;
  - iv. Regulation 7(2)(b)(ii) inserts new wording into section 29(4) of the 1973 Act. It is stated that the new wording is to be inserted after sub-paragraph (iv), but it does not state which paragraph it refers to. The correct reference is paragraph (e)(iv), not sub-paragraph (iv).
- c. Regulation 10 inserts new wording into the 1984 Act. There are two cross-referencing errors in this regulation:
  - i. Regulation 10(2)(a) inserts new wording into section 60A of the 1984 Act. It refer to “paragraph (3)”, but this should be “subsection (3)”.
  - ii. Regulation 10(2)(b) inserts new definitions into section 60A of the 1984 Act. The opening words refer to “paragraph (7)” but this should be “subsection (7)”. In



the definition of “prohibited conduct standard contract” the words “of the” are repeated. There should also be semi-colons at the end of each definition.

- d. Regulation 11(5) inserts new wording into section 32 of the 1985 Act. There are two cross-referencing errors in this regulation:
- i. The heading of section 32 of the 1985 Act is referred to as “power to dispose of land held for the purposes of this Act”, but the word “Act” should read “Part”.
  - ii. In the new subsection (3A)(d)(ii), reference is made to Schedule 3 to the 2016 Act and it is not clear whether the wording in parentheses is intended to be a summary of what Schedule 3 does or whether it is the title of Schedule 3. The wording used is “various forms of occupation contract made with community landlords which may be standard contracts”, but the heading of Schedule 3 is “occupation contracts made with or adopted by community landlords which may be standard contracts”.
- e. Regulation 11(19) refers to the heading of section 247 of the 1985 Act as “changes of ownership of land to be notified to local housing authority”. The heading of section 247 of the 1985 Act is “changes of ownership **or occupation** of land to be notified to local housing authority” (emphasis added);
- f. Regulation 14(2) amends section 283(3A) of the Insolvency Act 1986. The regulation references subsection (3A) but “3A” has not been bracketed;
- g. Regulation 16(3) inserts a new section 1A into the Housing Act 1988 (“the 1988 Act”). At subsections (2) and (4) of that new section 1A, reference is made to “paragraph (3)”. As these references are made in relation to a sub-division of a section of an Act of Parliament, these references should instead read “subsection (3)”;
- h. Regulation 18 amends the Local Government and Housing Act 1989 (“the 1989 Act”). The following cross-referencing errors are noted in that regulation:
- i. Regulation 18(5)(c)(iii) refers to “sub-paragraph 3” of paragraph 2 of Schedule 10 to the 1989 Act. The “3” should be bracketed.
  - ii. Regulation 18(5)(d)(ii) refers to “sub-paragraph 5(a)” of paragraph 4 of Schedule 10 to the 1989 Act. The “5” should be bracketed.
  - iii. Regulation 18(5)(h)(iv) refers to “sub-paragraph 3(c)” of paragraph 11 of Schedule 10 to the 1989 Act. The “3” should be bracketed.
  - iv. Regulation 18(5)(i)(i) refers to “section 24 (incorporation and modification of supplementary terms)”. This should instead read “section 24 (incorporation and modification of supplementary **provisions**)” (emphasis added).
- i. Regulation 19 amends the Coal Mining Subsidence Act 1991 (“the 1991 Act”). The following cross-referencing errors are noted in that regulation:



- i. Regulation 19(2)(a) inserts a new sub-paragraph (4)(f) into paragraph 1 of Schedule 4 to the 1991 Act. In doing so, the regulation states, "(a) in sub-paragraph (4), after (e), insert—". It should state, "(a) in sub-paragraph (4), after **paragraph** (e), insert—" (emphasis added);
- ii. Regulation 19(2)(b) inserts a new sub-paragraph (7) into paragraph 1 of Schedule 4 to the 1991 Act. However, the regulation refers to this sub-paragraph being inserted after "paragraph (6)", rather than "**sub**-paragraph (6)" (emphasis added).
- j. Regulation 23(2) inserts a new section 1(8) into the Landlord and Tenant (Covenants) Act 1995. In doing so, the regulation reads "After subsection 1(7)...". It should read, "After **section** 1(7)..." (emphasis added).
- k. There are instances of incorrect chapter numbers being cited when referring to Acts of Parliament in the Regulations:
  - i. Regulation 14(2)(a) makes reference to "the Rent Act 1977 (c. 47)". This should read "the Rent Act 1977 (**c. 42**)" (emphasis added). 1977 c. 47 would take readers to the Local Authorities (Restoration of Works Powers) Act 1977;
  - ii. Regulation 16(3) makes reference to "the Local Government and Housing Act 1989 (c. 49)". This should read "the Local Government and Housing Act 1989 (**c. 42**)" (emphasis added). 1989 c. 49 does not correspond to an Act of Parliament.

**5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 11(5)(b) inserts new a new subsection (3A) into section 32 of the 1985 Act. The new subsection (3A) refers to a supported standard contract. However, no definition of a supported standard contract appears in the 1985 Act. Regulation 11 goes on to insert a definition of a standard contract into the 1985 Act but not a supported standard contract.

**6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 11(8) inserts new wording into the 1985 Act to set out where in that Act the new definitions inserted by regulation 11(7) will appear. Regulation 11(7) inserts a new definition for an "occupation contract" but this is not included in regulation 11(8). There are also no opening and closing quotation marks around the wording to be inserted by regulation 11(8) (the same issue arises in relation to regulations 11(18) and 11(25)).

**7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 11(11)(b) omits wording from section 85ZA of the 1985 Act which is the result of the omission of section 85ZA(8) effected by regulation 11(11)(a). Regulation 11(11)(b) therefore removes the words "and (8)" from section 85ZA(9), but does not remove the plural



“subsections” in the preceding wording. The amendment should therefore substitute “subsections (7) and (8)” with “subsection (7)” in order for the legislation to make sense.

**8. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 11(23) amends section 554 of the 1985 Act. However, the structure of the amendments set out in regulation 11(23)(b) makes it unclear how such amendments are to take effect. It appears that regulation 11(23)(b)(i) should actually be regulation 11(23)(b) and that regulation 11(23)(b)(ii) should actually be regulation 11(23)(c) in order for this regulation to make sense.

**9. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 16(4) omits certain wording from section 8(4A)(a) and (4B) of the 1988 Act. However, it appears that paragraph 6(c) of Schedule 29 to the Coronavirus Act 2020 (as amended) (“the 2020 Act”) only required that those provisions *be read* in the way suggested by regulation 16(4), rather than inserting the wording that regulation 16(4) seeks to omit. Regardless, that provision of the 2020 Act expired on 25 March 2022. Clarification is sought as to why regulation 16(4) has been considered necessary.

**10. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 16(9) inserts a definition of “secure contract” into section 45 of the 1988 Act by linking the term to its meaning in section 8 of the 2016 Act. It appears that the word “same” is missing from the associated explanation. The regulation should read, ““secure contract” has the **same** meaning as in the Renting Homes (Wales) Act 2016 (anaw 1) (see section 8 of that Act);” (emphasis added).

**11. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 18(5)(c)(iv) inserts a definition of “the 2016 Act” into paragraph 2(6) of Schedule 10 to the 1989 Act. It appears that the intention is to insert this definition after the definition of the “Housing Act 1988,” but, as currently drafted, the regulation suggests that the definition of “the 2016 Act” is to be inserted immediately after the words “Housing Act 1988,”.

A semi-colon should also appear within the quoted term relating to the 1988 Act, rather than a comma. It currently reads “Housing Act 1988,” (emphasis added), but should read “Housing Act 1988;”.

**12. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**



Regulation 18(5)(d)(v) inserts the wording “or an occupation contract” into paragraph 4(7)(a) of Schedule 10 to the 1989 Act. In the English text, the closing quotation marks around the inserted wording are missing. This error does not occur in the Welsh text.

**13. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 18(5)(e)(iv) inserts a new sub-paragraph (3)(cc) into paragraph 6 of Schedule 10 to the 1989 Act. In the Welsh version of the Regulations, there is a typographical error, as the new paragraph (cc) begins “n relation to...”, rather than “in relation to...” (emphasis added). This error does not occur in the English version.

**14. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 18(5)(f)(v) amends paragraph 9(4) of Schedule 10 to the 1989 Act to insert wording after “assured periodic contract” in both places it occurs. However, “assured periodic contract” does not appear in paragraph 9(4) of Schedule 10. It appears that the regulation should refer to “assured periodic **tenancy**” (emphasis added), which does appear twice in the paragraph.

**15. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Closing quotation marks around the wording are missing from some provisions:

- a. Regulation 18(5)(h)(i) inserts the wording “or the periodic standard contract” into paragraph 11(1)(a) of Schedule 10 to the 1989 Act;
- b. Regulation 34(4)(a):
  - i. in paragraph (i), in the English text, there is a missing set of closing quotation marks between the 2 semi-colons at the end of the definition of “contract-holder”; and
  - ii. in paragraph (ii), there is a missing set of closing quotation marks at the end of “or an occupation contract”.

**16. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 18(5)(h)(ix) inserts wording into paragraph 11(8)(c) of Schedule 10 to the 1989 Act, after “assured periodic tenancy”. However, “assured periodic tenancy” appears in the text appearing after paragraph (c), rather than within that paragraph. Therefore, the regulation should refer to paragraph 11(8) of Schedule 10 to the 1989 Act, rather than paragraph 11(8)(c).

This defect has a knock-on effect in relation to regulation 18(5)(h)(x). That regulation inserts a new paragraph (d) into paragraph 11(8) of Schedule 10 to the 1989 Act. As the regulations appear to have considered the wording appearing after paragraph 11(8)(c) to form part of paragraph (c), regulation 18(5)(h)(x) causes the wording currently appearing after paragraph





11(8)(c) to subsequently appear after the new paragraph (d). This does not appear to have been the intention of regulation 18(5)(h)(ix) and (x).

**17. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 22(4)(a) inserts wording into section 69(3)(c) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”). In doing so, reference is made to “that Act”. However, “that Act” is not defined for the purposes of the section and it is not clear to which Act of Parliament it refers. Preceding section 69(3)(c), reference is made in section 69 to the Leasehold Reform Act 1967, the Housing Act 1996, and the Commonhold and Leasehold Reform Act 2002.

**18. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 22(4)(b) inserts a new subsection (3A) into section 69 of the 1993 Act. Paragraph (a) of that new subsection appears to contain a drafting error in that it states “(see section 18 (see also section 19) [sic] of that Act)”. Whilst the references to section 18 and 19 of the 2016 Act appear correct, that sentence requires amending.

**19. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 22(5)(h) inserts a new paragraph 5 into Schedule 9 to the 1993 Act. However, the new paragraph 5 does not substitute the pre-existing paragraph 5, nor does that appear to be the intention of the regulation. Therefore, as currently drafted, Schedule 9 to the 1993 Act would contain two versions of paragraph 5. The regulation should instead insert the provision as “paragraph 4A”.

**20. Standing Order 21.2(viii) – that it uses gender specific language.**

These Regulations include gender specific language in two places:

- a. Regulation 24(3)(b)(ii), which inserts new sub-paragraph (7) into paragraph 7 of Schedule 7 to the Family Law Act 1996, includes the use of “his” in three places; and
- b. Regulation 25(15)(b), which inserts text into section 160A(8) of the Housing Act 1996 (“the 1996 Act”), includes the use of “he”.

**21. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 24(3)(b) inserts text following “Chapter 1 of Part V of the Housing Act 1996”, but appears to be missing “or” from the start of the inserted text.

**22. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**



Regulation 25(4)(d) substitutes "Subsection (1)(A)" in section 124(3) of the 1996 Act, but there is no subsection (1)(a). It appears that this should be "Subsection (1A)".

**23. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 25, which amends the 1996 Act, includes a number of omissions that do appear to be incorrect:

- Regulation 25(9)(a) omits section 143E(3)(a)(ii) of the 1996 Act, but there is no subsection (3)(a)(ii) in section 143E. It is not clear which provision should be omitted.
- Regulation 25(11) omits the wording "or 143H" from section 143I(1) of the 1996 Act, but the wording within that section is "or 143H(3)".

**24. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 27(2)(b) includes, in the new paragraph 3A(1), the text "referred to in this Part as "the 2016 Act"", but the definition is only used in paragraph 3A, and there are not any Parts in Schedule 7 to the Commonhold and Leasehold Reform Act 2002. It appears that the reference to "Part" should be to "paragraph".

**25. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 32 amends the Prevention of Social Housing Fraud Act 2013 to add references to "secure contract" alongside existing references to "assured tenancies". Within those sections amended by Regulation 32, there are references to "tenant" and "tenancy". It would appear that in place of those terms, the legislation should refer to "contract-holder" and "occupation contract". It is noted that the Consumer Rights Act 2015 is amended by Regulation 34 to insert references to "contract-holder" and "occupation contract" alongside tenant and tenancy respectively.

**26. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 32(5)(d) provides for the insertion of text, but does not include a reference to the subsection to be amended. It is not clear how the amendment could operate without a reference to the provision to which it applies.

**27. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 33(2) includes a reference to "the tenant's share (within the meaning given by that section)". It appears that the text should be "the tenant's **total** share (within the meaning given by that section)" because "total share" is a defined term in section 7(7) of the 1993 Act.



**28. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 34(4)(b) provides for the substitution of text within the definition of “long lease”. Subparagraph (ii) refers to “paragraph (a), but following the amendment to the paragraphs within the definition, this appears to be incorrect, and should instead refer to “subparagraph (i)”.

**29. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 34(4)(b) provides for the substitution of text within the definition of “long lease”, and specifically inserts the text “has the meaning given by paragraph 8 of Schedule 2 to the Renting Homes (Wales) Act 2016 (anaw 1)”. Paragraph 8 of Schedule 2 to the 2016 Act uses the term “long tenancy”, and it would appear appropriate to reference that term within the inserted text.

**30. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

In Regulation 33(12)(a), the definition of “occupation contract” is inserted after the definition of “looked after, accommodated or fostered”. Elsewhere in these Regulations, the phrase “in the appropriate place in the alphabetical order insert” has been used when introducing new definitions. It would seem more appropriate here to use that latter approach, as the English and Welsh text are introducing the new definition after different definitions because of the different order of definitions in both language texts.

**31. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

In Regulation 34(4)(b), the amendment that begins “in the definition of “long lease”...” is incorrectly numbered as subparagraph (b). It appears that this should be numbered as paragraph (iii), as it also is amending a definition found within section 88(1).

As a result, it appears that subparagraph (c) is also incorrectly numbered and should be subparagraph (b) (due to the earlier incorrect referencing).

## Merits Scrutiny

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

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

Regulation 1 provides that various parts of regulation 25 are stated to come into force once section 120 of, and various paragraphs of Schedule 8 to, the Housing and Planning Act 2016 come into force. Neither the Explanatory Memorandum nor the Explanatory Notes give any



indication as to when these provisions are expected to be brought into force. The Welsh Government is asked to provide further information in this regard.

**33. 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.**

Although the Committee notes that they do not form part of these Regulations themselves, over 50 errors have been found in the footnotes to these Regulations which have been notified separately to Welsh Government officials. Footnotes are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

**34. 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.**

In reviewing these amendments, the Committee notes that in several instances the Welsh Government does not appear to have adhered to its own drafting guidelines, as set out in “Writing Laws for Wales”. The Committee encourages the Welsh Government to adhere to its own standards when drafting legislation.

**35. 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.**

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to the Regulations notes that:

*“No formal consultation has taken place as these Regulations make only consequential technical amendments.”*

## Welsh Government response

A Welsh Government response is required in relation to all reporting points save for point 35.

## Committee Consideration

The Committee considered the instrument at its meeting on 11 July 2022 and reports to the Senedd in line with the reporting points above.



**Government Response: *The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022***

Technical Scrutiny point 1, 2, 4, 5, 6 (but see response below), 7 to 17, 19, 20 to 24, 26, 28 to 31:

*Response*

The Welsh Government thanks the Legislation, Justice and Constitution Committee for its diligence and has considered the points raised. The Statutory Instrument and Explanatory Memorandum have been withdrawn and corrected (in relation to the Reporting Points listed above) and re-laid.

Technical Scrutiny point 3:

*Response*

Welsh Government take the view that it is not necessary to insert “in England” after the second instance where “dwelling-house” appears in section 1(1) of the Housing Act 1988. In our view it is clear from the proposed amendment to section 1(1) of the 1988 Act that “dwelling-house” in that context means a dwelling-house in England. In our view, no amendment is needed.

Technical Scrutiny point 6 (in part):

*Response*

The Legislation, Justice and Constitution Committee have commented that there is an error in the opening and closing quotation marks around the wording to be inserted by regulation 11(25). The Welsh Government disagree and are of the view that the quotation marks in relation to 11(25) are correct.

Technical Scrutiny point 18:

*Response*

Welsh Government are of the view that regulation 22(4)(b) is correct. The term “fundamental provision” is defined in section 18 of the 2016 Act and the reference to section 19 is included to assist the reader. This approach is confirmed by the Index of terms which appears at section 253 of the 2016 Act.

Technical Scrutiny point 25:

*Response*

Welsh Government do not agree that regulation 32 (which makes amendments to the Prevention of Social Housing Fraud Act 2013) should make amendments to the terms “tenants” and “tenancy” (to include reference to “contract-holder” and “occupation contract”). The current drafting reflects Welsh Government’s policy intention that, given that these provisions relate to criminal offences they should not be extended to persons who rent a home in Wales under a licence (which would be the effect of including reference to “contract-holder” and “occupation contract”) and should continue to apply to only occupation contracts that are tenancies. In addition, the

amendments to the provisions under the Consumer Protection Act 2015 (as amended by Regulation 34) to include “contract-holder” and “occupation contract”, reflect Welsh Government’s policy intention to extend the protections under the relevant provisions to all contract-holders, so there is no distinction between tenancies and licences.

Technical Scrutiny point 27:

Response

Welsh Government do not agree that regulation 33(2) should make reference to a tenants “total” share. The current drafting reflects the wording in the definition of “domestic tenancy” set out at section 2(1)(a)(ii) of the Housing (Wales) Act 2014.

Merits Scrutiny point 32:

Response

The Welsh Government does not have any information about when the relevant provisions of the Housing and Planning Act 2016 will be brought into force.

Merits Scrutiny point 33:

Response

The Welsh Government thanks the Legislation, Justice and Constitution Committee for its diligence and has considered the points raised in relation to the footnotes. The Statutory Instrument has been withdrawn and corrected (particularly in relation to specific points raised in relation to footnotes) and re-laid.

Merits Scrutiny point 34:

Response

The Welsh Government thanks the Legislation, Justice and Constitution Committee for its diligence, notes the comments made and endeavours to adhere to the drafting guidelines set out in “Writing Laws for Wales” wherever possible.



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022**

**DATE**            **15 July 2022**

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

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State for Environment, Food and Rural Affairs exercising a subordinate legislation-making power in a devolved area in relation to Wales.

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

### **Impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence:**

The creation of new concurrent powers confines the Senedd in exercising its legislative competence (on the basis that SoS consent is needed under paragraph 11 of Schedule 7B to remove these functions).

The requirement to obtain the Secretary of State's consent to remove any Minister of the Crown function has been amended by the Government of Wales Act 2006 (Amendment) Order 2021 ('the 2021 Order'). The 2021 Order amended Schedule 7B to the Government of Wales Act 2006 to remove the requirement to obtain Minister of the Crown consent if the Welsh Ministers modify or remove a Secretary of State function in the circumstances set out in paragraph 11(6) to Schedule 7B and include any function of the Minister of the crown that is to any extent 'exercisable concurrently where that function exists to any extent by virtue of regulations made under sections 8 to 8C of the EUWA 2018.

The regulations were laid before Parliament on 13 July 2022 to come into force 21 days later.



## UK MINISTERS ACTING IN DEVOLVED AREAS

### 011 - [The Animals, Food, Plant Health, Plant Propagating Material and Seeds \(Miscellaneous Amendments etc.\) Regulations 2022](#)

*Laid in the UK Parliament: 18 July 2022*

#### Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	19 July 2022
Date sifting period ends in UK Parliament	13 September 2022
SICM under SO 30A (because amends primary legislation)	Not required

#### Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### Background

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Welsh Government has consented to the UK Government making these Regulations in a devolved area.

#### Summary

These Regulations correct a number of deficiencies in, among other things, devolved retained EU law, in order to make that law work in a domestic context.

Many of the deficiencies being corrected are relatively minor. For example:

- References to “Member States” are changed to references to “competent authority”. For example, instead of giving “Member States” a choice as to when to take milk samples, these Regulations

give “competent authorities” a choice as to when to take milk samples. The Welsh Ministers are the competent authority in Wales.

- References to “Community experts” are changed to “experts appointed by the competent authority”.
- References to “the Community” are change to references to “Great Britain”.

However, other changes appear to be more significant, in particular changes to two EC Decisions relating to the import of animal products and fishery products from the USA.

Currently, such imports must be accompanied by a health certificate in accordance with a model form that is set out in legislation. However, as a result of these Regulations, such imports will, instead, have to be accompanied by a health certificate **in the form published by the appropriate authority from time to time.**

The Welsh Ministers are the appropriate authority in Wales. This gives the Welsh Ministers (and other appropriate authorities in Great Britain) discretion as to the form of health certificates that must accompany imports of animal products and fishery products from the USA, rather than requiring such imports to be accompanied by a health certificate in accordance with a model form that is set out in legislation.

### **Statement by Welsh Government**

Legal Advisers make the following comments in relation to [the Welsh Government’s written statement dated 15 July 2022](#):

- The written statement does not summarise the purpose of the Regulations, as required by SO 30C.3(i). There is no description of what the Regulations do.
- The written statement does not explain why the Welsh Ministers have consented to the UK Government making these Regulations in a devolved area, as required by SO 30C.3(iii).
- The written statement refers to the amendment of Schedule 7B to the Government of Wales Act 2006 so as to remove the requirement for UK Government consent “*if the Welsh Ministers **modify or remove** a Secretary of State function*”. However, Schedule 7B was amended only as regards **removing** a Secretary of State function; the amendment of Schedule 7B did not capture the **modification** of such functions.

- That quote from the written statement also appears to conflate the Welsh Ministers and the Senedd – Schedule 7B is relevant only to Senedd Acts, and not the executive functions of the Welsh Ministers.

### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

As regards the use of these powers in devolved areas, the Intergovernmental Agreement says that the powers will not be used to enact “new policy” in devolved areas. It is unclear to what extent these Regulations enact new policy. Some might say that changing the form of health certificate amounts to new policy. Others might say that the policy is simply for imports to be accompanied by health certificates, and that policy is not changing. In other words, it is difficult to define what is “new policy”.

The Intergovernmental Agreement also says that the primary purpose of using these powers will be “administrative efficiency”. However, the Welsh Government’s written statement says nothing about the administrative efficiency achieved by these Regulations. Without further information as to how the new health certificates will work, it is impossible to know whether the Regulations will achieve administrative efficiency.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**25 July 2022**

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** Inter-Ministerial Standing Committee (IMSC)  
**DATE** 12 July 2022  
**BY** Mick Antoniw MS, Counsel General and Minister for the Constitution

The First Minister and I represented the Welsh Government at the second meeting of the Inter-Ministerial Standing Committee (IMSC) on 29<sup>th</sup> June. We were joined by the Minister for Finance and Local Government, Rebecca Evans MS, and the Minister for Social Justice, Jane Hutt MS, for the Cost of Living discussion.

Deputy First Minister and Cabinet Secretary for Covid Recovery John Swinney MSP chaired this virtual Standing Committee meeting on behalf of the Scottish Government.

A joint [communiqué](#) was published following the meeting and contains full details of other attendees. Among the items on the agenda were: current UK Parliament legislative programme; the rise in the cost of living and the progress on establishing Inter-ministerial Groups (IMGs) to date.

Concerning the agenda item on the current UK legislative programme, whilst we welcomed the positive progress made towards agreeing improved ways of working and engagement, I once again highlighted the unacceptable previous breaches of the Sewel Convention and unacceptable engagement from the UK Government on a number of Bills in the current legislative programme including the Northern Ireland Protocol Bill, Levelling-up and Regeneration Bill and Bill of Rights. In doing so I underlined the importance of early engagement on future UK Bills and called on the UK Government to provide assurances they would respect the Sewel Convention,.

In relation to the Cost of Living item, discussions included the measures recently announced by the UK Government and common challenges faced across the UK Government and Devolved Governments. This item gave the opportunity for Welsh Ministers to emphasise the importance of constructive discussions around our shared responsibility for ensuring a resilient labour market, the importance of supporting households and businesses and the need for a more concentrated focus on long-term challenges.

Ministers noted the progress on establishing IMGs to date, and a forward look for IMSC meetings. The next IMSC is scheduled to be held in September and will be chaired by the Welsh Government, in line with rotating chair arrangements.

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



**Llywodraeth Cymru**  
**Welsh Government**

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

12 July 2022

Dear Huw,

### **Inter-Institutional Relations Agreement: Inter-Ministerial Standing Committee**

Further to my letter of 17 June I have issued a [Written Ministerial Statement](#) summarising the discussions at the meeting.

I have confirmed as part of this Written Ministerial Statement that the next Inter-Ministerial Standing Committee IMSC is scheduled to be held in September and will be chaired by the Welsh Government, in line with rotating chair arrangements. I will provide a written update on the arrangements for the next meeting, which will include the date and likely agenda items in due course.

Following your letter of 27 June future correspondence on such meetings will be copied to all Senedd Committees where agenda items (and subsequent meeting updates) are likely to fall within their remits. As such, I have also copied this letter to the Finance Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,



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

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

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-LG-1797-22

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

[huw.Irranca-Davies@senedd.wales](mailto:huw.Irranca-Davies@senedd.wales)

12 July 2022

Dear Huw,

## **The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022**

I wish to inform the Committee I am giving consent to the Secretary of State for Environment, Food and Rural Affairs to lay The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 on 12 July 2022.

The Regulations make minor technical amendments to retained direct EU law relating to official controls, to ensure that it operates effectively following the withdrawal of the United Kingdom from the European Union.

The amendments are summarised below:

- Part 2 of this instrument makes operability amendments to secondary legislation in England relating to the marketing of seed and fruit planting material to EU references which are no longer appropriate, and which were overlooked in earlier amending instruments. These amendments are necessary to ensure that this legislation continues to function effectively following the withdrawal of the UK from the EU.
- Part 3 of this instrument makes various operability amendments to retained direct EU legislation applying in relation to Great Britain relating to animal health and welfare, food and plant health, the majority of which were overlooked in earlier amending instruments, while some correct minor technical errors. These amendments are necessary to ensure that this legislation continues to function effectively following the withdrawal of the UK from the EU.

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

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- The majority of the amendments are to change EU references, such as references to the Union and Member States, in the original European legislation to the GB language of Great Britain and relevant authorities in Great Britain, as well as removing redundant provisions applicable to EU institutions no longer applicable in GB.
- Part 4 of this instrument revokes two retained decisions and a retained regulation in the area of plant health, which are no longer considered necessary

I would like to draw to your attention that Regulations 7 and 9 create concurrent functions.

The changes consist of removing the model Export Health Certificates (EHCs) from the annexes of the relevant legislation and replace them with '*a form published by the Appropriate Authority from time to time*', meaning future changes to the model EHCs become an administrative process.

Similar concurrent functions in the sphere of Animal Health and Welfare were previously approved on the basis there is a mutual interest for all administrations in the application of coherent disease prevention. It makes sense to exercise these functions jointly because they need to work for the whole of the UK, or Great Britain (where there is freedom of movement). Furthermore, they are exercised in the context of a functioning Common UK Animal Health and Welfare Framework.

It is important to note that Welsh Ministers retain the power to not consent to the Secretary of State and to publish their own EHCs for animals and animal products entering Wales. However, officials envisage this would only happen in exceptional circumstances. This concurrent function is therefore appropriate and mirrors what already happens in other legislation and administrative processes to publish other EHCs for importation of animals and animal products into Great Britain as a whole.

It is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances there are benefits in working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I am giving my consent to these Regulations, which make corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency, and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is currently no divergence in policy. Our position on the protection of animals during transport is consistent with that of the UK Government.

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

Regards,

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

**Lesley Griffiths AS/MS**

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





Ein cyf/Our ref VG/00737/22

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

14 July 2022

Dear Huw,

In accordance with the Inter-Institutional Relations Agreement, I can report to Members that I attended a meeting of the Interministerial Group on UK-EU Relationships on 4 July.

I was unable to provide prior notice of the meeting as it was called at very short notice by the UK Government.

The meeting was also attended by the Rt Hon. Michael Ellis QC MP, Paymaster General and Minister for the Cabinet Office, and Neil Gray MSP, the Scottish Government's Minister for Culture, Europe and International Development. An official from the Northern Ireland Executive attended as an observer.

I am copying this letter to the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee because of its interest in topics discussed in the meeting.

As highlighted in the Written Statement, the date for the next meeting has yet to be agreed. However, I will inform you of the date as soon as it is confirmed, if I am able to do so, together with the likely agenda.

Further information can be found at  
<https://gov.wales/written-statement-meeting-interministerial-group-uk-eu-relations>

Yours sincerely,

**Vaughan Gething AS/MS**  
Gweinidog yr Economi  
Minister for Economy

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Llywodraeth Cymru  
Welsh Government

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

**TITLE** Meeting of the Interministerial Group on UK-EU Relations  
**DATE** 14 July 2022  
**BY** Vaughan Gething MS, Minister for Economy

I represented the Welsh Government at a virtual meeting of Interministerial Group (IMG) on UK-EU relations on 4 July. The meeting was attended by the Rt Hon. Michael Ellis QC MP, Paymaster General and Minister for the Cabinet Office, and Neil Gray MSP, the Scottish Government's Minister for Culture, Europe and International Development. A senior official attended from the Northern Ireland Executive as an observer.

The agenda had items on progress and priorities relating to the Trade and Cooperation Agreement (TCA) and the Northern Ireland Protocol Bill. Retained EU law was also discussed briefly.

In my response to the update on the TCA I stated the importance of our continued participation in EU Programmes including Horizon Europe and, on electricity trading, I raised the matter of long-term security and the scope for trade with Ireland. I also discussed the growth of FinTech in Wales. I expressed the importance of returning to the negotiating table to resolve issues.

In relation to the Northern Ireland Protocol Bill, I raised the matter of the lack of engagement with the Devolved Governments before introduction and also areas of concern.

The date for the next meeting of the IMG was not confirmed, but all parties agreed the need to meet after the summer.

# Agenda Item 8.4

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



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS, Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

20 July 2022

Dear Huw

I wish to inform Committee members of the granting of consent to the UK Government making and laying The Aquatic Animal Health (Amendment) Regulations 2022.

The Regulations intersect with devolved policy and will apply to Wales. The provisions could be made by Welsh Ministers in exercise of our own powers. The Regulation will extend to England, Scotland and Wales and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made by the Secretary of State, in exercise of the powers conferred by section 38 of the Fisheries Act 2020.

Officials, as part of the UK Aquatic Animal Health Policy Group, have been considering the functioning of the retained and domestic legislation, to improve the regime to make it more flexible, efficient and less burdensome. A number of improvements have been identified including enabling changes more quickly to the following Lists:

- i. lists of aquatic animal species which act as vectors for listed aquatic animal diseases;
- ii. lists of aquatic animal species which are susceptible to listed diseases; and

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- iii. the lists of species which can be imported into Great Britain from certain countries, as well as zones within these countries they can be imported from.

The amendments will provide better protection for Great Britain's aquatic animal health status, and significantly reduce the resources required to make these changes.

Legislation made under the Fisheries Act is covered by a 'carve out' within the Government of Wales Act 2006 (Amendment) Order 2021, as such the creation of these concurrent-plus functions would not impinge on the Senedd's ability to legislate in this area in future, if it so wished.

The Regulation is due to be laid before Parliament on 19 July 2022 with a commencement date of 15 August 2022.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Paul Davies MS, the Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely



**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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## **STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **British-Irish Council Summit in Guernsey**

**DATE**            **21 July 2022**

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

I attended the 37<sup>th</sup> meeting of the British-Irish Council on 7/8 July, which was hosted by the Government of Guernsey. The Minister for Climate Change attended the meeting virtually.

The meeting was chaired by the Chief Minister of the Government of Guernsey, Deputy Peter Ferbrache. Other attendees included An Taoiseach Micheál Martin TD, the First Minister of Scotland the Rt Hon Nicola Sturgeon MSP, the Chief Minister of Jersey Senator John Le Fondré, the Chief Minister of the Isle of Man Alfred Cannan MHK, and the Rt. Hon. Conor Burns MP, Minister of State for Northern Ireland.

Before the main BIC meeting, I took part in a discussion with the other Heads of Delegation on the Cost of Living crisis. We took the opportunity to share our most pressing concerns, offering examples of the actions our Governments are taking and noted areas where further action was needed. As part of this I emphasised the need for action to be taken on the inequity where energy customers on pre-payment meters also face standing charges.

The theme of this Council meeting was Collaborative Spatial Planning. The Minister for Climate Change attended virtually a constructive and informative inter-Ministerial discussion on this topic ahead of the Council meeting, and the Council then also discussed the matter. The Council noted potential opportunities to revitalise our towns and make them places where people want to live, do business, and spend their leisure time, while delivering on a range of wider outcomes including inclusive development, addressing climate change, supporting green recovery and promoting active and sustainable travel.

In addition, the Council discussed the latest political developments including: the cost of living crisis, particularly in the areas of fuel and housing; ongoing relations with the EU, and the concerning current situation in relation to the Northern Ireland Protocol; climate change; developments in Ukraine and the continuing challenges posed by the Covid-19 pandemic.

In contributing to this discussion, I highlighted a number of areas that need to remain as high priorities for the BIC:

- the cost of living crisis and the need for significant further action to support vulnerable households struggling with rising costs;
- Ukraine, and the continued imperative to support refugees fleeing the conflict;
- the ongoing impact of Covid-19, which would continue to put pressure on public services and for which effective collective planning needs to be in place for the coming winter;
- the concerning impacts of Brexit including on trade and Welsh ports, and the need for improvements in the trading and wider relationship between the UK and the EU; and
- climate change, which remains an overarching priority for all Governments and where new issues cannot lead to compromises to the detriment of future generations.

I also reflected briefly on political developments within the UK Government, and the need for the next Prime Minister to reset relationships based on productive and respectful dialogue.

A joint Communiqué was issued after the meeting, which is available at:

<https://www.britishirishcouncil.org/bic/summits>

The British-Irish Council published its Annual Report 2020/21 in June, which is available at:

<https://www.britishirishcouncil.org/>

The next Council Summit will be hosted by the UK Government.

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



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

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21 July 2022

Dear Huw,

**Inter-Institutional Relations Agreement: British-Irish Council Summit in Wales**

Further to my letter of 6 July regarding the inter-institutional relations agreement, the British-Irish Council Summit in Guernsey and the Ministerial discussion of the Collaborative Spatial Planning work sector, I would like to draw your attention to my written [statement](#) of today, and to the BIC [communiqué](#) summarising the outcomes of the Summit and Ministerial discussion.

Yours sincerely,

**MARK DRAKEFORD**

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Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

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4 August 2022

Dear Huw,

In accordance with the inter-institutional relations agreement, I wish to notify you a further meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 20 July at the Royal Welsh Show.

The meeting was attended by Edwin Poots MLA, Minister of Agriculture, Environment and Rural Affairs, Northern Ireland Government; George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, UK Government; David TC Davies MP, Parliamentary Under-Secretary of State for Wales; Lord Malcom Offord, Parliamentary Under-Secretary of State to the Scotland Office; Mairi McAllan, Minister for Environment and Land Reform, Scottish Government; Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands, Scottish Government.

I chaired the IMG where I presented on Welsh Government's proposals for a Sustainable Farming Scheme.

Ministers also discussed the implications of the invasion of Ukraine and wider increased costs on agri businesses, including a presentation on the modelling of the impact of agri-inflation in Wales. I noted Governments were working well at official level and suggested it would be good if Governments could do more modelling and analysis together. I also raised with the UK Government whether actions could be taken forward on VAT on red diesel and fertiliser.

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A discussion of retained EU Law and the proposed Brexit Freedoms Bill followed where the UK Government outlined the rationale for the legislation. Concerns were raised regarding how devolved aspects of the Bill would be addressed. The Gene Technology (Precision Breeding) Bill was also discussed, particularly, the implications for Devolved Administrations and the need for much greater engagement.

Ministers then discussed the development of the borders Target Operating Model for future border checks with a particular emphasis on timescales for implementation, the importance of biosecurity and the proposed trusted trader approach.

The UK Government also provided an update on progress regarding the negotiations for the Convention of Biological Diversity COP 15 and the planned summit in Montreal later this year.

Finally, the UK Government confirmed the exclusion to the Internal Market Act on single use plastics had now been granted.

We agreed our next meeting would be held on Monday 12 September in Scotland.

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

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

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



**Llywodraeth Cymru**  
**Welsh Government**

Regards,

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

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

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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.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Ministerial Forum for Trade  
**DATE** 09 August 2022  
**BY** Vaughan Gething, Minister for Economy

In accordance with the inter-institutional relations agreement, I can report to Members that I attended the Ministerial Forum for Trade on 5 July 2022.

The meeting was attended by;

- Rt Hon Penny Mordaunt MP, Minister of State for Trade Policy
- Ivan McKee, Scottish Minister for Business, Trade, Tourism and Enterprise
- Gordon Lyons, Northern Ireland Executive Minister for the Economy

The Ministerial Forum for Trade provides the primary forum to discuss matters of trade policy between the UK government, Northern Ireland Executive, Scottish Government and Welsh Government.

In the forum, I agreed the revised terms of reference for the group and highlighted our broad support for the UK Governments free trade agreement negotiations. I also raised the importance of engaging closely with the Welsh Government to ensure expertise and interests are represented in trade deals and also in other agreements impacting on trade, such as the Memorandum of Understanding reached with individual US states.

Following the agreement of the revised terms of reference, the Ministerial Forum for Trade will now transition into the Inter-ministerial Group (Trade) for Trade but continue to serve the same function. A joint communique will be published on the UK government webpage.

The Inter-ministerial Group (Trade) will meet again at a later point in the year.

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



Huw Irranca-Davies MS  
Chair of Legislation Justice and Constitution Committee  
[SeneddLJC@assembly.wales](mailto:SeneddLJC@assembly.wales)

Paul Davies MS  
Chair of Economy Trade, and Rural Affairs Committee  
[SeneddEconomy@senedd.wales](mailto:SeneddEconomy@senedd.wales)

8 August 2022

Dear Huw, Paul,

I am writing further to my letter of 4 July and in accordance with the inter-institutional relations agreement, to inform you that I attended the Ministerial Forum for Trade on the 5 July.

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

During the meeting, we discussed and agreed the revised terms of reference for the group. There were also updates on the Memorandum of Understanding that the Department for International Trade have concluded with some US states as well as an update on the UK-India free trade negotiations.

I reiterated that the Welsh Government is supportive of international trade and that here in Wales we have a great deal of expertise that can be drawn on to support negotiations, particularly in relation to the United States which is an important market for Wales.

I also emphasised our concerns in relation to animal welfare and standards with regards to India and that the UK government must not create an unlevel playing field.

Please note, following the agreement of the revised terms of reference, the group will now transition into the Inter-ministerial Group (Trade) but continue to serve the same function. A joint communique will be published on the UK government webpage.

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

Yours sincerely,

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

**Vaughan Gething AS/MS**  
Gweinidog yr Economi  
Minister for Economy

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



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

19<sup>th</sup> August 2022

Dear Huw,

Thank you for your letter of 25 July 2022 regarding consent to The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (the Frequency of Checks Regulations) and the plenary debate following which you raised the following questions:

***1. What consultation took place with Welsh stakeholders on the Frequency of Checks Regulations and the policy change implemented by them?***

The initial consultation with stakeholders on the method for determining the frequency of risk targeted plant health import inspections took place between 26 May - 4 August 2021 and was targeted at members of the Plant Health Advisory Forum, which includes Welsh stakeholders. The consultation considered the levels of identity checks and physical inspections required on regulated plant health goods imported into GB.

A follow up consultation took place between 3 December 2021 and 28 January 2022 on a revised method, as a result of responses to the initial consultation.

Welsh Government officials engaged with Welsh stakeholders directly on the follow up consultation, including FUW, Tyfu Cymru/Grow Wales and the Wales Plant Health Evidence and Advisory Group (WPHEAG) which represents a range of stakeholders in Wales, including industry.

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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.

**2. What, if any, concerns were raised by these stakeholders and how were these addressed?**

The responses received to the initial consultation were generally supportive of a GB focused risk-based frequency of checks regime. Stakeholders highlighted concerns on the exclusion of plants for planting from the proposed approach and the delay before goods from the EU could benefit from this proposal. To address these concerns the second consultation included a revised methodology which applied to a much wider range of goods, including plants for planting as well as produce (e.g., fruit, vegetables and cut flowers).

Welsh stakeholders supported the concept of the risk-based approach to inspections and supported reviewing inspection frequencies. In response to the consultation the Welsh Plant Health Evidence and Advisory Group made the following suggestions or queries:

<b>WPHEAG comment</b>	<b>How this was addressed</b>
That the conditions under which plant passports and phytosanitary certificates are issued may need to be reconsidered, if inspection frequencies decrease.	The UK Plant Health Risk Group will continuously review risks to plant biosecurity and identifying actions needed to mitigate the most significant risks. These include keeping our regulatory regime up to date, carrying out focused surveillance and inspections, contingency planning, research, and awareness raising as well as identifying areas where intervention would not be helpful or justified.
Recommendation that inspection methods are reviewed and researched. Resources need to be allocated to developing new inspection methods that utilise the most recent technologies.	This was acknowledged in the consultation response document. As a UK Plant Health Service, we will be seeking to improve front line diagnostic services.
That the details of the methods used to establish frequencies of inspections should be published.	This was addressed through details of the methods being included in the regulation itself.

**3. Can you clarify whether these policy changes relate to the plant health common framework and, if so, were they considered through relevant framework processes?**

These policy changes relate to the plant health common framework and the processes set out within the framework were adhered to in their development. This included the proposed changes to the frequency of checks regime being discussed by groups within the framework structure. This included the Plant Health Advisory

Forum which discussed the proposals in October 2021 and the UK Plant Health Risk Group in February 2022, both of which WG and the other UK nation officials attend.

***4. Can you clarify whether the Frequency of Checks Regulations come within the scope of the United Kingdom Internal Market Act 2020?***

Before a plant can be sold in Great Britain it will need to satisfy certain regulatory requirements. This includes those set out in the Frequency of Checks Regulations, relating to the import of plants. England, Scotland and Wales are choosing to align their Frequency of Checks Regulations and there is no divergence in approach. As UKIMA applies to the sale of goods and services it may be that certain plants imported and subject to the Frequency of Checks Regulations are then sold elsewhere in Great Britain due to UKIMA.

***5. Can you confirm that the Frequency of Checks Regulations result in a divergence from EU standards that were in place at the end of the transition period and explain how any implications of this divergence will be assessed?***

The Regulations extend to England, Scotland and Wales, and following the UK's exit from the EU the recommendation was to retain the risk targeted approach, used in the EU. When the regulations are in place the level of checks will be reviewed annually and can be amended upwards or downwards as necessary to reflect any changes in the level of risk, which would result in a divergence from the EU. Any evidence of a serious plant health risk would lead to more urgent action being taken outside of the annual review process (e.g. immediately increasing inspection levels). Any implications of divergence from the EU will be assessed by the UK Plant Health Risk Group.

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

Yours sincerely,



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



Julie James MS  
Minister for Climate Change

25 July 2022

Dear Julie

### The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022

Thank you for your letter of 28 June in which you notified us of your intention to consent to The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (the Frequency of Checks Regulations) which were subsequently laid in the UK Parliament on 30 June 2022. We considered your letter at our meeting on 4 July, and then on 11 July, we considered your letter of 5 July in which you confirmed you had given your consent. As mentioned in the debate on the associated Plant Health etc. (Fees) (Amendment) (Wales) (EU Exit) (No.2) Regulations 2022, this series of regulations highlights the complexity of law making in Wales following our exit from the EU. We would therefore be grateful if you would address the following questions:

1. What consultation took place with Welsh stakeholders on the Frequency of Checks Regulations and the policy change implemented by them?
2. What, if any, concerns were raised by these stakeholders and how were these addressed?
3. Can you clarify whether these policy changes relate to the plant health common framework and, if so, were they considered through relevant framework processes?
4. Can you clarify whether the Frequency of Checks Regulations come within the scope of the *United Kingdom Internal Market Act 2020*?

5. Can you confirm that the Frequency of Checks Regulations result in a divergence from EU standards that were in place at the end of the transition period and explain how any implications of this divergence will be assessed?

I would be grateful to receive a response by 22 August 2022.

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

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE** Statement on the progress of the Independent Commission on the Constitutional Future of Wales

**DATE** 15 July 2022

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

In May we provided a progress report on the work of the Independent Commission on the Constitutional Future of Wales and undertook to provide a further report in the summer.

Information on the Commission's work since my last statement can be found in the most recent progress report received from the Co-Chairs <https://gov.wales/independent-commission-on-the-constitutional-future-of-wales-progress-report-july-2022>.

We will provide further updates to members in the autumn.

Huw, Irranca-Davies MS

Chair, Legislation, Justice and Constitution  
Committee

18 July 2022

Dear Huw,

## Historic Environment (Wales) Bill: Financial Implications

At our meeting on 7 July, the Finance Committee considered the Historic Environment (Wales) Bill (the Bill). As you will be aware, it is standard practice for the Finance Committee to consider the financial implication of Bills introduced into the Senedd. However, given that the Bill is a consolidation Bill, the Standing Orders set out distinct requirements that are different from the procedures that apply to public Bills.

In particular, consolidation Bills cannot give rise to additional significant costs. The Explanatory Memorandum (EM) accompanying the Bill must contain a statement from the Member in Charge confirming that the provisions of the Bill do not give rise to additional significant expenditure payable out of the Welsh Consolidated Fund and where a Bill gives rise to additional expenditure, it must set out the best estimates for this.

As such, the EM identifies that, if passed, there will be some small transitional costs associated with implementing the Bill, specifically transitional costs of approximately £50,000 which will be spread across the implementation period (2023-26). The EM further states that “the Bill is not expected to give rise to any additional costs beyond the implementation period”.



Given that the Bill does not give rise to significant costs, the Finance Committee believes it would be more appropriate for your Committee to consider the financial implications of this Bill as part of your scrutiny work. If there is the likelihood that additional costs may arise, other than the transitional costs identified, I would be grateful if you could bring them to the attention of the Finance Committee.

Yours sincerely



Peredur Owen Griffiths MS  
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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

Llywodraeth Cymru  
Welsh Government

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

[seneddlic@senedd.wales](mailto:seneddlic@senedd.wales)

27 July 2022

Dear Huw,

I would like to thank you and the Committee Members for your consideration of the Legislative Consent Memorandum (LCM) laid before the Senedd in respect of the UK Government's Online Safety Bill.

I welcome the report published by the Committee on the 28 June and am pleased that the Committee agreed with the assessment of the provisions within the Bill that require the consent of the Senedd and that it is appropriate for the Bill to make provision for Wales.

I note in your report that the view of the Committee was that the Memorandum should have made reference to the fact that the regulation-making power provided to Welsh Ministers in clause 175(5) of the draft Bill is subject to the draft affirmative procedure.

The rationale for use of the affirmative procedure provided by the Department for Digital, Culture, Media and Sport and the Home Office to the Delegated Powers and Regulatory Reform Committee was as follows:

- *341. This delegated power is considered necessary to allow the legislation to be updated to address changes in the education system. These are Henry VIII powers and as such the draft affirmative procedure is most appropriate. The draft affirmative procedure will offer a high level of parliamentary scrutiny and oversight while still ensuring that Ministers or Departments can keep the legislation up to date.*
- *342. Removing, adding or amending Schedule 1 Part 2 could increase regulatory burdens on a particular description of education or childcare. It is therefore important that Parliament and the respective devolved administrations have the opportunity to debate such changes to the scope of the regulatory framework.*

I therefore think that it is appropriate that the regulation making power conferred on Welsh Ministers under clause 175(5) of the Bill is subject to the draft affirmative procedure.

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[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@gov.Wales)

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

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This power enables Welsh Ministers to amend the list of Welsh education and childcare providers (found in Part 2 of Schedule 1) who will be exempt from regulation under the Bill. The Henry VIII power enables the amendment of primary legislation using subordinate legislation, which may affect the application of provisions in the Bill relating to devolved matters. Given the nature of Henry VIII powers it is considered that they should be subject to sufficient Senedd scrutiny. Therefore, the affirmative procedure is suitable.

I trust that this letter provides the Committee with the additional information they require.

Yours sincerely



**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd

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

Elin Jones MS  
Llywydd  
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[Llywydd@senedd.wales](mailto:Llywydd@senedd.wales)

27 July 2022

Dear Elin,

The UK Government introduced the Data Protection and Digital Information (DPDI) Bill to the House of Commons on 18 July. The purpose of this letter is to notify you of a delay in laying a Legislative Consent Memorandum in relation to the DPDI Bill. There are a number of reasons for this which relate primarily to complexity of the Bill, its length and the late sight of the draft Bill.

The UK Government believe this is an important and complex piece of legislation which touches upon a number of areas of policy, as demonstrated by the Long Title of the Bill:

*A Bill to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about access to customer data and business data; to make provision about privacy and electronic communications; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; to make provision about the disclosure of information to improve public service delivery; to make provision for the implementation of agreements on sharing information for law enforcement purposes; to make provision about the keeping and maintenance of registers of births and deaths; to make provision about information standards for health and social care; to establish the Information Commission; to make provision about oversight of biometric data; and for connected purposes.*

The Bill itself is 194 pages long and covers multiple policy areas and Ministerial responsibilities.

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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.



My officials received first sight of the draft Bill in its entirety on 15 July and Welsh Ministers also received it on the same day. The UK Government have stated they will be seeking legislative consent from the Senedd in respect of three measures within the Bill - Smart Data Measures; Digital Economy Act Data Sharing Gateway; and the International-Law Enforcement Alerts Platform (I-LEAP).

Welsh Government lawyers are currently analysing the Bill to assess whether we agree with on the devolved areas of competence and we will be providing advice to Ministers as soon as is practicable. Whilst we do expect to lay a Legislative Consent Memorandum before the Senedd, unfortunately this will be outside the normal two-week Standing Order 29 deadline due to the reasons outlined above. However, we will lay prior to the end of the recess period.

I am copying this letter to the First Minister, the Deputy Minister for Climate Change, the Counsel General and Minister for the Constitution, the Minister for Health and Social Services, the Minister for the Economy and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely



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

# Agenda Item 9.5



Canolfan  
Llywodraethiant Cymru  
Wales Governance  
Centre

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

Dr Robert Jones  
Wales Governance Centre  
School of Law and Politics  
Law Building  
Cardiff University  
Museum Avenue  
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28 July 2022

Annwyl Mr Irranca-Davies,

The Wales Governance Centre at Cardiff University has been researching the topic of criminal justice in Wales for almost a decade. This research has helped to uncover a range of issues including those relating to sentencing and imprisonment, alternative criminal justice models, the legal economy, and the 'jagged edge' of justice in Wales. Over the past four years our work has also identified clear evidence of racial disproportionality within the Welsh criminal justice system. While it is true that Ministers and Members of the Senedd have referred to our findings on racial disproportionality, there has been no substantial scrutiny of those findings to date.

The purpose of this letter is to express my view that the Legislation, Justice and Constitution Committee should carry out an inquiry into racial disproportionality within the criminal justice system in Wales. To further underline the case for an in-depth inquiry I have provided a brief summary of some of the key areas of concern that I feel are worthy of further consideration. The points below include previously unpublished data.

## **Policing**

- Home Office data show that there is a disproportionate use of stop and search on Black, Asian and Minority Ethnic (BAME) communities in Wales. In 2020/21, there were 23 stop and searches per 1,000 BAME people in Wales, compared with 8 searches per 1,000 White people. There were 56 stop and searches per 1,000 Black (or Black British) people in Wales in 2020/21, 18 per 1,000 for Mixed groups and 16 per 1,000 individuals from an Asian background.

- Data on the number of times police tactics were used show that individuals from a BAME background were overrepresented in police use of force statistics in 2020/21. While the 2011 Census found that 4.4 per cent of the Welsh population belonged to a BAME ethnic group, 9.8 per cent of all incidents of police restraint were against individuals from a BAME ethnic background in 2020/21.
- Individuals belonging to a BAME ethnic group in Wales were also overrepresented within police use of 'Less lethal weapons' in 2020/21. 6.6 per cent of all incidents where a Conducted Energy Device (i.e. a TASER) was used by Welsh forces was against someone from a BAME background in 2020/21.<sup>1</sup>
- 6.2 per cent all arrests made by Welsh police forces in 2020/21 were individuals from a BAME background. Despite comprising 0.6 per cent of the general population, 2.6 per cent of all those arrested in 2020/21 belonged to a Black ethnic group.

### **Courts and Sentencing**

- The Lammy Review in 2017 found that individuals from a BAME background were less likely to enter guilty pleas due to a lack of trust in the criminal justice system. Disaggregated data obtained from the Ministry of Justice show that a slightly higher proportion of White defendants (82.5 per cent) pleaded guilty at the Crown Court in 2019 compared to individuals from a BAME (80.9 per cent) background.
- Although the number of children first entering the criminal justice system has fallen in Wales, the rate has declined unevenly across different ethnic groups since 2010. While the number of White children first entering the criminal justice system in Wales fell by 87 per cent, the number of Asian children declined by 69 per cent and those from Black backgrounds fell by 59 per cent.
- Individuals from a Black (76 per cent), Asian (75 per cent) and Mixed (70 per cent) ethnic group recorded a higher custody rate at the Crown Court in Wales than White (64 per cent) defendants in 2019.

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<sup>1</sup> This total includes all incidents including where a CED device is drawn, aimed, arced, red-dot, drive-stun, fired and angle drive-stun.

- Those from BAME backgrounds are also more likely to receive longer custodial sentences than those belonging to a White ethnic group. Between 2013 and 2020, the average custodial sentence length in Wales was higher for Black (26.7 months), Asian (26.4 months) and Mixed (26.4 months) offenders sentenced in Wales than for those from White (16.7 months) ethnic groups.

### **The Prison and Probation Population**

- Since 2017, the number of BAME prisoners from Wales (based on home address prior to entering custody) has marginally increased (1 per cent) while the overall Welsh prison population has fallen by 7 per cent.
- In 2021, there were 79 Black people from Wales in prison for every 10,000 of the population. This rate compared to just 14 White people per 10,000 of the population. There were 21 Asian people in prison per 10,000 and 44 people from a Mixed background per 10,000 in prison in 2021.
- Individuals from Black and Mixed ethnic groups are over-represented amongst the probation population in Wales. For every 10,000 Black people living in Wales 129 were under probation supervision in 2021. This compared to a rate of 45 per 10,000 for individuals from a White background, 40 for Asian and 85 for those from a Mixed ethnic group.
- The Ministry of Justice's most recent *Ethnicity and the Criminal Justice System* report found that Black prisoners are consistently more likely to serve a higher proportion of their determinate sentences in prison than any other ethnic group. Disaggregated data show that between 2015 and 2018, Mixed prisoners from Wales (63 per cent) served a higher proportion of their determinate sentences in prison followed by Black (61 per cent), White (57 per cent) and Asian (57 per cent) prisoners.

While criminal justice is reserved to the UK Government, the Welsh Government has a clear set of responsibilities for promoting equality and tackling all forms of discrimination in Wales. The overlap and intersection between the reserved and devolved areas means that this topic has yet to receive any kind of serious analysis or scrutiny. The lack of publicly available Welsh-only criminal justice data has only added to the problem of effective oversight. The Ministry of Justice's own *Ethnicity and the Criminal Justice System* report, for example, fails to provide a disaggregated picture for Wales and

England, while the Lammy review in 2017 also focussed exclusively upon trends in 'England and Wales'.

As it currently stands, there is no clear or authoritative understanding of how different communities across Wales experience and interact with the criminal justice system. It is also unknown what steps could and should to be taken by the Welsh Government to promote fairness and tackle discrimination within the criminal justice system. I believe that the points outlined above underscore just how important an inquiry into racial disproportionality within the Welsh criminal justice system is at this time.

I would like to take this opportunity to thank you for your time in considering this letter. If you wish to discuss this subject further or require any additional information please do not hesitate to contact me.

Yours sincerely,

Dr Robert Jones

Chair of the Legislation, Justice and Constitution Committee

1 August 2022

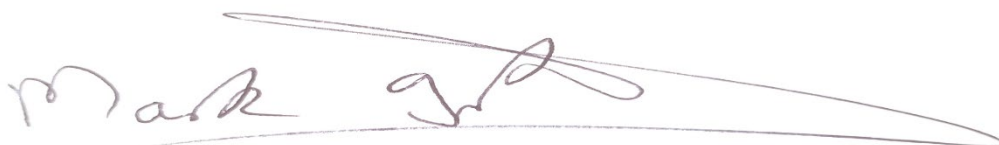
Dear Huw,

### Legislative Consent Memorandum: The Procurement Bill

At its meeting held on 14 July 2022, the Public Accounts and Public Administration Committee considered its approach to scrutiny of the Legislative Consent Memorandum (LCM): The Procurement Bill. As you will be aware the Committee agreed to write jointly with the Legislation, Justice and Constitution Committee to the Minister for Finance and Local Government raising a number of queries about the LCM.

The Committee has also invited the Minister to discuss these queries further as part of an oral evidence session scheduled between 10am – 11am on Wednesday 21 September 2022. I am pleased to invite all Members of the Legislation, Justice and Constitution Committee to attend the session and would be grateful if you could confirm via the Clerks if you and other Members of your Committee will be able to attend.

Kind Regards,



Mark Isherwood MS  
Committee Chair

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

# Agenda Item 9.7

Department for  
Business, Energy  
& Industrial Strategy

Rt Hon Kwasi Kwarteng MP  
Secretary of State  
Department for Business,  
Energy & Industrial Strategy  
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W [www.gov.uk](http://www.gov.uk)

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

1 August 2022

Dear Huw,

Thank you for your letter, dated 21 July, seeking clarity about the UK Government's intention regarding the "potential repeal" of the Trade Union (Wales) Act 2017.

Employment and industrial relations are clearly reserved matters, something that the Wales Act 2017 put beyond doubt. There are good reasons for this, not least as many businesses and important public services operate across borders. It is important that both employers and employees have a clear framework to follow that applies equally across all parts of Great Britain.

This is why we are committed to taking steps to override the provisions of the Trade Union (Wales) Act 2017 when parliamentary time allows.

The Government made these intentions clear including when the Trade Union (Wales) Bill was passed by the National Assembly for Wales and the then Secretary of State for Wales (the Rt Hon Alun Cairns MP) wrote to the Assembly's Chief Executive and Clerk in August 2017. Given this commitment to remove the provisions in the Trade Union (Wales) Act 2017 has been Government policy for five years, we did not consider it necessary to take advantage of the new intergovernmental arrangements to discuss it with the Welsh Government.

We will, of course, look to engage on this further once a suitable legislative vehicle has been identified. I very much hope that the new intergovernmental arrangements will support that engagement at the appropriate time.

Yours sincerely,



**RT HON KWASI KWARTENG MP**  
Secretary of State for Business, Energy & Industrial Strategy



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

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

8 September 2022

Dear Chair

### **Trade Union (Wales) Act 2017**

Thank you for your letter dated 21 July enclosing your letter to the Secretary of State for Business, Energy and Industrial Strategy.

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 will have no direct impact on the Trade Union (Wales) Act 2017. However, as you are aware, the Explanatory Memorandum restates the UK Government's longstanding hostile position in relation to the Trade Union (Wales) Act 2017 and its abhorrent aspiration to remove the Act "when parliamentary time allows".

We have made it clear to the UK Government that such a move would be utterly unacceptable, and widely interpreted in Wales as fundamentally disrespectful both to devolution and to legislation passed by the Senedd Cymru. We will continue to use the opportunities presented through the Inter-Governmental Relations arrangements, including at the Inter-Ministerial Standing Committee meetings, to raise this and other issues.

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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.



We believe imposing tighter restrictions on trade unions is highly regressive and will do nothing to enrich the lives of working people or to improve the overall industrial relations environment. In Wales, we work in social partnership and in a spirit of collaboration and mutual respect – we will continue to work in this way.

Yours sincerely

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

**MARK DRAKEFORD**

The Rt Hon Kwasi Kwarteng MP  
Secretary of State for Business, Energy and  
Industrial Strategy

21 July 2022

Dear Kwasi

### Trade Union (Wales) Act 2017

I am writing in relation to the *Trade Union (Wales) Act 2017*, which was passed by the Senedd on 18 July 2017.

In a [letter](#) to us in April, the Rt Hon Michael Gove MP, the former Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations told us that the new intergovernmental arrangements would herald a new era for joint working between the UK Government and the Devolved Governments.

Paragraph 7.5 of the [draft Explanatory Memorandum](#) to the [draft Conduct of Employment Agencies and Employment Businesses \(Amendment\) Regulations 2022](#), published on 27 June 2022, states:

*"Section 2 of the Trade Union (Wales) Act 2017 prohibits a devolved Welsh authority from hiring a worker supplied by an employment business for the purpose of replacing staff who are on strike or participating in other industrial action. Since the passage of the Trade Union (Wales) Act 2017, the Wales Act 2017 has clarified that industrial relations is a reserved matter. As previously stated in 2017, the UK Government intends to legislate to remove the Trade Union (Wales) Act 2017 through primary legislation when Parliamentary time allows, to ensure trade union legislation applies equally across Great Britain."*

The prospect of an Act of the Senedd being repealed by the UK Parliament would represent a significant—and unprecedented—constitutional event.

We would have expected, at the very least, that the potential repeal of an Act passed by the Senedd would have featured prominently in intergovernmental discussions between the UK and Welsh Governments. In the Senedd on the 28 June the First Minister said:

*"First of all, Llywydd, let me say this, that it was deeply, deeply disrespectful of the UK Government—disrespectful to devolution, disrespectful to this Senedd—yesterday to have smuggled out, in an explanatory memorandum, not even in the statement that they made, their intention to attempt to repeal pieces of legislation that were passed through this legislature. Not a word in advance, not a letter to say that this is what they intended to do, and, if it hadn't been for the eagle eyes of people looking to see what they were intending to do, then we wouldn't know about it today, would we?"*

I would be grateful therefore if you could:

- clarify the UK Government's intentions regarding this potential repeal of the *Trade Union (Wales) Act 2017*,
- clarify why the UK Government has not used the new intergovernmental arrangements to discuss this issue with the Welsh Government;
- clarify whether you do intend to engage with the Welsh Government and if so, when that is likely to be; and
- provide your observations on the constitutional implications of the UK Government's intentions.

I am copying this letter to the Secretary of State for Wales, the Secretary of State for Levelling Up, Housing and Communities and the Paymaster General and Minister for the Cabinet Office.

I am also drawing it to the attention of the First Minister, as well as relevant parliamentary Committees in the other nations of the United Kingdom.

Yours sincerely

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>Electoral Commission's Evaluation Report of Welsh Electoral Pilots</b>
<b>DATE</b>	<b>02 August 2022</b>
<b>BY</b>	<b>Mick Antoniw MS, Counsel General and Minister for the Constitution</b>

I am pleased to be able to provide an update on progress on the Electoral Pilots that were delivered in Wales as part of the Local Government Elections in May 2022.

The pilots aimed to bring the ballot box closer to people's day-to-day lives. They were a step to ensuring that elections in Wales are as accessible as possible and that everyone who wants to vote can vote. They were designed within the framework that I set out in a written statement in July 2021 <https://gov.wales/written-statement-framework-electoral-reform>

These pilots were developed in close collaboration between the local authorities and the Welsh Government, with invaluable input from the Electoral Commission and the wider electoral community. I want to thank everyone involved for all their hard work, in particular the four local authorities that designed and hosted the pilots:

**Blaenau Gwent** – the centrally-located Ebbw Vale Learning Zone was used as an advance polling station for all residents of the county, including students of the college who were eligible to vote at the elections. Advance voting was available on the Tuesday and Wednesday before election day;

**Bridgend** - polling stations in certain low turnout wards were open for advance voting on the Tuesday and Wednesday before election day. A new advance polling station was also created in a school on the Tuesday before election day for use by students registered at that school who were eligible to vote in those wards;

**Caerphilly** – the council's headquarters at Ystrad Mynach was used as an advance polling station for all residents of the county on the weekend before election day;

**Torfaen** – the council offices at Pontypool was used as an advance polling station for all residents of the county on the weekend before election day.

The Electoral Commission is required by law to evaluate electoral pilot schemes, in particular whether the pilot scheme has:

- helped to make voting or counting the votes easier;
- helped to improve turnout;
- helped to facilitate voting;
- led to a reduction or increase in electoral fraud; and
- led to a reduction or increase in the cost of the election.

As such, they have evaluated the pilots undertaken in May 2022 and have today published their report which can be accessed here:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/advance-voting-pilots-evaluation>

The Electoral Commission's evaluation reflects that the pilots were well run and that no issue arose because of undertaking these innovative pilots. The electronic registers that were trialled worked well and enabled administrators to deliver multiple venue polling stations simultaneously. As expected, the pilots did not increase turnout dramatically but demonstrated that flexible and more convenient ways of voting can be provided securely and with voters' confidence.

The learning from the pilots and the evaluation will be used to inform longer term improvements to the way people vote and to help reduce the democratic deficit. I look forward to consulting on our proposals in the coming months.

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

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



Llywodraeth Cymru  
Welsh Government

To: Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

John Griffiths MS, Chair, Local Government and Housing Committee  
[SeneddHousing@senedd.wales](mailto:SeneddHousing@senedd.wales)

cc. David Rees MS, Chair, Llywydd's Committee

2 August 2022

Dear Huw, John,

I am writing to the Committee to provide you with an update on the electoral pilots that were delivered in Wales as part of the Local Government Elections in May 2022.

The Electoral Commission is required by law to evaluate every electoral pilot scheme undertaken in Wales. As such, they have evaluated the pilots undertaken in May 2022 and have today published their report which can be accessed here:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/advance-voting-pilots-evaluation>

I have also issued a written statement updating Senedd members on progress which can be found here:

<https://gov.wales/written-statement-electoral-commissions-evaluation-report-welsh-electoral-pilots>

Yours sincerely,

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

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

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

# Agenda Item 9.9

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



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

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

4 August 2022

Dear Huw,

Thank you for your letter of 30 June in relation to my appearance at the Legislation, Justice and Constitution Committee on 20 June. I welcomed the opportunity to speak to the Committee regarding the extensive range of issues we covered. I have provided a detailed response to your further questions in an Annex to this letter.

Yours sincerely

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

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

## Annex

### Legislative consent process

1. *The Welsh Government revised its five-year Programme for Government when it entered into a cooperation agreement with Plaid Cymru. Given there is precedent to publishing revisions to the Programme, can you see any reason why the Welsh Government should not publish regular updates which would provide clarification as regards which Government and which Parliament will legislate to achieve a particular commitment?*

We are committed to providing regular updates on our intent to utilise UK Bills and have done this through, for example, written statements in relation to our work with UK Government on the Procurement Bill. I do not, however, think it is suitable for revisions to the Programme for Government to be made whenever UK Parliament is to make legislation in relation to Wales.

As I set out in my letter of 17 June, it is not the case that the Welsh Government commonly approaches the UK Government to actively seek devolved provisions to be contained in UK Bills. As I noted, often, where devolved provision is made in a UK Bill, this reflects the UK Government offering an opportunity to the Welsh Government to include such provision. This is often an iterative process, in which we discuss in confidence provisions with UK Government with a view to securing a way forward which would enable Welsh Ministers to recommend to the Senedd that it votes to give legislative consent where possible. As demonstrated by the previous Parliamentary session, it is not uncommon for that final position on recommending consent to be reached late in the passage of a Bill. I do not therefore believe that a process of updating the Programme for Government to share this sort of information, would be practical, noting also the timely updates that we seek to give to the Senedd and its relevant Committees.

2. *The Welsh Government announces a legislative programme for each year within a five-year Senedd term. You told us the next announcement would be on 5 July. Acknowledging the potential for different timings of Welsh and UK Government legislative announcements, it should be feasible to give an indication, in the annual announcement, of the current inter-governmental working on UK Bills where the Welsh Government is seeking provisions for Wales in devolved areas. Can you see any reason why the Welsh Government should not include this information in its annual legislative statements and, further, to provide termly updates as and when needed?*

As outlined above, it is not often the case that we would proactively seek provision for Wales; it is frequently a more reactive process. In those instances where we have sought provision, or where we are minded to agree to provision in UK Bills, I am committed to ensuring the Senedd remains informed at the earliest meaningful opportunity, rather than include information in the annual legislative statement.

3. *In terms of the Welsh Government legislating itself for Wales you said that the issue of capacity in the Welsh Government is not a problem “in terms of the things that we want to do” (RoP 44 and 46). Does this mean that the Welsh Government will, in effect, allocate resources to a set number of Bills and then take opportunities presented to it to*



*use UK Bills to deliver other, previously unidentified (or not prioritised) legislative objectives?*

Yes, insofar as our legislative programme is designed to deliver the ambitions of the Programme for Government, so we inevitably seek to ensure capacity is in place to support that work. Our principles set out that where UK legislation would be appropriate for Wales but there is no time to bring forward similar in the Senedd we would consider utilising a UK Bill. This is a practical position, ensuring that we deliver for the people of Wales and make best use of the resource and opportunities available. As noted above, however, it is not the case that the Welsh Government commonly approaches the UK Government to actively seek devolved provisions to be contained in UK Bills.

4. *In your letter of 20 April you said: “So we decide how best to do that via both Senedd and UK Parliament legislation, taking account of the priorities and capacity of our own legislative programme and also the potential opportunities – and risks – arising from the UK Government’s legislative programme. If we only delivered our priorities through Senedd legislation, rather than pursuing a wider set of priorities through both legislative programmes, then we would end up delivering less for the people of Wales.”*
- i. Would you agree that this letter paints a different picture to your view in evidence that capacity and resources (RoP 42-46) are not a barrier to bringing forward Welsh Bills?*
  - ii. Given the remarks in your letter, and if the Welsh Government has the resources ‘to do what it wants to do’, are we correct to surmise that the Welsh Government needs the support of a different government and different parliament to help make and pass laws in devolved areas for Wales?*

I do not believe that my comments paint a different picture to the position set out in the letter. In my comment to the Committee I said (RoP 44), “So, the resources are there and the skills are there in terms of the Government's own legislative programme, in terms of the things that we want to do”. This is a reflection that when we set out our Legislative Programme this is underpinned by prioritisation and planning on the resource capacity and expertise needed to deliver the Bills as well as the time available in the Senedd. My letter refers to the decisions we take in relation to UK Parliament legislation taking account of the priorities and capacity of our own legislative programme.

Furthermore, it would not be correct to surmise as you do in the second part of the question. Our principles for UK legislation provide the basis for when we might consider using UK Bills. There can be circumstances where that is appropriate – for example, as outlined in our principles, in addition to the point on timing, where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument. This is not the same as saying the Welsh Government needs the support of a different government and different parliament. As consistently noted, and in line with our principles, it would be self-denying to not take a pragmatic approach to the opportunities that can be presented through UK Bills, and potentially disadvantageous to Wales.

5. *How do you respond to the view that the UK Government is setting, in effect, a large part of the legislative agenda for Wales because of the Welsh Government’s approach?*

The UK Government's recent legislative programmes have significantly intruded on the devolution settlement in ways which we have consistently made clear are completely unacceptable. It would be wholly misleading to suggest that this is because of the Welsh Government's approach.

Even in those circumstances where we have recommended to the Senedd that provisions in devolved areas are included UK Bills, that is not commonly because we have approached the UK Government to ask for this, but because an opportunity has arisen to do so, which we feel is sufficiently consistent with our principles for UK legislation. Our final recommendation to the Senedd on consent is ultimately dependent on the outcomes of our work to seek to ensure that any such provision is satisfactory from our perspective.

6. *As regards the current political landscape you spoke of a situation "where you have a UK Government legislating and seeking to legislate in Welsh areas" (RoP 57). While that may be the case, it is also true to say that on occasion the UK Government includes provisions in UK Bills at the Welsh Government's request, as your comments at paragraph 12 of the RoP would appear to suggest. How could the Welsh Government be more transparent in this regard?*

As noted in my 17 June letter, I would again reiterate my commitment to working collaboratively with the Senedd on legislative consent matters. In that spirit, I can confirm that, wherever possible, we will lay a written statement before the Senedd and notify relevant Committees where we have sought provision on in a UK Bill, before the commencement of the legislative consent process. The extent to which this is possible will be affected by the nature of the engagement from the UK Government on any such Bill, and any temporary confidentiality requirements related to inter-governmental discussions on it.

7. *You state that "quite often, UK Government Bills will relate to things that aren't part of our programme for government, and then the issue arises whether there's something in that that we might want to seize the opportunity to do, that it might be advantageous to the people of Wales" (RoP 12).*

- i. On what basis does the Welsh Government decide that these opportunities are "advantageous" if they aren't in the programme for government and no consultation or evidence-gathering with Welsh stakeholders has taken place?*
- ii. How long does this decision process generally take? If, as you suggest (RoP 75), it can be only a matter of weeks, please can you explain how this is in the interests of good law-making?*

The situation on each Bill naturally varies on a case-by-case basis. Overall, our decisions are based on our assessment of the merits of including provision in a UK Bill, drawing on any information, consultation or evidence gathering which is already available, or which can be gained in a relevant time period. Clearly, the earlier that UK Government engages with us on a Bill, and the more open the UK Government is around its legislative proposals, the greater the opportunity there is for us to engage with stakeholders and partners in Wales, and to draw the Bill to the attention of the Senedd and its relevant Committees.

For example, you will be aware of our extensive involvement with the Procurement Bill. In December 2020, the UK Government published a Green Paper entitled Transforming Public Procurement, which saw an escalation of engagement between Welsh Government and UK Government on the issues. In 2021, we held a series of stakeholder events on reforms to

procurement legislation, including considering the suitability of proposals in the UK Government Green Paper. These stakeholder events were followed up with a survey which resulted in the majority of stakeholders in Wales saying they were content with the direction of the proposals in the Green Paper. Following the stakeholder engagement in Wales and the improved sharing of information as well as written assurances being received from UK Government, the Minister for Finance and Local Government issued a Written Statement on 18 August 2021 outlining that provision for Welsh Contracting Authorities was to be made within the UK Government's Bill. We have continued engaging with UK Government on the development of this Bill, and you will be aware of our legislative consent memoranda to date.

You will also be aware of the forthcoming Mental Health Reform Bill, which the Deputy Minister for Mental Health and Wellbeing has previously discussed within the Senedd, and to which we are supportive of in principle. Proposals in that Bill stem from a 2018 independent review, and a 2021 UK Government White Paper. The Welsh Government's response was informed through the establishment of a reference group, consisting of representatives from Royal College of Psychiatrists, NHS Wales, Healthcare Inspectorate Wales and Social Care Wales. We also held focused sessions to test our proposed positions with key groups including the Wales Alliance for Mental Health, the National Mental Health Partnership Board and the President of the Mental Health Review Tribunal for Wales. This extensive engagement fed into our current position. Work continues on the development of that Bill with introduction expected towards the end of the year.

*8. What steps will the Welsh Government be taking to reduce the democratic deficit caused by the Welsh Government's using the UK Government and UK Parliament to legislate in devolved areas, and to improve the current constitutional structure to which you refer (RoP 57-58)?*

Ineffective engagement by UK Government with Welsh Government is one of the biggest obstacles to the smooth operation of the current legislative consent process. It is one of many reasons for us regularly impressing upon UK Government the importance of information and engagement, to enable us to appropriately engage with the Senedd in turn and in good time.

We want to maximise the Senedd's ability and flexibility to scrutinise the use of UK Parliamentary Bills within the constraints imposed by the process and the UK Government's approach.

Inevitably, the scrutiny for such legislation by the Senedd will not be as detailed as that for legislation made in the Senedd. For this reason we are committed to ensuring as much scrutiny as possible through the LCM process, and also to limiting our involvement with UK Bills in such a manner as is consistent with our principles.

We continue to seek to work with the UK Government and the other devolved governments to strengthen ways of working and improve UK Government engagement on its legislative programme, including respect for the Sewel convention. I will update on this work further when it is possible to do so.

**Retained EU Law Bill**

9. Please can you clarify whether:

- i. you are working with the UK Government on the Retained EU Law (or “Brexit Freedoms”) Bill, and whether it is your intention that the Bill’s provisions will apply to Wales?
- ii. the Welsh Government is in agreement with the UK Government’s statements / proposals for reform of the status of retained EU law? If not, what is the Welsh Government’s position on reforming the status of retained EU law?

I met with the Rt Hon. Jacob Rees-Mogg MP, Minister for Brexit Opportunities and Government Efficiency, in May to discuss the Retained EU Law Bill. My officials have had regular meetings with the Bill team where indicative and provisional information of the thinking underpinning the Bill have been shared, including its application to Wales.

The Welsh Government is not necessarily opposed to the concept of revisiting the body of EU law we inherited when we left the EU or to pragmatic and proportionate approaches to enable it to be updated over time which respect the devolution settlement. But we would be opposed to any moves which may see the UK Government seeking to reduce valuable standards and protections through ideological deregulation, or to any moves that do not respect or, worse, undermine devolution.

10. The UK Government has said the Bill will include a “targeted power” to accelerate the repeal or amendment of retained EU law. What is your response to this?

It is of vital importance for the people and businesses of Wales that any proposals to change retained EU law (REUL) are fully assessed and considered in the constitutional context of the devolved settlements before any decisions are made, including respecting the provisions and ways of working reflected in agreed Common Frameworks.

11. You spoke of the possibility of the use of sunset clauses in the Bill and the resultant need to check “potentially several thousands of pieces of legislation” (RoP 83). What preparation has been made internally within the Welsh Government in anticipation of having to do this?

My officials, along with officials from the Scottish Government and Northern Ireland Executive, have made strong representations requesting UK Government departments share an understanding of the split of devolved and reserved REUL, recognising that UK Government departments will need to identify this in any case as part of their work. To date this has not been forthcoming.

We do not consider that the Devolved Governments should have to undertake entire separate analytical exercises on this, not least given the scale of the task and that this is a UK Government initiative driven to an arbitrary UK Government timetable, and bearing in mind that we have requested this be worked on collaboratively.

12. You also spoke of discussions with the Minister for Brexit Opportunities and Government Efficiency, the Rt Hon Jacob Rees-Mogg MP, and that you were “given the assurances I hoped for at that time, that there may be areas there where we do not agree and that we want these matters to be retained.” (RoP 83). Can you confirm which specific matters or areas of retained EU law the Welsh Government has identified at this stage and whether these were raised with Mr Rees-Mogg?

With over 2,400 pieces of REUL identified by the UK Government and published in its REUL catalogue, the Welsh Government has not undertaken our own separate analysis as this is a major undertaking. We have, though, in conjunction with the Scottish Government and Northern Ireland Executive made a request for the UK Government to share with us, from its own analysis, what REUL is within devolved competence.

*13. Can you confirm what guarantees you have received that the Bill will not change the status of retained EU law in devolved areas, if the Welsh Government does not want it changed?*

There have been no guarantees made that the Bill will not change the status of REUL in devolved areas. We will continue to press UK Government to ensure that the Bill respects the devolution settlement for Wales.

*14. The UK Government has suggested the Bill will change the status of retained EU law for interpretation by the courts. What is your response to this?*

In addition to proposing a revision of the status of certain types of REUL, the UK Government's 'Benefits of Brexit' publication also outlines its plans to consider removing the continued effect of the supremacy of EU law over domestic law that was made before the end of the transition period; a review of the extent to which domestic courts should follow historic decisions of the EU courts; and a review of the role of the general principles of EU law in relation to REUL (among a number of other proposals). If all or any of these proposals were to be reflected in draft legislation, this could impact on the how courts are currently required to interpret retained EU law.

As above, it is important that any proposals to change REUL are fully assessed and considered in the constitutional context of the devolved settlements before any decisions are made, including respecting the provisions and ways of working reflected in agreed Common Frameworks.

## **Northern Ireland Protocol Bill**

*15. Can you explain whether, in the Welsh Government's opinion, the Bill constitutes a breach of international law?*

By its own admission, the UK Government has chosen to introduce a Bill which, if enacted and implemented, would breach the international obligations it freely entered into when it agreed the NI Protocol, as part of the Withdrawal Agreement with the EU. In its own words, the UK Government has; "decided to introduce legislative measures which, on entry into force, envisage the non-performance of certain obligations". The UK Government seeks to justify this on the basis of the international law doctrine of "necessity", though a number of independent expert legal commentators have already challenged the credibility of this position.

The Welsh Government takes compliance with international law very seriously. We would question whether the UK Government will be able to demonstrate that the requirements for the defence of necessity are satisfied (and note that numerous respected lawyers and commentators have raised similar concerns), so as to make the non-performance of international obligations, as is envisaged by the Bill, justifiable under international law. However, ultimately it is the European Court of Justice that will rule on this point.

*16. Has the Welsh Government had an indication from the UK Government of any potential powers that could be granted to the Welsh Ministers under the Bill, and for what purpose?*

The Foreign Secretary wrote to the Minister for Economy, stating that elements of the Bill are within the Senedd's legislative competence and seeking confirmation that the Welsh Government is willing to provide agreement in principle to support a legislative consent motion in the Senedd.

While a full analysis of the Bill (which we did not see until the day on which it was introduced) continues, it is clear that it confers a number of extremely broad regulation making powers to Ministers of the Crown and that clause 22(6) of the Bill provides a power for Ministers of the Crown to sub-delegate the exercise of all or any of the powers that are provided to them in the Bill to the Welsh Ministers or Ministers of another devolved government. We have not had any further indication from UK Government as to what powers it envisages could be granted under this clause, to whom, or for what purpose.

We are currently giving the provisions in the Bill close consideration to establish the implications for our devolved interests, powers and responsibilities, as well as considering the broader constitutional implications of the Bill.

*17. You made reference to your concerns about whether the Senedd can consent to a Bill "that effectively legitimises unlawfulness" (RoP 145). Please can you explain what your specific concerns are?*

While the UK Government accepts that the Bill involves the 'non-performance of the UK's international obligations', it seeks to justify this on the basis of the international law doctrine of "necessity". A number of independent expert legal commentators have already challenged the credibility of this position. The Welsh Government takes compliance with international law very seriously. This is a complex issue, which will form a fundamental part of our ongoing consideration of the Bill.

We have consistently made clear that issues related to the Northern Ireland Protocol should be resolved through negotiation between the UK and EU.

*18. What are the implications of the Bill for Wales, including your assessment on other areas of work within your portfolio, including common frameworks and intergovernmental relations?*

Changes to the Northern Ireland Protocol might require revisions to Common Framework agreements. The frameworks are drafted and agreed on a four-nation basis and any changes would be assessed on a case-by-case basis.

There are provisions in the Bill which intersect with devolved matters, to which we are giving due consideration, together with the wider impacts of the Bill.

However, the lack of any prior meaningful engagement by the UK Government plainly breaches the mutually agreed principles and working arrangements, set out in the Intergovernmental Relations Review, that exist between the UK and devolved governments. The importance of UK Government living up to the commitments it has signed up to in the Common Frameworks is something that we are raising with the UK Government.

**Divergence and alignment**

*19. Given that the Welsh Government is not in a position to continuously monitor the alignment or divergence of EU law from existing Welsh law (RoP 91), how does it know if standards in Wales are keeping pace with developments in the EU?*

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

Within the Trade and Cooperation Agreement there is also a chapter on Good Regulatory Practice and Regulatory Cooperation which requires the publication of relevant changes to regulations in the EU and the UK and encourages good regulatory practice.

*20. What impact is the lack of monitoring having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?*

Ways of understanding the relevance of key developments at an EU level as outlined in the answer to the previous question are part of approaches to good policy development.

*21. What impact is existing UK-EU divergence since the end of the transition period having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?*

As outlined above, ways of understanding the relevance of key developments at an EU level as outlined in the answer to the earlier question are part of approaches to good policy development. In the time since the end of the transition period there has been limited scope for large-scale UK-EU divergence. The impact on policy making and the approach to be taken in Wales would be considered on a case-by-case basis.

## **Intergovernmental relations**

*22. Why was the planned meeting of the Inter-Ministerial Standing Committee postponed twice in June?*

The Inter-Ministerial Standing Committee was postponed to ensure that all relevant Ministers from all Governments were able to attend.

All Governments endeavour to stick to agreed meeting dates, however, on this occasion postponement was the best option, ensuring that all agenda items could be progressed via meaningful discussion and engagement.

*23. How is the Inter-Ministerial Standing Committee approaching its responsibilities for oversight of intergovernmental relations in relation to:*

- i. improving joint working on the UK Government's legislative programme;*
- ii. oversight of the UK internal market and common frameworks;*
- iii. the oversight of international relations and*

As previously mentioned, the Intergovernmental Review mechanisms aim to improve joint working including on UK Government's legislative programme across all four governments.

Whilst UK Government has made positive indications around improving its approach to engagement in this session, I have deep concerns at the approach shown in relation to a number of Bills, including the Northern Ireland Protocol Bill, the Genetic Technology (Precision Breeding) Bill and the Bill of Rights. These are issues of the utmost importance, and the approach by UK Government has been unacceptable.

I raised these issues at the last IMSC meeting held on 29 June, along with the utterly unacceptable text from the UK Government suggesting it would seek to repeal the Trade Union (Wales) Act.

We anticipate that future IMSC meetings will include agenda items on Common Frameworks, the internal market and international relations, however, the forward work programme continues to be developed between the governments.

*24. In light of your comments on the dispute resolution process (RoP 112-118), do you intend to raise any intergovernmental disagreements as disputes through this process, not least in terms of the lack of engagement on some key UK Bills?*

The formal dispute resolution process remains an option available to us and we will carefully consider utilising the process, as a last resort, if all other avenues have been exhausted.

*25. We have been copied into correspondence from the House of Lords Constitution Committee regarding the UK Government's review of the Cabinet Manual. Can you confirm what discussions you have had with the UK Government on this review?*

We do not believe that the UK Government has contacted Welsh Government in relation to this review.

*26. We would welcome your observations on the role, if any, the Manual plays in intergovernmental relations, and in what ways (if any) you think it should be updated?*

We would expect Chapter 8 in particular to be updated to fully reflect the Review of Intergovernmental Relations, including the principles of joint working.

## **UK Internal Market Act 2020**

*27. If the Welsh Government's litigation in relation to the UK Internal Market Act 2020 is not successful, will it be seeking further exclusions under the terms of the Act?*

It is too early to speculate on the consequences of a future judgment, but we will keep the Senedd informed as this matter progresses.

*28. If exclusions cannot be secured, what impact will this have on the Welsh Government's legislative programme?*

The Welsh Government's position remains that UKIMA has not had the impact on the Senedd's competence that it purports to have had. In this context, the securing of exclusions (or otherwise) will not impact directly on the Welsh Government's legislative programme.



*29. Can you confirm that the Welsh Government will notify the Senedd of any disputes with the UK Government over exclusions? At what point in the process would you intend to provide such notifications?*

I remain committed to keeping the Senedd updated on the progress and activities of the Common Frameworks programme. Work continues between officials on the development of a meaningful and informative future reporting and monitoring mechanism for Common Frameworks. I look forward to sharing this with the Committee when it has been agreed at a Ministerial level.

*30. We acknowledge your comments about the situation surrounding the Genetic Technology (Precision Breeding) Bill (RoP 128-136), but could you clarify whether, in the Welsh Government's view, the proposals to alter the existing GMO authorisations processes fall within exclusions related to the protection of health of humans, animals or plants?*

The Welsh Government has stated to the UK Government, in a number of official meetings, that the effects of the Genetic Technology (Precision Breeding) Bill, which spans a number of Common Framework areas, should have been shared at an earlier stage with the devolved governments under the recognised Common Framework process. This matter is still under consideration.

*31. Could you set out the Welsh Government's assessment of the potential impact of the Northern Ireland Protocol Bill on the UK Internal Market Act 2020, including on the powers provided to the Welsh Ministers in relation to the Protocol?*

While full analysis of the Bill is continuing, as introduced it will amend the operation of the Protocol by disapplying elements of the Protocol in domestic law. As already mentioned, the Bill confers a number of extremely broad regulation making powers on Ministers of the Crown, and includes a power at clause 22(6) for Ministers of the Crown to sub-delegate the exercise of all or any of the powers that are provided to them in the Bill to the Welsh Ministers or Ministers from another devolved government. We have not had any further indication from UK Government as to what powers it envisages could be granted under this clause, to whom, or for what purpose.

## **Common frameworks**

*32. We note your comments on the impact of common frameworks in making laws for Wales. Can you provide an update on whether there have been any instances of the Welsh Government changing or not proceeding with a change to law or policy because of intergovernmental discussion through a common framework?*

I am not aware of any area where we have been unable to proceed with legislative or policy plans. As a general principle, intergovernmental discussion through Common Frameworks is mutually beneficial to policy development in all four nations.

*33. In your letter to us of 2 March 2022, you said that you would be surprised if there had been any delays to Welsh Government policies or initiatives in common framework areas, because the "processes of the Common Frameworks are now an intrinsic part of how policy is developed in the areas where they apply". Can you explain how you are ensuring that*

*intergovernmental decision making through common frameworks leads to no dilution in the role of the Senedd and Welsh stakeholders in making law and policy for Wales?*

The Common Frameworks will not change the way that we engage with the Senedd and consult with stakeholders. Common Frameworks allow scope for divergence which may require legislation through the Senedd. Such legislation would be subject to the scrutiny of the Senedd in the usual way. Common Frameworks do not in themselves limit the role of the Senedd.

*34. In that letter, you agreed that the Welsh Government should notify us when a common framework dispute is escalated to Ministers. Why did the Welsh Government not notify the Senedd that a dispute had been raised through the common framework for resources and waste over the request for an exclusion for single use plastics from the UK Internal Market Act?*

With regards to the dispute surrounding the single-use plastics exclusion, it was the Scottish Government that sought an exclusion and initiated early discussions under the Resources and Waste Framework. A solution was proposed by officials and agreed by Ministers before a formal process was triggered. This is why Committees were not informed.

I remain committed to the transparency of the Common Frameworks Programme and to informing the Senedd where a dispute is raised, by the Welsh Government or involving the Welsh Government, to the Ministerial level.

*35. In the same letter, you also agreed that the Welsh Government would notify the Senedd where legislation relates to a common framework. The Welsh Government has not always notified the Senedd of the relationship between secondary legislation in a common framework policy area and the common framework. Will you commit to do this?*

We are only now beginning to see legislation being introduced which relates to Common Frameworks, therefore this has not been a routine matter. However, yes, we do see this as part of good practice.

As I have outlined above, I remain committed to keeping the Senedd updated on the progress and activities of the Common Frameworks programme. Work continues between officials on the development of a meaningful and informative future reporting and monitoring mechanism for Common Frameworks. I look forward to sharing this with the Committee when it has been agreed at a Ministerial level.

Mick Antoniw MS  
Counsel General and Minister for the Constitution

30 June 2022

Dear Mick

#### Follow-up to evidence session, 20 June 2022

Thank you for appearing before the Committee on 20 June and giving evidence on matters within your portfolio.

There are a number of issues we would like to pursue further. I would therefore be grateful to receive your responses to the following questions by 31 July 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

#### Legislative consent process

1. The Welsh Government revised its five-year Programme for Government when it entered into a cooperation agreement with Plaid Cymru. Given there is precedent to publishing revisions to the Programme, can you see any reason why the Welsh Government should not publish regular updates which would provide clarification as regards which Government and which Parliament will legislate to achieve a particular commitment?
2. The Welsh Government announces a legislative programme for each year within a five-year Senedd term. You told us the next announcement would be on 5 July. Acknowledging the potential for different timings of Welsh and UK Government legislative announcements, it should be feasible to give an indication, in the annual announcement, of the current inter-governmental working on UK Bills where the Welsh Government is seeking provisions for Wales in devolved areas. Can you see any

reason why the Welsh Government should not include this information in its annual legislative statements and, further, to provide termly updates as and when needed?

3. In terms of the Welsh Government legislating itself for Wales you said that the issue of capacity in the Welsh Government is not a problem “in terms of the things that we want to do” (RoP 44 and 46). Does this mean that the Welsh Government will, in effect, allocate resources to a set number of Bills and then take opportunities presented to it to use UK Bills to deliver other, previously unidentified (or not prioritised) legislative objectives?

4. In your letter of 20 April you said:

*“So we decide how best to do that via both Senedd and UK Parliament legislation, taking account of the priorities and capacity of our own legislative programme and also the potential opportunities – and risks – arising from the UK Government's legislative programme.*

*If we only delivered our priorities through Senedd legislation, rather than pursuing a wider set of priorities through both legislative programmes, then we would end up delivering less for the people of Wales.”*

- i. Would you agree that this letter paints a different picture to your view in evidence that capacity and resources (RoP 42-46) are not a barrier to bringing forward Welsh Bills?
- ii. Given the remarks in your letter, and if the Welsh Government has the resources ‘to do what it wants to do’, are we correct to surmise that the Welsh Government needs the support of a different government and different parliament to help make and pass laws in devolved areas for Wales?

5. How do you respond to the view that the UK Government is setting, in effect, a large part of the legislative agenda for Wales because of the Welsh Government’s approach?

6. As regards the current political landscape you spoke of a situation “where you have a UK Government legislating and seeking to legislate in Welsh areas” (RoP 57). While that may be the case, it is also true to say that on occasion the UK Government includes provisions in UK Bills at the Welsh Government’s request, as your comments at paragraph 12 of the RoP would appear to suggest. How could the Welsh Government be more transparent in this regard?

7. You state that “quite often, UK Government Bills will relate to things that aren't part of our programme for government, and then the issue arises whether there's something in that that we might want to seize the opportunity to do, that it might be advantageous to the people of Wales” (RoP 12).

- i. On what basis does the Welsh Government decide that these opportunities are “advantageous” if they aren’t in the programme for government and no consultation or evidence-gathering with Welsh stakeholders has taken place?
- ii. How long does this decision process generally take? If, as you suggest (RoP 75), it can be only a matter of weeks, please can you explain how this is in the interests of good law-making?

8. What steps will the Welsh Government be taking to reduce the democratic deficit caused by the Welsh Government’s using the UK Government and UK Parliament to legislate in devolved areas, and to improve the current constitutional structure to which you refer (RoP 57-58)?

### Retained EU Law Bill

9. Please can you clarify whether:

- i. you are working with the UK Government on the Retained EU Law (or “Brexit Freedoms”) Bill, and whether it is your intention that the Bill’s provisions will apply to Wales?
- ii. the Welsh Government is in agreement with the UK Government’s statements / proposals for reform of the status of retained EU law? If not, what is the Welsh Government’s position on reforming the status of retained EU law?

10. The UK Government has said the Bill will include a “targeted power” to accelerate the repeal or amendment of retained EU law. What is your response to this?

11. You spoke of the possibility of the use of sunset clauses in the Bill and the resultant need to check “potentially several thousands of pieces of legislation” (RoP 83). What preparation has been made internally within the Welsh Government in anticipation of having to do this?

12. You also spoke of discussions with the Minister for Brexit Opportunities and Government Efficiency, the Rt Hon Jacob Rees-Mogg MP, and that you were “given the assurances I hoped for at that time, that there may be areas there where we do not agree and that we want these matters to be retained.” (RoP 83). Can you confirm which specific matters or areas of retained EU law the Welsh Government has identified at this stage and whether these were raised with Mr Rees-Mogg?

13. Can you confirm what guarantees you have received that the Bill will not change the status of retained EU law in devolved areas, if the Welsh Government does not want it changed?

14. The UK Government has suggested the Bill will change the status of retained EU law for interpretation by the courts. What is your response to this?

## Northern Ireland Protocol Bill

15. Can you explain whether, in the Welsh Government's opinion, the Bill constitutes a breach of international law?

16. Has the Welsh Government had an indication from the UK Government of any potential powers that could be granted to the Welsh Ministers under the Bill, and for what purpose?

17. You made reference to your concerns about whether the Senedd can consent to a Bill "that effectively legitimises unlawfulness" (RoP 145). Please can you explain what your specific concerns are?

18. What are the implications of the Bill for Wales, including your assessment on other areas of work within your portfolio, including common frameworks and intergovernmental relations?

### Divergence and alignment

19. Given that the Welsh Government is not in a position to continuously monitor the alignment or divergence of EU law from existing Welsh law (RoP 91), how does it know if standards in Wales are keeping pace with developments in the EU?

20. What impact is the lack of monitoring having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?

21. What impact is existing UK-EU divergence since the end of the transition period having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?

### Intergovernmental relations

22. Why was the planned meeting of the Inter-Ministerial Standing Committee postponed twice in June?

23. How is the Inter-Ministerial Standing Committee approaching its responsibilities for oversight of intergovernmental relations in relation to:

- i. improving joint working on the UK Government's legislative programme;
- ii. oversight of the UK internal market and common frameworks; and
- iii. the oversight of international relations?

24. In light of your comments on the dispute resolution process (RoP 112-118), do you intend to raise any intergovernmental disagreements as disputes through this process, not least in terms of the lack of engagement on some key UK Bills?

25. We have been copied into correspondence from the House of Lords Constitution Committee regarding the UK Government's review of the Cabinet Manual. Can you confirm what discussions you have had with the UK Government on this review?

26. We would welcome your observations on the role, if any, the Manual plays in intergovernmental relations, and in what ways (if any) you think it should be updated?

### UK Internal Market Act 2020

27. If the Welsh Government's litigation in relation to the UK Internal Market Act 2020 is not successful, will it be seeking further exclusions under the terms of the Act?

28. If exclusions cannot be secured, what impact will this have on the Welsh Government's legislative programme?

29. Can you confirm that the Welsh Government will notify the Senedd of any disputes with the UK Government over exclusions? At what point in the process would you intend to provide such notifications?

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### Common frameworks

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33. In your letter to us of 2 March 2022, you said that you would be surprised if there had been any delays to Welsh Government policies or initiatives in common framework areas, because the "processes of the Common Frameworks are now an intrinsic part of how policy is developed in the areas where they apply". Can you explain how you are ensuring that intergovernmental decision-making through common frameworks leads to no dilution in the role of the Senedd and Welsh stakeholders in making law and policy for Wales?



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35. In the same letter, you also agreed that the Welsh Government would notify the Senedd where legislation relates to a common framework. The Welsh Government has not always notified the Senedd of the relationship between secondary legislation in a common framework policy area and the common framework. Will you commit to do this?

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



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

23 August 2022

By email: [SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

Dear Mr Irranca-Davies,

**Lords European Affairs Committee inquiry into the future UK-EU relationship**

The European Affairs Committee has just launched an [inquiry into the UK's future relationship with the EU](#). This wide-ranging inquiry will cover a number of topics, including the political, diplomatic, and institutional relationship, foreign policy and security, environment and climate change, and culture, education and the movement of people.

The Committee recognises that issues of this importance require input from as wide a range of stakeholders as possible, and most especially from colleagues in the devolved parliaments across the UK. Members have therefore asked me to write to you personally to make you aware of this inquiry and to ask you to consider whether your Committee would be willing to share your valuable perspective on the matters raised in the [call for evidence](#).

In a further demonstration of the Committee's commitment to hearing from colleagues and stakeholders across the UK, we are hoping to visit Cardiff early in the new year to meet stakeholders and take formal evidence for this inquiry. We would very much appreciate the opportunity to engage with your Committee at that time.

Yours sincerely,



Lord Kinnoull

Chair of the European Affairs Committee



Department for Levelling Up,  
Housing & Communities

**Agenda Item 9.11**  
Rt Hon Greg Clifton MP  
Secretary of State for Levelling Up,  
Housing and Communities

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

**Department for Levelling Up,  
Housing and Communities**  
4th Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF

Our ref: 19621912

30 August 2021

Dear Huw,

Thank you for your letter of 20 July regarding the UK Government's engagement with the Welsh Government in relation to legislation which affects devolved areas. The new Inter governmental structures are a positive means of facilitating joint working between the UK and devolved governments. Whilst I have not attended the meetings myself, it has been good to see the follow up activity from the last Inter Ministerial Group discussion on collaboration and information-sharing on building safety. I am grateful for the work going on to prepare for the next meeting on lessons learned on our respective approaches to homelessness and for the Welsh Government agreeing to host.

I appreciate the importance of the devolved governments and legislatures having appropriate time to consider relevant legislation, and appreciate the work conducted by committees such as yours to scrutinise legislation.

My officials proactively provide guidance and support on engagement to UK Government bill teams throughout a bill's development and parliamentary passage. Engagement at official level should take place when developing policy which could affect devolved matters, and this engagement should continue throughout the bill's passage, including the sharing of information to allow devolved government counterparts to make informed policy decisions. This engagement is also important to identify where a UK government bill can include provisions within a devolved legislature's competence and enable timely pragmatic solutions to policy challenges to deliver for people of Wales freeing up devolved legislatures time whilst respecting their legislative competence via the legislative consent process.

It is important that officials continue to work closely, not least as a bill's passage through Parliament can be complicated and not all eventualities can be predicted. Bill amendments in particular often need rapid work to respond to specific circumstances. There are some circumstances in which legislation is developed at

pace, for instance emergency legislation to address specific situations. In these instances, I would still hope for all reasonable steps to be taken to engage with the devolved governments.

We will continue to work with devolved governments to strengthen ways of working and improve engagement on legislation through the relevant IGR structures.

Thank you again for your correspondence,

I am copying this letter to the Secretary of State for Wales.

A handwritten signature in black ink, appearing to read 'Greg Clarke' with a stylized flourish below it.

**Rt Hon Greg Clarke MP**  
**Secretary of State for Levelling Up, Housing and Communities**

The Rt Hon Greg Clark MP  
Secretary of State for Levelling Up, Housing and  
Communities

20 July 2022

Dear Greg

### Intergovernmental relations: proposals for UK Bills to legislate in devolved areas

As you will be aware, the UK Government and Devolved Governments reached agreement on the outcome of the Intergovernmental Relations Review earlier this year.

We welcomed the outcome as a positive step forward, as it would likely result in a more co-operative approach between governments. We also noted **correspondence** from the Rt Hon. Michael Gove MP, the former Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, who spoke of the new intergovernmental arrangements heralding a new era for joint working between the UK and Devolved Governments and the UK Government's "ambition to work with the Devolved Governments at a much earlier stage" where matters of legislative consent are concerned.

We accept that new arrangements will take time to bed in and note that progress is already being made, with various interministerial committees set up and meetings already held.

Nevertheless, we are aware of concerns regarding cooperation on UK Government Bills that make provision in devolved areas. On 17 June the Counsel General **wrote** to us saying that in some instances, the current UK Government does not share any information on Bills prior to their introduction. Correspondence from the Welsh Ministers that we considered at our meeting on 4 July has confirmed this to be the case for a number of UK Government Bills including the **Social Housing Regulation Bill**, the **Northern Ireland Protocol Bill**, the **Genetic Technologies (Precision**

**Breeding) Bill** and the **Bill of Rights Bill**. Furthermore, a Welsh Government **Written Statement** also highlighted concerns linked to a Bill on retained EU law.

This correspondence, and the Written Statement, make for disappointing reading and suggest a less than satisfactory start to the new intergovernmental approach in some areas.

We would therefore be grateful if you could explain how the UK Government will look to ensure that this does not continue to happen in relation to any future UK Government Bills that make provision in devolved areas and if you would commit to drawing our concerns to the attention of UK Government departments.

We would also find it helpful to understand what processes are followed when the UK Government decides to legislate in a devolved area including:

- at what stage in the process UK Government departments are required to initiate discussions with the Welsh Government;
- the timetabling information that is provided to help the Welsh Government consider the proposals including final legislative drafts; and
- at what point in the process the Welsh Government is engaged on the preparation of government amendments and the notice period given before amendments are tabled.

I would be grateful to receive a response by 5 September 2022.

I am copying this letter to the Secretary of State for Wales, the Paymaster General and Minister for the Cabinet Office, the First Minister of Wales and the Counsel General and Minister for the Constitution of the Welsh Government.

I am also drawing it to the attention of other parliamentary Committees in the other nations of the United Kingdom.

Yours sincerely,



Huw Irranca-Davies

Chair

Mr William Wragg MP, Chair, Public Administration and Constitutional Affairs  
Committee, House of Commons  
The Baroness Drake CBE, Chair, Constitution Committee, House of Lords  
Ms Clare Adamson, Convener, Constitution, Europe, External Affairs and Culture  
Committee, Scottish Parliament

20 July 2022

Dear colleagues,

**Intergovernmental relations: proposals for UK Bills to legislate in devolved areas**

Please find attached a letter to the Secretary of State for Levelling Up, Housing and Communities regarding intergovernmental relations. The letter highlights several areas we are seeking clarification on following discussions during our Committee meeting on the 4 July 2022. We will keep you informed of further developments.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

# Agenda Item 0.12

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



Llywodraeth Cymru  
Welsh Government

Mark Isherwood  
Chair, Public Accounts and Public Administration Committee

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

1 September 2022

Dear Mark and Huw,

Thank you for your letter and the questions put forward by your respective Committees relating to the Procurement Bill Legislative Consent Memoranda (LCM). I am pleased to provide my response, which is attached at Annex 1.

I look forward to discussing the LCM at the Public Accounts and Public Administration Committee on 21 September.

Yours sincerely,

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

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

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[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

## Annex 1

**1. What consideration did the Welsh Government give to using the time it has identified for the Social Partnership and Public Procurement (Wales) Bill to bring forward a wider procurement Bill that covered the scope of both the UK Procurement Bill and the Social Partnership and Public Procurement (Wales) Bill?**

The scope, policy and legal instructions for the Social Partnership and Public Procurement (Wales) Bill (“SPPP Bill”) were already well developed when the Welsh Ministers were presented with the option of joining the UK Government’s (“UKG”) Procurement Bill, and consultation on the SPPP Bill had already taken place.

Incorporating the Procurement Bill into the SPPP Bill would have required changing the scope of the SPPP Bill as it would have predominantly become a Procurement Bill, shifting the focus of the Bill away from Social Partnerships. Also, the Bills are aiming to achieve different things – the Procurement Bill focuses on the processes underpinning procurement, whilst the SPPP Bill will focus on ensuring socially responsible outcomes are achieved from our procurement.

There would also have been significant delays to laying the SPPP Bill in the Senedd due to another consultation process. This would have led to the Welsh Government implementing procurement legislation later than the UKG, which would have resulted in:

- Confusion, inconsistency, and uncertainty for Welsh contracting authorities (WCAs) and suppliers, especially those who conduct business across the borders. This would have negatively impacted upon SMEs, who are better able to optimise efficiency and reduce costs when there is consistency.
- The Wales market becoming an unattractive business prospect if Welsh procedures are different to those in England. Given that Welsh public sector spend represents less than 5% of the UK’s total, it is crucial that Wales remains attractive to suppliers.
- Discontent and frustration amongst Welsh public sector stakeholders, who desire the certainty and stability that a single, consistent procurement regime can offer.

**2. We have been advised by the Counsel General that neither resourcing nor capacity are issues in bringing forward Welsh Bills. Given the significant number of provisions in devolved areas within the Bill and the expertise available to the Welsh Government on procurement issues, why wasn’t resource put into developing a wider, more coherent Welsh Government Procurement Bill?**

As stated in my response to question one, there were important practical reasons for joining with the UKG’s Procurement Bill, not least ensuring consistency and stability for both buyers and suppliers, and particularly our Welsh SMEs.



This is also consistent with our principles on recommending consent to UK Bills, insofar as the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.

**3. Given that this is such an important area of public policy, why is it considered appropriate to take a legislative approach which prevents elected Members of the Senedd from undertaking detailed legislative scrutiny on the subject matter of the Bill, including through engagement with Welsh stakeholders?**

After the UKG published their *Transforming Public Procurement* Green Paper, the Welsh Government ran a series of stakeholder engagement events which identified that stakeholders in Wales were largely content with the proposals in the Green Paper. Further stakeholder engagement has been undertaken on a range of specific Bill-related areas, including proposals in relation to below-threshold transparency, and the Wales Procurement Policy Statement.

The legislative consent process will ensure that scrutiny can be undertaken by the Senedd which will help to ensure UK Government stand by the assurances they made when we agreed to Welsh contracting authorities being included in the Bill. Furthermore, the substance of the Bill's enactment will be specified in bilingual secondary legislation and guidance that will be developed by Welsh Government as the Bill continues its legislative journey. The Welsh Ministers have equivalent powers in significant areas of the Bill so there will be a substantial level of secondary legislation which will be subject to detailed legislative scrutiny in the Senedd, as well as wider engagement and consultation with stakeholders across Wales.

**4. How accessible will the new procurement regime be when it is split over two Bills?**

The purpose of the two Bills is different. The Procurement Bill focuses on the processes underpinning procurement, whilst the Social Partnership and Public Procurement (Wales) Bill aims to ensure socially responsible outcomes are achieved from our procurement. The new procurement regime will be accessible to suppliers as tenders are designed to cover the requirements of both Bills when required. The enhanced transparency measures should also ensure that suppliers have better visibility of tender opportunities, procurement data, etc. than they do currently.

**5. What degree of involvement have you and your officials had in shaping and drafting clauses of the UK Procurement Bill? Did you as Minister require sign off of individual clauses?**

My officials have, and continue to, work closely with their counterparts in the Cabinet Office on the development of the Procurement Bill to ensure it aligns to Welsh policy objectives and legislation. They meet frequently and will continue to interrogate any additional Government amendments to clauses as the Bill moves through scrutiny in UK Parliament.

I have called out areas where the Bill's proposed clauses did not align to our Welsh policy objectives. Different provision has therefore been included in the Bill for contracting authorities in Wales to reflect those specific policy objectives.

**6. What consultation was undertaken with Welsh stakeholders to inform the drafting process?**

The UK Cabinet Office published their Green Paper, *'Transforming Public Procurement'* in December 2020. During the Green Paper consultation period, Welsh Government ran a series of stakeholder engagement events to seek their views on how procurement legislation could be reformed to benefit Wales, and to gauge their appetite for the proposals in the Green Paper.

This included targeted engagement sessions with the Welsh private sector, including Industry Wales, the construction industry, and legal firms, to understand the impact of the Green Paper proposals on Welsh businesses.

These stakeholder sessions were followed up with a survey which resulted in the majority of Welsh stakeholders saying they were content with the direction of the reforms proposed in the UK Government's Green Paper.

**7. What role has the provisional common framework for public procurement had in the development of the Bill?**

A Working Group has already been established under the provisional common framework for public procurement. Monthly meetings are held and attended by the four Administrations and the development of the Bill is a standing item on the agenda.

**8. The UK Government is of the view that clauses 114 and 116 require the Senedd's consent. Could you outline how you have concluded that clauses 114 and 116 do not require the Senedd's consent?**

Clauses 114 and 116 are technical provisions which are concerned with how the Bill works rather than substantive provisions, and as a matter of practice we do not generally include non-operative clauses within Legislative Consent Memoranda.

**9. Clauses 50, 62, 63, 65, 79 and 80 contain Henry VIII powers for the Welsh Ministers, subject to the negative procedure. What role did you play in choosing these procedures and do you believe that the negative procedure is appropriate for these powers?**

My officials have considered the powers and the associated procedures as part of their review of the draft clauses provided by UKG and provided feedback as appropriate. Some concerns have been raised on the procedures for some of these clauses in the Delegated Powers and Regulatory Reform Committee's Report.

Discussions between my officials and their counterparts in the Cabinet Office are still ongoing in relation to the response to the Delegated Powers and Regulatory Reform Committee.

**10. Please can you provide a narrative on the concurrent powers in the Bill and how the approach adopted by the Welsh Government complies with its guidance on this issue?**

Welsh Ministers have secured standalone, equivalent regulation making powers for the vast majority of powers in the Bill.

There is a concurrent plus power in the Bill, as introduced, in relation to section 62 (electronic invoicing). The Counsel General and I agreed that there is strong rationale for this position. A concurrent plus power was deemed appropriate, primarily to provide consistency to basic e-invoicing standards and syntaxes across the UK nations to avoid confusion and additional costs for suppliers. In line with the guidance, my officials have ensured that both the executive and legislative competence of the Senedd are protected as this is a concurrent plus power and a carve out has been included within section 106 of the Bill.

The other powers currently in the Bill listed as concurrent are subject to ongoing discussions with UKG as noted at paragraph 119 of the Legislative Consent Memorandum.

The Bill is still working its way through the legislative process and there may be further concurrent powers as a result of potential amendments made. My officials are monitoring potential amendments and their impact on Wales.

**11. What analysis have you undertaken of how each clause of the Bill differs from or replicates the current legislative position and can the Committees see this analysis?**

There are significant differences in approach between the current legislative position and the clauses within the Bill proposed. For example, it combines aspects of the Public Contracts Regulations 2015 (PCR), Utilities Contracts Regulations 2016 (UCR), Concession Contracts Regulations 2016 (CCR) and the Defence and Security Public Contracts Regulations 2011 (DSPCR) into one piece of legislation. As such, it is not appropriate for officials to perform a clause-by-clause analysis of the Bill against current regulations.

My officials have therefore taken a holistic approach in reviewing the Bill and have only reviewed specific clauses against the existing legislation where appropriate.

**12. Have you undertaken a Wales-specific impact assessment of the Bill as introduced?**

As this is a UK Government Bill, there is no requirement for Welsh Government to undertake a Wales-specific impact assessment. Rather, it is the responsibility of the

lead UKG department (in this instance, the Cabinet Office) to undertake an impact assessment and consider the relative costs and benefits associated with the proposed legislative changes, and if there are any additional impacts in Wales. The impact assessment can be accessed via the UK Parliament website (<https://bills.parliament.uk/bills/3159/publications>).

My officials have reviewed the relevant UK Government impact assessments of the Bill as introduced, and I am satisfied that no adverse issues have been identified from a Welsh policy perspective. My officials continue to work closely with the Cabinet office on the development of the Bill and will consider the impact on Wales of any amendments taken forward as well as addressing any Bill-related matters as identified in the LCM.

Impact assessments will be undertaken on the secondary legislation that will be developed by Welsh Government, and these will be made available as they are created.

- 13. The Memorandum notes “There are likely to be a number of costs associated with the reform of public procurement in Wales although the exact details are still to be confirmed”. Please can you commit to share details of these costs with the Committees once they have been confirmed?**

Yes, I commit to sharing the details of these costs when they have been confirmed.

- 14. Could you provide an update on the discussions with the UK Government with regard to amendments being tabled to the Bill to address the concerns you set out in paragraph 119 of the Memorandum?**

Discussions with the UK Government are continuing regarding the concerns set out in paragraph 119 of the Memorandum.

We have reached a mutually agreeable position regarding the issues surrounding the “disapplication power for healthcare services”. This power has not been included in the Bill and options are being considered for taking it forward through Senedd legislation.

The concern surrounding a Welsh Contracting Authority’s duty to have regard to the Wales Procurement Policy Statement being “enforceable in civil proceedings” is also being addressed and there is a Government amendment being proposed at Lords Committee stage to address this.

Officials continue to work with UK Government counterparts on the remainder of the concerns listed in paragraph 119. I also received a letter from Minister Rees-Mogg on 12 August saying that he has noted my concerns and has asked his officials to continue working collaboratively with mine throughout the summer and September to resolve the remaining concerns whilst the Bill is going through the parliamentary process. We will therefore continue to pursue resolutions to these outstanding matters and will feedback to the committees as further progress is made.

**15. Have you engaged the new intergovernmental relations arrangements to resolve matters of concern?**

No, we have not engaged the new intergovernmental relations arrangements. Any matters of concern have been, and continue to be, dealt with via correspondence and meetings between officials and/or Ministers.

**16. Will you introduce your own legislation to cover matters of concern that you cannot resolve?**

Given what the matters of concern are, it would not be possible to introduce our own legislation to resolve them. For example, the matter regarding the definition of devolved Welsh authorities needs to be dealt with in the Procurement Bill itself as, whether or not Wales was part of this Bill, there would need to be an effective and mutually acceptable definition so as to ensure clarity as to which side of the line a contracting authority would fall.

**17. Will you commit to not using an intergovernmental agreement with the UK Government as a mechanism for resolving your concerns?**

I will commit to not using an intergovernmental agreement with the UKG as a mechanism for resolving our concerns. However, I will keep this under review as discussions continue and the Bill's passage progresses.

**18. What involvement will you and your officials have throughout the scrutiny and amending process in Westminster?**

The Welsh Government has already proposed several amendments which have been included in the Government amendments currently being debated in the House of Lords. My officials are continuing to work closely with their counterparts in the UK Government to ensure any further Government amendments fully reflect the Welsh Ministers' policy priorities.

**19. What regulations do you foresee as being necessary to implement the reforms under the Bill and under which powers (and procedures) in the Bill? Will those regulations brought forward by the Welsh Ministers be consistent with any taken forward by UK Government Ministers?**

Welsh Ministers have secured standalone, equivalent regulation-making powers to UK Government Ministers for the majority of relevant powers throughout the Bill. Hence, Welsh Ministers will need to develop and implement secondary legislation in relation to devolved areas. This includes regulations covering key areas that will need to be in place for the new regime to become operative, such as those relating to the Light Touch Regime, financial thresholds for below-threshold contracts, and procurement notices.

Clause 110(10) of the Procurement Bill lists the regulation making powers in this legislation that are exercisable by Welsh Ministers and are subject to the affirmative

procedure. Regulations made under any other section (not listed in clause 110(10)) will be subject to the negative procedure.

My officials are currently developing a project plan which will inform the approach to the development and implementation of the secondary legislation in Wales. Officials will continue to work closely with UK government on the development of the secondary legislation to ensure consistency and coherence in the implementation of the provisions of the Bill, where appropriate. A pragmatic approach will be adopted to ensure that the Bill meets the requirements of Welsh Contracting Authorities and suppliers.

Rebecca Evans MS  
Minister for Finance and Local Government

28 July 2022

Dear Rebecca

### Legislative Consent: UK Government's Procurement Bill

At our respective meetings on the 6 July and 11 July, we considered the Welsh Government's Legislative Consent Memorandum (Memorandum) on the Procurement Bill (the Bill). The Committees agreed that we should write to you seeking clarification on a number of matters. We would be grateful for a response from you by 5 September 2022 on the following questions:

1. What consideration did the Welsh Government give to using the time it has identified for the Social Partnership and Public Procurement (Wales) Bill to bring forward a wider procurement Bill that covered the scope of both the UK Procurement Bill and the Social Partnership and Public Procurement (Wales) Bill?
2. We have been advised by the Counsel General that neither resourcing nor capacity are issues in bringing forward Welsh Bills. Given the significant number of provisions in devolved areas within the Bill and the expertise available to the Welsh Government on procurement issues, why wasn't resource put into developing a wider, more coherent Welsh Government Procurement Bill?
3. Given that this is such an important area of public policy, why is it considered appropriate to take a legislative approach which prevents elected Members of the Senedd from undertaking detailed legislative scrutiny on the subject matter of the Bill, including through engagement with Welsh stakeholders?
4. How accessible will the new procurement regime be when it is split over two Bills?

5. What degree of involvement have you and your officials had in shaping and drafting clauses of the UK Procurement Bill? Did you as Minister require sign off of individual clauses?
6. What consultation was undertaken with Welsh stakeholders to inform the drafting process?
7. What role has the provisional common framework for public procurement had in the development of the Bill?
8. The UK Government is of the view that clauses 114 and 116 require the Senedd's consent. Could you outline how you have concluded that clauses 114 and 116 do not require the Senedd's consent?
9. Clauses 50, 62, 63, 65, 79 and 80 contain Henry VIII powers for the Welsh Ministers, subject to the negative procedure. What role did you play in choosing these procedures and do you believe that the negative procedure is appropriate for these powers?
10. Please can you provide a narrative on the concurrent powers in the Bill and how the approach adopted by the Welsh Government complies with its **guidance** on this issue?
11. What analysis have you undertaken of how each clause of the Bill differs from or replicates the current legislative position and can the Committees see this analysis?
12. Have you undertaken a Wales-specific impact assessment of the Bill as introduced?
13. The Memorandum notes "There are likely to be a number of costs associated with the reform of public procurement in Wales although the exact details are still to be confirmed". Please can you commit to share details of these costs with the Committees once they have been confirmed?
14. Could you provide an update on the discussions with the UK Government with regard to amendments being tabled to the Bill to address the concerns you set out in paragraph 119 of the Memorandum?
15. Have you engaged the new intergovernmental relations arrangements to resolve matters of concern?
16. Will you introduce your own legislation to cover matters of concern that you cannot resolve?
17. Will you commit to *not* using an intergovernmental agreement with the UK Government as a mechanism for resolving your concerns?



18. What involvement will you and your officials have throughout the scrutiny and amending process in Westminster?
19. What regulations do you foresee as being necessary to implement the reforms under the Bill and under which powers (and procedures) in the Bill? Will those regulations brought forward by the Welsh Ministers be consistent with any taken forward by UK Government Ministers?

Yours sincerely,

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

Mark Isherwood

Chair, Public Accounts and Public Administration Committee

A handwritten signature in dark ink, appearing to read 'Huw Irranca-Davies', written over a horizontal line.

Huw Irranca-Davies

Chair, Legislation, Justice and Constitution Committee

Huw Irranca-Davies MS  
Legislation, Justice and Constitution Committee

5 September 2022

Dear Huw

Thank you for your letter of 12 July enclosing the report on Access to Justice by the Senedd's Citizen Engagement Team, which highlights important issues relating to justice and the law in Wales.

I welcome the Committee's decision to commission this work, and appreciate the opportunity to provide my own observations below.

#### Attracting and retaining talent

These are very significant issues that are impacting the legal sector, and the current and future provision of legal advice, in Wales. The Welsh Government has similar concerns to those raised by contributors to this report about the challenges the legal sector faces. As set out in our Delivering Justice for Wales publication, we have therefore been seeking to bring forward a range of measures including:

- in April this year, we issued a framework for two new legal apprenticeship qualifications, paralegal at level 3 and advanced paralegal at level 5, with the aim of attracting local talent into the legal professions and improving social mobility and diversity of the workforce. Employers and providers are gearing up for the first intakes of students in the 2022-2023 academic year
- we are about to launch a tender for a 'needs analysis' for solicitor apprenticeships which we expect to provide valuable evidence in understanding how we can help legal practices in Wales attract, develop and retain talent
- working with Business Wales to deliver a package of tailored business support to legal practices in Wales, and
- establishing a working group with the Wales and Chester Circuit of the Bar to develop the public law bar in Wales.

The Law Council of Wales has the potential to play a valuable role in supporting talent management in the legal sector in Wales. Its legal services working group is seeking to develop a strategy for supporting the viability of the legal professions in Wales, and has also established a sub-group to support the expansion of apprenticeships.

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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.

## Impact of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

I concur with your panel's grave concern about the effects of LASPO. In the criminal law sector, a decade of stagnant fees has seen a collapse in legal aid practitioners and a two-tier justice system. Even the UK Government acknowledged this damage when it appointed Sir Christopher (now Lord) Bellamy to examine how to repair the damage. We have made it very clear to ministers in Westminster that Lord Bellamy's recommendations must be implemented in full.

We have also formally responded to the UK Government's recent consultations on the Legal Aid Means Test Review and Immigration Legal Aid fees setting out our concerns in relation to the cost-of-living crisis and advice deserts in Wales.

The effects outside the criminal sector have been profound. The complete removal of legal aid from cases involving housing, welfare, medical negligence, employment, debt and immigration, together with the removal of support for most private family law cases, has prevented access to justice for all but the extremely wealthy. The Welsh Government has stepped in to help fill this void via the Single Advice fund,<sup>1</sup> but we should not have to be making up for the deficiencies of the Westminster government and we cannot help all those who are now unable to afford the legal advice and representation that they need to secure their legal entitlements.

## Courts and Tribunals

The court closure programme created particular access to justice challenges relating to the rural and mountainous nature of the geography of Wales which I raised with Lord Bellamy when I first met him and which I know he understands. The position has in some ways been alleviated through the greater use of online hearings (see section below), but these are not universally available and we retain significant concern about people who are unable to participate effectively in proceedings of the greatest importance to their lives.

The Commission on Justice in Wales recommended that "a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales".<sup>2</sup> We agree with this, but even prior to the transfer of powers to devolved institutions, we believe the Ministry of Justice could and should develop a strategy for Wales, in collaboration with Welsh Government and other organisations in Wales. This is something we have raised in discussions with the Ministry of Justice.

I am also concerned at the comments made in the report relating to reluctance to use the Welsh language. There has been a recent consultation on the HMCTS Welsh language scheme, the results of which are currently being considered.

There is no law that currently enables the empanelling of a bilingual jury to hear cases where Welsh is to be used. Welsh Government officials raised with HMCTS the need for reconsideration of the Jurors Act 1974 which does not provide for the services of a translator, so that deliberations have to take place in the language that is 'common to all', which inevitably means English.

An amendment to the Juries Act has recently been made which provides that a British Sign Language interpreter is a reasonable adjustment that judges can grant for people with hearing impairments. We consider that the law should be similarly changed to enable an interpreter to facilitate jury deliberations when there is a mix of bilingual, first language

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<sup>1</sup> [£8 million funding for advice delivery services across Wales | GOV.WALES](#)

<sup>2</sup> Rec 39

Welsh jury members, and jury members unable to speak Welsh and that this is especially needed when cases are heard in Welsh. This is a matter which will be raised with the new Welsh Language Commissioner when appointed.

### Technology

The pandemic has accelerated the use of information and communication technology in the justice system. Remote hearings or online conversations between solicitor and client will ease the difficulties of travel and the delays associated with courts. They are an opportunity for more efficient performance but, like your panel, I am concerned for those left behind.

Through the National Survey for Wales 2021-22 we know that 7% of Welsh adults (aged 16 and over) do not personally use the internet. This means that approximately 170,000 individuals in Wales are completely digitally-excluded. Of those who do personally use the internet, our National Survey for Wales shows that 22% lack the basic digital skills to do so safely and confidently.

An area which will have an impact, although there is not yet any robust National Survey data, is the ability of people to afford connectivity/data – potentially pushing those currently digitally included, to exclusion. A Bevan Foundation report '[A snapshot of poverty in Summer 2022 - Bevan Foundation](#)' shows that 19% of people in Wales are cutting back on the internet or internet enabled devices.

The use of information technology in the courts and legal profession is at an early stage and there is a critical need to ensure that faults within any new system are corrected with alacrity. Early users of the Common Platform rolled out by HMCTS highlighted concerns with its accuracy and ease of use, yet these issues were not immediately rectified and with a strike ballot having been held over the matter, it can be said that there remain serious issues with it.<sup>3</sup>

### Accessibility of Welsh law

The responses the Committee received and have reported on reflect the long-standing concerns over the inaccessibility of the law and in some cases the particular difficulties which we experience here in Wales (for reasons we have articulated extensively in previous papers and reports). It is why we have taken the steps we have with the Legislation (Wales) Act 2019 and [The future of Welsh law: A programme for 2021 to 2026](#). The 5-year programme contains a blend of legislative and non-legislative projects designed to increase the accessibility of Welsh law.

The most ambitious element of this first programme is legislative consolidation and I was very pleased to introduce into the Senedd the Historic Environment (Wales) Bill on 4 July 2022. This is a substantial piece of work which will bring real-life benefits to those involved in this area by making administrative procedures and the application of the law more efficient and transparent. Bringing all the law on this subject together in one place will also make it easier for people to understand their legal rights and their legal obligations.

During this Senedd term we will also be bringing forward a consolidation Bill which simplifies and modernises the law on Planning and a Statute Law Repeals Bill to repeal or disapply legislative provisions from across the statute book that are obsolete, spent, or are no longer of practical use in Wales.

Your summary report mentions an online tool created by the Ministry of Justice. We have also started to explore the potential for using machine learning and artificial intelligence to

make Welsh law more accessible. I will report further on this shortly when I lay the first progress report on the programme before the Senedd.

Accessing commentary on Welsh law remains a challenge which the newly formed Law Council may consider further. The Government is continuing to support the Cyfraith Cymru/Law Wales website. This site provides information, and seeks to explain, Welsh law and the constitution of Wales, together with more detailed commentary on individual topics. We are currently seeking contributions from subject experts in external law firms, who welcome the opportunity to submit articles on subjects in which they have expertise. We hope this development will encourage further commentary and debate on the law in Wales so that citizens and legal practitioners will eventually have a comprehensive source of reliable information to help them understand and access the law for Wales.

One of the areas of the law mentioned in your report relates to the accessibility of housing law in Wales. Housing law has long been criticised for being unnecessarily complex and relying on obscure case law. The implementation of the Renting Homes (Wales) Act 2016, which is based closely on Law Commission recommendations aimed at simplification and improving accessibility, will in part tackle this problem. We have produced a wide range of guidance aimed at both landlords and tenants. Collaborative work with the Ministry of Justice and HMCTS is also under way to ensure guidance on court processes properly reflects the new legislation.

#### Welsh Government support

The Welsh Government remains committed to supporting information and advice providers to ensure some of the most vulnerable people in our society have access to free and impartial advice on debt, discrimination, employment, housing, and welfare benefit issues, particularly important during these unprecedented times. We welcome the positive reflections of contributors to this exercise on the value that the Welsh Government's Single Advice Fund (SAF) has provided to those in need of advice and support.

It is important to note that the purpose of the SAF is not to provide core funding to different advice providers. The SAF was established as a project with a specific aim of ensuring that there is a framework of quality assured, generalist and specialist advice services across Wales that can effectively target early access to advice amongst the more vulnerable households.

Bids to the SAF were managed through a fair, open and competitive grant exercise. Bids could be submitted by an individual organisation, or by a collaboration of organisations. The successful Citizens Advice Cymru led consortia demonstrates an innovative service delivery model. It offers an integrated service which enables people to access advice on their social welfare problems. It also provides wraparound support services to help build an individual's resilience to future social welfare problems.

An independent review of the SAF is expected to be completed by the end of the year. The review will include consideration of whether the SAF has altered the way citizens access niche advice services and will identify any issues such services have with funding perhaps not being currently available to them. It will also explore whether small providers should be invited to join a SAF consortium.

#### Commission on Justice in Wales

I share the concerns of participants about legal aid delivery not being devolved and how this could restrict access to it, particularly in legislation enacted for Wales.

Wales would benefit from an equitable distribution of legal aid resources since spending per head on legal aid is £15 in England but only £11.50 in Wales.<sup>4</sup> A better-funded, innovative legal aid system that could link in with other devolved services would be the first steps towards giving the people of Wales the improved justice system they deserve.

The Welsh Government is committed to ensuring the people of Wales can access quality assured advice services as poor advice is often worse to a person than receiving no advice at all.

Information and Advice services in Wales are quality assured by a number of independently owned Advice Quality Standards. Welsh Government introduced the Information and Advice Quality Framework for Wales (IAQF) in response to the lack of consistency and understanding of what constitutes quality information and advice.

The IAQF is not a separate quality assurance process for individual information and advice providers. It works by assessing the quality assurance audit processes undertaken by the different Advice Quality Standards as being compliant with the IAQF. Many of the independently owned Advice Quality Standards have applied for and been awarded IAQF Wales Accredited Body Status.

The Welsh Government is committed to ensuring that smaller community organisations can apply for an IAQF Accredited Quality Standard. Following a recent review of the IAQF, a proposal has been developed that provides a “lighter touch” accreditation framework for these organisations and a programme of support will be delivered helping them to develop their policies and procedures to a level where they can apply for an IAQF Accredited Quality Standard.

#### Hybrid working

The Welsh Government shares the optimism of your participants in the opportunities presented by hybrid working and we presented a remote working strategy in March 2022. Flexible hybrid working can be better for staff, for the organisation and for the environment. The strategy will increase and enable remote working to help workers stay local with an aim to see 30% of the workforce working remotely on a regular basis.

In conclusion, we share the substantive access to justice concerns raised in this report. We have already, and on several occasions, raised key issues with the Ministers responsible for the Ministry of Justice and we have made, and are making, as much support as possible available to users of the justice system in Wales under what we can all agree is the current unsatisfactory settlement.

Yours sincerely,



#### **Mick Antoniw AS/MS**

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

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<sup>4</sup> [Commission on Justice in Wales report](#), **Part 2**, page 167

Mick Antoniw MS  
Counsel General and Minister for the Constitution

12 July 2022

Dear Mick

**Access to justice: Summary of engagement**

In December last year, as part of our remit in relation to justice matters, the Senedd's Citizen Engagement Team undertook some focus groups and a series of one-to-one interviews with legal practitioners and litigants in order to gain a better understanding of their experiences of access to justice in Wales.

On 30 June, we published a [summary](#) of the outcome of that work. We would be grateful to receive any observations you may have on the views contained in this summary by 31 August 2022.

Yours sincerely,



Huw Irranca-Davies  
Chair

# Agenda Item 9.14

Mick Antoniw AS/MS

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



Llywodraeth Cymru  
Welsh Government

5 September 2022

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

Dear Huw

**Re:** EU Exit derived statutory instruments (SIs).

Thank you for your letter of 19 July in which you sought information on EU Exit derived statutory instruments (SIs).

We anticipate bringing a small number of EU Exit-derived SIs to the Senedd before the end of this calendar year. Welsh Government officials are currently working closely with counterparts in the UK and Scottish Governments to identify those outstanding areas requiring correcting legislation and we will keep the Committee updated on progress.

As regards SIs to potentially be made by the UK Government with the consent of the Welsh Ministers, these are assessed on a case-by-case basis by reference to the SI's content and the suitability of the UK Government exercising the relevant power. Further information will be needed from the new UK Government on their intentions and proposed SIs before we can give an accurate estimate. However, as you will be aware, where we intend to consent to the exercise of such functions by the UK Government, we are committed to notifying your committee of our intentions and the rationale, ahead of laying a Written Statement. We will continue to keep your committee informed in this manner.

Yours sincerely

**Mick Antoniw AS/MS**

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

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



Mick Antoniw MS  
Counsel General and Minister for the Constitution

19 July 2022

Dear Mick

### EU exit derived statutory instruments

In the legislative programme statement on 5 July 2022, the First Minister stated that the Welsh Government will still be bringing EU exit derived statutory instruments (SIs) to the Senedd until the end of this year. We are aware that the period within which EU exit correcting statutory instruments can be made is due to come to an end at 11pm on 31 December 2022 (by virtue of section 8(8) of the *European Union (Withdrawal) Act 2018*).

We are also aware that the UK Government has proposed a 'Brexit Freedoms/Retained EU Law' Bill. This proposed Bill notwithstanding, I would be grateful if you would provide us with information regarding:

1. the number of EU exit derived correcting SIs still to be made by the Welsh Ministers;
2. the number of EU exit derived correcting SIs still to be made by the UK Government which will require the consent of the Welsh Ministers;
3. the number of any other EU exit related SIs still to be made by both the Welsh Ministers and the UK Government.

Given the potential implications for our work programme in the autumn term, and while I appreciate this may be difficult to assess, it would be helpful if you could give an indication of the likely timings for the making of this legislation.

I would be grateful to receive a response by 26 August.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair





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

05 September 2022

Dear Huw

### Intergovernmental Agreements

Thank you for your letter dated 19 July requesting information relating to intergovernmental agreements between the Welsh and UK Governments. I have provided a response below to each of the three questions raised.

- i. **provide details of each of the intergovernmental agreements relating to primary legislation in operation, how they are being used and when they are to be reviewed; and**
- iii. **let us know how and when you intend to publish details of all agreements that relate or have related to the operation of primary legislation, in line with paragraph 17 of the Inter-Institutional Relations Agreement.**

As part of the Inter-Institutional Relations Agreement, a dedicated web page has been developed and can be found at <https://gov.wales/concordats-memorandums-of-understanding-and-other-agreements>. This is not limited to those agreements between the Welsh and UK Governments which relate to primary legislation. My officials are in the process of ensuring that all relevant agreements are published on this site. We aim to finalise this work during the autumn period.

These agreements are being utilised to support co-operation in the related policy areas. They are reviewed regularly and updated accordingly.

- ii. **provide details of any such agreements entered into by the previous Welsh Government that are no longer in force, including when they came to an end;**

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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.

To date we have not kept a central log of such agreements, however going forward we will ensure the dedicated Welsh Government web page is kept under review and reflects both agreements in force and those that have come to an end.

Yours sincerely

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

**Mick Antoniw AS/MS**

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

Mick Antoniw MS  
Counsel General and Minister for Constitution

19 July 2022

Dear Mick

## Intergovernmental Agreements

In am writing to request information relating to intergovernmental agreements between the Welsh and UK Governments.

Our predecessor Committee's [Legacy Report](#) stated:

*Conclusion 10.* Our successor Committee should ensure that the next Welsh Government provides regular updates to the Senedd on the number of intergovernmental agreements relating to primary legislation in operation, how they are being used and when they are to be reviewed.

The [Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government](#) (November 2021) states at paragraph 17:

*The Welsh Government will maintain a dedicated page of its website providing all relevant formal intergovernmental agreements, common frameworks, concordats, memorandums or other resolutions that the Welsh Government has in place with the UK Government.*

We are not aware that this part of the agreement has been complied with in relation to intergovernmental agreements.

I would be grateful therefore if you could:

- i. provide details of each of the intergovernmental agreements relating to primary legislation in operation, how they are being used and when they are to be reviewed;
- ii. provide details of any such agreements entered into by the previous Welsh Government that are no longer in force, including when they came to an end;
- iii. let us know how and when you intend to publish details of all agreements that relate or have related to the operation of primary legislation, in line with paragraph 17 of the Inter-Institutional Relations Agreement.

I would be grateful to receive a response by 5 September 2022.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair



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

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
Cardiff  
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8 September 2022

Dear Elin

The UK Government tabled amendments to the Social Housing (Regulation) Bill (the Bill) in the House of Lords, on 25 August 2022.

As outlined in the Legislative Consent Memorandum (LCM) on the Bill as introduced, which was laid on 18 August 2022, although the Bill proposes changes to the regulation of social housing landlords in England, the majority of the provisions extend and apply to Wales and relate to the devolved matter of Housing. As such, those provisions make relevant provision for the purposes of Standing Order 29 for which Senedd consent is required. Some or all of the amendments tabled will also require consent, and accordingly a supplementary LCM will be laid.

However, it will not be possible to lay this within the normal two-week Standing Order 29 deadline due to the amendments being laid during recess.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS, and the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely

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

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

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

# Agenda Item 9.17



The Scottish Parliament  
Pàrlamaid na h-Alba

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

The Scottish Parliament  
EDINBURGH  
EH99 1SP

CEEAC.committee@parliament.scot

22 September 2022

Dear Huw,

## **Impact of Brexit on Devolution**

The Constitution, Europe, External Affairs and Culture Committee has today published a report on our inquiry into the impact of Brexit on devolution:

[The Impact of Brexit on Devolution | Scottish Parliament](#)

The Committee's findings demonstrate that there are fundamental concerns which need to be addressed in relation to how devolution works outside the EU. We identified the following constitutional questions –

- to what extent can the UK potentially accommodate four different regulatory environments within a cohesive internal market and while complying with international agreements;
- whether the existing institutional mechanisms are sufficient to resolve differences between the four governments within the UK where there are fundamental disagreements regarding alignment with EU law and while respecting the devolution settlement;
- how devolution needs to evolve to address these fundamental questions.

In our report we explore two significant areas in which devolution has begun to evolve following the UK's departure from the EU: the operation of the Sewel Convention and the use of delegated powers.



We agree that the Sewel Convention is under strain following Brexit and noted the view of some of our witnesses that without reform, “there is a risk of the convention, and the legislative consent process that puts Sewel into practice, collapsing altogether.”

It is also our view that the extent of UK Ministers’ new delegated powers in devolved areas amounts to a significant constitutional change. We have considerable concerns that this has happened and is continuing to happen on an ad hoc and iterative basis without any overarching consideration of the impact on how devolution works.

The Committee’s view is that there is a need for a much wider public debate about where power lies within the devolution settlement following the UK’s departure from the EU.

The Committee will launch a significant committee inquiry which will allow businesses, civic society and the wider public to engage on these core issues.

To inform this inquiry the Committee will seek the views of the UK Government and the Welsh Government as well as the Scottish Ministers in response to the findings of our report.

The Committee also agreed to pursue the findings of our report at an interparliamentary level through the interparliamentary forum and myself and the Deputy Convener look forward to discussing these with you and other colleagues in Cardiff on 28<sup>th</sup> October.

Yours Sincerely

A handwritten signature in cursive script that reads "Clare Adamson".

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

# Agenda Item 9.18

Jane Hutt AS/MS  
Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social Justice

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



Llywodraeth Cymru  
Welsh Government

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
Cardiff  
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[Llywydd@senedd.wales](mailto:Llywydd@senedd.wales)

22 September 2022

Dear Elin,

We wrote to you on 1 July, regarding the [Bill of Rights Bill](#) (the Bill), which was introduced in the House of Commons on 22 June, to explain that we expected to lay a Legislative Consent Memorandum (LCM) for this Bill but that this would be outside the normal two-week Standing Order 29 deadline.

We wrote to you again on 31 August to explain the further delay in laying this LCM, related to the complexity of the Bill and uncertainty about the UK Government's intentions and timetable. We noted then that Commons Second Reading of the Bill was scheduled for 12 September.

Following the appointment of the new Prime Minister, however, the decision was taken by the UK Government not to proceed with Second Reading in September. Moreover, there have been strong indications from the UK Government that it will not be proceeding with this Bill in its current form. It is unclear at present whether changes will be made to the Bill as introduced, or if the Bill will be withdrawn.

We are awaiting clarification from the Ministry of Justice, but do not expect this to be forthcoming in the immediate future. As such, in light of this uncertainty about the UK Government's intentions, it does not seem sensible to proceed with this LCM for the foreseeable future. To do so would be to ask the Senedd to spend time considering a legislative proposal which is not currently being taken forward, and risks being withdrawn or replaced by an alternative proposal in short order.

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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.

We will write to you again when the situation is clearer, but are providing this interim update in the meantime, since it seems possible there may be a lengthy delay.

As with the previous letters referred to above, we are copying this letter to the First Minister, the Minister for Rural Affairs and North Wales, and Trefnydd, the Chair of the Equality and Social Justice Committee, the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Cross-Party Group on Human Rights.

Yours sincerely,

	
<b>Jane Hutt AS/MS</b> Y Gweinidog Cyfiawnder Cymdeithasol Minister for Social Justice	<b>Mick Antoniw AS/MS</b> Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad Counsel General and Minister for the Constitution

# Agenda Item 11

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

Document is Restricted

# Agenda Item 12

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

Document is Restricted

Document is Restricted

Eich cyf/Your ref  
Ein cyf/Our ref

Llywodraeth Cymru  
Welsh Government

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

17<sup>th</sup> August 2022

Dear Huw

## **HISTORIC ENVIRONMENT (WALES) BILL**

Thank you for your letter of 19 July 2022 following my evidence to the Committee on 11 July. I found the Committee's approach to that first evidence session extremely helpful and I appreciate the opportunity to provide further information and detail through our correspondence.

### ***Legislation excluded from the Bill***

1. We omitted provision from section 53 of Part 3 of the Ancient Monuments and Archaeological Areas Act 1979 for legislative competence reasons. This is the provision in section 53(4) about bringing proceedings elsewhere in Great Britain for offences committed in the territorial sea adjacent to Wales. Because of the limitations of the Senedd's competence in terms of the extent of any changes to the law, we would have been unable to restate the effect of section 53(4) in the Bill.
2. Part 2 of the Ancient Monuments and Archaeological Areas Act 1979 is not being restated in the Bill. The decision not to restate this provision has been made for different reasons to the other examples of legislation mentioned in your question. Part 2 of the 1979 Act makes provision about archaeological areas, but Part 2 has never been used to designate areas in Wales. The Part is of no practical utility or effect, so the Bill makes amendments to Part 2 so that it will no longer apply in relation to Wales.

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

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

3. In the other Acts that are wholly or partly restated in the Bill, various provisions have been omitted from the consolidation under Standing Order 26C.2(iii) because they are no longer considered necessary. Those provisions are identified in the Drafters' Notes.
4. However, one provision of this kind was inadvertently omitted from the Drafters' Notes, and I would like to take this opportunity to correct that oversight. Section 54 of the Planning and Compulsory Purchase Act 2004 enables a development order under the Town and Country Planning Act 1990 to specify cases in which a person consulted about an application under the planning Acts is required to provide a response. This would include applications for listed building consent and conservation area consent, but the power has never been used in relation to those applications and Cadw considers that there is no prospect of it being used. Accordingly, in reliance on SO 26C.2(iii) the Bill does not amend section 54 to cover applications under the Bill, meaning that it will cease to apply to listed building and conservation area consent applications in Wales.
5. At a suitable opportunity the Drafters' Notes will be updated to include this reference.
6. The Drafters' Notes also include no reference to section 49 of the Planning (Listed Buildings and Conservation Areas) Act 1990, because that section will continue to apply to Wales after the consolidation. In our view, it would be more appropriate for section 49 to sit with the general law about compensation for the compulsory purchase of land, rather than with the law on the protection of the historic environment, and for that reason we do not think it belongs in this Bill.
7. Of the other examples of legislation mentioned in your Annex, the only realistic candidate for inclusion in the Bill was the provision about wrecks in the 1973 Act.
8. We took the view in relation to the 1969 and 1986 Acts that both Acts were peripheral to the subject-matter of the consolidation and should not be included in the Bill for that reason. In the case of the 1969 Act, the main provisions that are still in force are really about the powers of charities and the Charity Commission in connection with the disposal of land, rather than about the protection of the historic environment as such. Similarly, the 1986 Act is about preventing interferences with military aircraft that have crashed and vessels that have sunk. Had we included this provision in the Bill, we think this would have had a negative effect on the accessibility of the restated legislation.
9. As suggested above, the position in respect of the 1973 Act was different, and the legislation does protect certain wrecks thought to be historically, archaeologically or artistically important. The difficulty with the 1973 Act is that it was passed as "stop-gap" legislation at the time, creating what was meant to be a temporary mechanism for the designation and management of the sites of wrecks.
10. Incorporating the Act in the Bill would have required a number of new provisions to make it consistent with modern practices (the current provision is very light on detail about how the system established by the Act operates), and the legislation has not been used for 20 years (only six sites have ever been designated in relation to Wales). It also applies, of course, off-shore rather than on land. As a result the 1973 Act wasn't considered a priority partly because its omission could be justified and partly because it is not a significant part of the system for the protection of the historic environment.

### ***UK Government proposed legislation***

11. I understand, and to an extent share, the concerns of the Committee – the aim of all of the consolidation projects is to improve the accessibility of Welsh law, and we want to ensure that everything is done to maintain that improvement. That is not to say that



subsequent legislative changes cannot be made to legislation that has been consolidated. Clearly it can. What we want to ensure is that those changes are made as amendments to the consolidation, not as separate stand-alone legislative proposals.

12. Officials in the Office of the Legislative Counsel have discussed the Government's programme to improve the accessibility of Welsh law with their counterparts in the other UK drafting offices. This includes explaining our ambitions for maintaining the law once consolidated and codified. Those drafting offices are already aware of our existing policy that amendments to existing Welsh law by other legislatures must make changes to both language texts. There are plenty of examples of that happening already.
13. As explained in the evidence to the Committee, if the UK Government were to legislate for Wales on a matter for which the law had already been consolidated then the expectation would be that the consolidated law would be amended by that UK Bill. That is the approach, should this situation ever arise, that our officials would explain and discuss with the relevant policy, legal and drafting officials at the time.
14. I believe that, should this ever come to pass, then it would be appropriate to draw the Senedd's attention to the drafting approach being taken by the UK Government in their legislative proposals as part of the LCM process.

### ***Codes of Welsh law***

15. The Committee has understood the intentions for Codes of Welsh law correctly. They are, to adopt your wording, repositories of the law. They will most likely begin with a single piece of consolidated primary legislation. But they could also begin with the substantive statement of the law set out through an Act which reformed and restated the law on a subject (so through a Senedd Bill taken through Standing Order 26). Subsequent substantive primary legislation may also be part of a Code. For example, due to the amount of legislation involved, a Code of Welsh law on education may – as has been said in evidence previously – contain a number of Acts relating to different aspects of education law (e.g. schools, further education, higher education). If an Act is intended to form part of a Code, then a statement to that effect will be included within it – most usually in the way set out in section 1(1) of the Historic Environment (Wales) Bill.
16. Legislation which amends those substantive Acts will not form part of the Code and will not include the statement. They are simply the vehicle by which amendments to the, in this case, consolidated legislation is achieved.
17. The Committee is also correct to say that sitting within that Code (or 'repository') will be delegated legislation and guidance. The substantive regulations will include a statement that they form part of the Code. And again subsequent amending regulations will not be part of the Code but the effects they create will take place within the Code.

### ***Legislation.gov.uk***

18. Although The National Archives are aware of the Government's programme to improve the accessibility of Welsh law, we do not see that it is necessary to seek additional or different styling on legislation.gov.uk for legislation forming part of a Code. This is because it is not a new type or form of legislation (the Acts will continue to be Acts of Senedd Cymru for example).
19. We intend to use the Cyfraith Cymru/Law Wales website to set out the content of Codes of Welsh law. We will create a bespoke page for each Code, and users will be able to access the primary and subordinate legislation from this page, as well as links to

guidance. The Queen's Printer will remain responsible for the publication of the legislation (the official copies and printed versions) and legislation.gov.uk will continue to publish digital versions of the legislation (which is then available under the Open Government Licence for commercial publishers and others to re-use).

20. I will be updating the Senedd later this year on the excellent progress made with legislation.gov.uk on expanding the functionality of the site to enable the Welsh language texts of Welsh law to be updated. But ahead of this I can reassure the Committee that arrangements are being made to ensure that future amendments to Acts and SIs forming part of a Code of Welsh law will be updated on legislation.gov.uk swiftly.

### ***Potential changes to Standing Orders***

21. The Senedd and this Committee have recognised the risks, and arguably the damage, to the accessibility of law that has been consolidated subsequently fragmenting and proliferating again if amendments are not made to the substantive Acts. That is why we need to find a way to help ensure that the Senedd itself has to agree to any future legislative proposals doing anything other than amending a Code. I don't think we can say there would never be a good reason why this might happen, but I do think we can say that the Senedd has to be content were that to be proposed.

22. It seems to me that the best way to safeguard this principle is by including a provision on this in the relevant Standing Orders for Bills (and maybe also subordinate legislation if that was something the Senedd considered necessary).

23. The Trefnydd and I will seek to raise this with the Llywydd and the Business Committee once the intentions of the Senedd are known in relation to this Bill, so that a suitable approach to engaging with Members and Party Groups on this matter can be established. To reiterate the point I made at the evidence session, this is a matter that all Members need to consider and be content with – this is because Committees, individual Members and the Commission can bring forward legislative proposals, not just the Government.

### ***New powers of the Welsh Ministers***

24. Section 2(3) of the Bill includes a new power for the Welsh Ministers to provide for exceptions to the general rule that religious buildings used for religious purposes are not monuments for the purposes of Part 2 of the Bill.

25. This power has been included because of uncertainty about the meaning of the opening words of section 61(8) of the Ancient Monuments and Archaeological Areas Act 1979. That section prevents ecclesiastical buildings for the time being used for ecclesiastical purposes from being treated as "monuments".

26. In restating this provision in section 2(3) of the Bill, we were uncertain whether the exemption had originally been intended to apply in relation to the Church of England only, and uncertain about what the wording meant in the context of the operation of section 3 of the Human Rights Act 1998 (section 3 requires legislation to be read and given effect in a way that's compatible with ECHR rights, so far as it is possible to do so). We applied the provision to all religions in the first instance, because we took the view that this was the most likely ECHR compatible interpretation, but we have retained a degree of flexibility to respond to any future change in circumstances.

27. There are other examples in the Bill where provision has been moved from subordinate legislation into the Bill but changes might be needed in future. In those cases, the Bill

includes powers to amend the provisions. One example is the power in Schedule 3 to the Bill to change the categories of class consents; this is something that the 1979 Act leaves entirely to subordinate legislation. These examples do not involve the conferral of new powers and simply retain existing flexibility available to the Welsh Ministers to make adjustments to the system created by the Bill.

### ***Section 209(6) of the Bill***

28. This change has been made in the context of a change in the approach adopted by the Bill to what's covered on the face of the primary legislation. We have restated much more on the face of the Bill about key matters relevant to partnership agreements than currently appears on the face of the Ancient Monuments and Archaeological Areas Act 1979 and Planning (Listed Buildings and Conservation Areas) Act 1990. For example, provision about the termination of partnership agreements is covered exclusively by the Bill and not left to regulations (as is currently the case).
29. This difference in approach justifies a different procedure in our view, and this is something we think is permitted by Standing Order 26C.2. The matters we are leaving to regulations subject to negative procedure are the types of procedural matters that are also left to negative regulations elsewhere in the Bill; for example, in the provisions about applications for scheduled monument consent.
30. It's worth noting that any regulations modifying the effect of Part 2 of the Bill to partnership agreements would still be subject to the affirmative procedure. This is consistent with the Government's policy on determining the suitable procedure to apply to subordinate legislation.

### ***Effect of the Interpretation Act 1978 and the Legislation (Wales) Act 2019 on the Bill***

31. The Interpretation Act 1978 applies to all the Acts consolidated in the Bill and all the subordinate legislation made before 2020. The Legislation (Wales) Act 2019 applies to more recent subordinate legislation and will apply to the Bill. The Bill will therefore be subject to slightly different interpretation provisions from nearly all of the legislation it consolidates.
32. The main implications of this change are described in paragraphs 14 to 17 of the Drafters' Notes, and specific examples are given in the entries for sections 2, 3, 74, 160, 161 and 205 of the Bill and the entry for the omission of section 91(4) of the 1990 Listed Buildings Act. The Office of the Legislative Counsel also issued general guidance on the effect of the changes made by the Legislation Act in 2020: see <https://gov.wales/guidance-for-preparing-welsh-legislation>
33. The Schedules of generally applicable definitions in the two Acts are slightly different. In particular, the definition of "Wales" in the Interpretation Act does not include the territorial sea whereas the definition in the Legislation Act does. This has different implications for different Parts of the Bill. In Part 2, we have omitted provisions from the 1979 Act that give "Wales" the wider meaning, because they are not needed in a Bill that will be subject to the Legislation Act. In Part 3, we have added a provision giving "Wales" the Interpretation Act meaning; this preserves the effect of the silence in the 1990 Listed Buildings Act about the meaning of "Wales" (which means the Interpretation Act definition applies).

### ***Use of 'expedient' and 'appropriate'***

34. Our approach is that references to what is “appropriate” or “expedient” should not be included unless they are necessary. This reflects our general approach of omitting superfluous wording. Conversely, of course, wording should not be omitted where it is necessary.
35. Where a provision confers a power on a public authority to do something, it is generally unnecessary to require the authority to consider that doing that thing is “expedient” or “appropriate” because the law already requires public bodies to act reasonably. That position may have been less clear when some of the provisions restated in the Bill were first enacted (in some cases a very long time ago), which may explain why it was done. But a modern Bill would not normally include wording to indicate that a public body must act reasonably, and the references that have been omitted in the Bill are mainly of this kind.
36. Some references to what an authority considers “appropriate” have been retained in the Bill. This is where we think the references are necessary because the provisions in question would not work, or would be unclear, without them. But we are reviewing these references and we would be happy to look at any that the Committee considers may be unnecessary.
37. Where the Bill uses the word “appropriate,” the references should fall into the following categories:
- a. Provisions about consultation or notification often require Ministers to consult or notify specified persons and “any other persons they consider appropriate”. There are examples in sections 5(3), 78(2), 194(7) and 196(4) and paragraph 3(5) of Schedules 4 and 5, and similar provisions about who may be a party to a partnership agreement in sections 25(2) and 113(2) and (4) of the Bill. Referring only to “other persons” would be unclear and might have a different effect.
  - b. Some provisions enable or require a public authority to take action it considers “appropriate” for particular purposes or having regard to particular considerations. The references to what the authority considers appropriate make clear the connection between the action and the purposes or considerations. There are examples in sections 35(1), 123(1) and 134(1) and paragraph 2(7) of Schedule 9.
  - c. Some provisions state that a public authority may do anything it considers appropriate, in order to make clear that the power is a very broad one. This may be important if the context would otherwise suggest that the power might be narrower. There is an example in section 184(6).
  - d. Some provisions refer to what is “appropriate” for a mixture of reasons b. and c., i.e. to make clear that a public authority has a wide power to do anything it considers appropriate for a particular purpose. There are examples in sections 9(5), 42(3), 81(5), 135(3) and 143.
38. These may not be the only reasons for including the word “appropriate” in legislation. For example, the Curriculum and Assessment (Wales) Act 2021 is a recent Act that includes the word “appropriate” in various places. Some of these references were included for reasons that are not relevant to the current Bill:
- a. Sections 12, 14, 16 and 51 of that Act confer powers for education bodies to do various things if they “consider it appropriate to do so”. These powers appear immediately after powers to do other things only if the bodies “consider it

necessary to do so". The references to what is "appropriate" are needed in these contexts to make clear that the test is not what is necessary.

- b. Sections 33(4), 45(5) and 46(3) confer powers for a body to direct another person to "take the action that it considers appropriate". The wording is included to make clear that it is the body giving the direction that determines what action it is appropriate to take.

### ***Engagement with HMCTS***

39. The Welsh Government has followed the agreed procedures to make the HM Courts and Tribunals Service and the Ministry of Justice aware of the Bill. A Justice System Impact Identification form was submitted to the Ministry of Justice who have confirmed that the Bill will have nil or minimal impact on the justice system. In addition, information has also been submitted to the Lord Chief Justice and no issues have been identified that will impact on HMCTS or the Judicial College.

### ***Judicial Review and Courts Act 2022***

40. Section 13 of the Judicial Review and Courts Act 2022 was brought fully into force on 13 July 2022 by regulation 3 of the Criminal Justice Act 2003 (Commencement No. 34) and Judicial Review and Courts Act 2022 (Commencement No. 1) Regulations 2022 (SI 2022/816).

41. The Bill does not make any changes to the sentencing powers of Magistrates' Courts but incorporates actual and prospective changes to the penalties for historic environment offences made by other legislation. The only change to a sentencing power made by the Bill is in section 198, which omits the power to impose a sentence of imprisonment on conviction on indictment that is currently provided by section 330(5) of the Town and Country Planning Act 1990. (See the entry for section 198 in the Drafters' Notes.)

### ***Updating TAN24***

42. As part of the implementation phase anticipated in relation to the Bill, guidance and advice issued by the Welsh Government, including Technical Advice Note 24, will be updated. These will be textual changes updating the references to the title of the legislation or section numbers – the policy advice contained in these documents will remain the same.

43. Schedule 14 to the Bill makes transitional provisions, so that any reference to a repealed provision or enactment is to be read as reference to the corresponding provision of the Bill.

44. As I note above, I will be updating the Senedd later this year on progress under the Government's accessibility programme, including in relation to Cyfraith Cymru. But I hope my earlier comments on the intentions for publication of the Codes on that site set out how guidance will be included.

### ***Costs associated with implementation***

45. I note your comments regarding other legislation, but we must be clear that just because other legislation may not have costs at the level of this Bill, that in and of itself does not mean these costs are significant or lacking in accuracy or robustness. To calculate costs for this Bill, the parts of the historic environment sector that would be impacted by the new legislation were identified by Cadw, together with consideration of the work that

would be required. These informed estimates of costs, that also took comparisons with recent legislation and civil service pay grades into account.

46. Overwhelmingly, the costs identified were staff costs associated with updating websites, guidance and forms so that they refer to the correct legislation. Time will also be needed for staff to familiarise themselves with the new legislation. As noted in the Explanatory Memorandum these are 'opportunity' rather than 'actual' costs – only very limited actual costs (detailed in the Explanatory Memorandum) were identified.
47. Whilst I of course understand the Committee seeking clarification on any matter set out in Explanatory Memorandum, I should make clear that the Government does not intend to complete the full regulatory impact assessments in relation to consolidation Bills as we do, where relevant, for law reform Bills. In line with Standing Orders, the Government is required to set out the best estimates of any additional costs. In developing these, if it is considered that these costs would be significant, then this would suggest that the proposals cannot continue as a consolidation Bill and the government should consider whether or not to proceed by bringing forward a reform Bill. And a full RIA would be undertaken at that time.
48. But on the points raised by the Committee, I can confirm:

*a) Costs for National Park Authorities and Local Authorities*

The estimate of time reflects anticipated work to update websites and other materials to include references to the new legislation and familiarising key staff with the legislation. Much of the information that local authorities provide will not change as the effect of the law will remain the same. They may need to check, for example, links which take the reader to the Cadw website to ensure that they are correct, as well as to update references to the correct legislation. This is likely to be done at a similar cost by staff of similar grades to the Welsh Government and the costs have been estimated on this basis. Although no formal consultation has been undertaken, discussions with planning authorities on the impact of the Bill and what will need to be done prior to its commencement have informed our cost estimates.

*b) Costs to land owners and private individuals*

There will be no costs to landowners or private individuals as there is no change in the effect of the law.

*c) Costs for third sector bodies and amenity societies*

It is difficult to quantify this as some organisations will include links on their website which direct the reader to the pertinent legislation or associated material which will take a matter of minutes to update. Other organisations include more detailed explanatory text which will need to reflect the new legislation which may take longer to update. It is also not possible to place a cost on the time that this may take as each organisation will have different pay levels.

*d) Familiarisation workshops for heritage crime officers*

Although police authorities have their own mechanisms for identifying new legislation, there is a network of officers who deal specifically with heritage crime. There are four heritage crime liaison officers in Wales, one for each police force, one of whom is the overall single point of contact (SPOC) leading on heritage crime for Wales. The familiarisation session will be carried out as part of Cadw's regular meetings with the

heritage crime liaison officers. The identified costs include Cadw's costs, opportunity costs for the heritage crime officers' time to attend the session and any time needed to update any manuals or desk instructions.

*e) Welsh Archaeological Trusts and the Royal Commission on the Ancient and Historical Monuments of Wales*

The Welsh Archaeological Trusts are responsible for the Historic Environment Records of Wales. '[Archwilio](#)' is the online access system to these records and contains information for the whole of Wales; some updating will be required to reflect the new legislation. The Welsh Archaeological Trusts also play a vital role in the management and promotion of the historic environment and we expect them to provide valuable assistance in raising awareness of the new legislation and related subordinate legislation and guidance. Accordingly, they will need to ensure their websites have the correct revised information.

The main costs for the Royal Commission will be associated with staff familiarising themselves with the Bill. The Commission will also need to review their websites and databases to identify changes that may be required to reflect the new legislation.

We have not undertaken formal consultation on the estimated costs, but discussions with the Welsh Archaeological Trusts and the Royal Commission suggest that this work will require minimal activity from both, and this is reflected in the cost estimates.

I look forward to the Committee's further deliberations on the Bill, and am happy to confirm that I will return to provide further evidence on 14 November.

Yours sincerely,

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

**Mick Antoniw AS/MS**

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

Mick Antoniw MS  
Counsel General and Minister for the Constitution

19 July 2022

Dear Mick

**Follow-up to evidence session on the Historic Environment (Wales) Bill, 11 July 2022**

Thank you for appearing before the Committee on 11 July and giving evidence on the Historic Environment (Wales) Bill (the Bill). We found our discussions on this first consolidation Bill to be productive and it will help our subsequent consideration of the Bill.

There are a number of issues we would like to pursue further. There are also some matters which we did not have the opportunity to raise during the meeting.

I would be grateful to receive your responses to the questions in the Annex by 17 August 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

We have also been giving consideration as to how we may, during the course of our consideration of the Bill, best raise any questions which specifically relate to drafting style and the Drafters' notes which accompany the Bill. I asked you during our meeting whether you and the drafters in the Office of the Legislative Counsel would be content with the drafters themselves speaking with us should the need arise. As I said during the meeting, we would, of course, respect the boundaries of what is appropriate to ask of government officials. I take the opportunity to thank you again for your positive response. The Clerks will liaise with the drafters to identify a suitable date and time, should the need arise.

May I also take the opportunity to formally invite you to our meeting on Monday 14 November (p.m.).



This will be an opportunity for us to discuss with you the matters which have arisen during our full consideration of the Bill, including any matter which is raised with us by stakeholders.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



## Annex

1. During the evidence session we asked you whether decisions had been made to exclude relevant legislation from the consolidation exercise and whether any such exclusions were because of concerns regarding legislative competence (RoP paragraphs 14-22). You and your officials provided some examples – namely the *Protection of Wrecks Act 1973*, the *Redundant Churches and Other Religious Buildings Act 1969*, the *Protection of Military Remains Act 1986*, and the *Ancient Monuments and Archaeological Areas Act 1979*. As discussed during the evidence session, we would be grateful if you would provide details as regards the full reasons why provisions in these Acts have been excluded from the consolidation exercise, along with details of any other relevant legislation which has been deliberately excluded from the version of the Bill introduced to the Senedd.
2. During the session, we also asked you what would happen if the UK Government legislates in a devolved area of law that has been consolidated. It was suggested to us that the Welsh Government would expect the UK Government to reform the law and to do it bilingually (RoP paragraphs 73-81). It was also suggested that this situation could be difficult where the UK Government is preparing a law that applies to the whole of the UK, for example, on a specific matter but the Welsh Government does not “see that that is likely to happen” (RoP paragraph 81). You will know that there have been several examples in recent years where the UK Government has sought to legislate on a UK-wide basis, with or without the input of the Welsh Government or the consent of the Senedd. As such, we would be grateful if you would give further consideration to this matter and confirm:
  - whether discussions have already begun with relevant UK Government counterparts regarding the Welsh Government’s consolidation of law programme – and this Bill in particular – and the Welsh Government’s expectation that any law to be proposed by the UK Government in an area that has been (or is being consolidated) will be done bilingually and any required amendments will be made to the Welsh law as consolidated;
  - how the Welsh Government considers that it could ensure that any amendments proposed by the UK Government to Welsh law which has been consolidated will be done in a way that will preserve the consolidation;
  - whether the Welsh Government will consider any impacts on the consolidation of Welsh law in any discussion it has with the UK Government on a relevant piece of legislation and how it would draw any such potential impacts to attention of the Senedd?
3. We also asked if you would provide more details on your plans for a code of Welsh law on the historic environment and you told us that the code will consist of the Act (if and when the Bill is

passed and then implemented) and any secondary or tertiary legislation under it (RoP paragraphs 92-95). Can you confirm our understanding that:

- 'codes of Welsh law' will each be, in effect, repositories of law which begin with the single piece of consolidated primary legislation, and sitting within the repository will be any delegated legislation made in consequence of the headline primary legislation, along with all relevant guidance;
  - in practice, future amendments will, in effect, be made to specific law within a code;
4. What discussions have you had with The National Archives about the styling of legislation as codes on legislation.gov.uk and the need to update them quickly?
  5. We asked you to provide more detail on your thinking as regards changes to the Senedd's Standing Orders to ensure future Bills and amendments are made within a code of Welsh law . You confirmed that such changes would have an impact on private Member proposals for Bills to be introduced to the Senedd (RoP paragraphs 96-98). As such we asked if you had given consideration to consulting backbench Senedd Members and Party Groups directly on your proposals, in addition to any evidence gathering the Business Committee may undertake itself. We would be grateful if you would provide clarification and confirmation of your intentions as regards this matter.
  6. Are there any new powers included in the Bill that give the Welsh Ministers powers to make policy changes?
  7. Section 209 of the Bill relates to regulations that may be made under the Bill, once enacted. Section 209(6) provides for the downgrading of scrutiny procedures – from affirmative to negative - for certain regulations relating to partnership agreements. Can you clarify how, in your view, this is line with SO26C.2(iv)?
  8. Can you explain what has been the effect of the **Interpretation Act 1978** and the **Legislation (Wales) Act 2019** - both of which apply to Welsh law - on the Bill?
  9. Changes have been made throughout the Bill as regards where existing Acts used the wording "expedient" and "appropriate", and most references to what is "expedient" or "appropriate" have been omitted from the Bill. In the Drafters' Notes we are told that "the two words have the same effect, and in most cases they do not add anything to the general requirements of administrative law for public authorities to act reasonably". We are aware that recent law reform Bills introduced to the Senedd include these words. Can you therefore offer some further clarity and explanation on this matter.
  10. You have acknowledged that work will be needed by HM Courts and Tribunals Services to update their systems to reflect the new legislation. What discussions have you had with HMCTS and are they in agreement that such changes will be undertaken as part of their normal course of business?

11. The Bill makes changes to sentencing powers of Magistrates' Courts. In the Drafters' Notes which accompany the Bill you highlight that section 13 of the *Judicial Review and Courts Act 2022* further amends the *Sentencing Act 2022* so that the Lord Chancellor may change the "applicable limit" from 12 months to 6 months and back again. You note that the penalties for either-way offences have been restated to reflect these changes on the understanding that section 13 will come into force before this Bill. What is your understanding as regards when section 13 of that Act will come into force? What impact will there be on Bill if section 13 isn't in force before this Bill, and what action will you be required to take?
12. In the Explanatory Memorandum you note that the existing legislation is accompanied by a range of advice and guidance, include **Technical Advice Note 24**.
  - Are there plans to update this guidance as a result of this Bill ?
  - What progress has been made with the Cyfraith Cymru website?
13. The Standing Orders do not require a financial resolution to be considered or agreed by the Senedd for consolidation Bills. The total transitional costs for the Bill are estimated to be around £50,000, to be spread across a three year implementation period. That figure is higher than the cost estimates for other law reform Bills introduced to the Senedd where a financial resolution was required, for example the **NHS Indemnities (Wales) Bill**, where the estimated costs were £30,000. It is important that the cost estimates are accurate, robust and justifiable. Please can you explain how you arrived at the costs for the Bill, and provide details of the specific transitional costs involved?
14. Paragraph 43 of the Explanatory Memorandum notes the estimated costs per local authority or National Park authority will be approximately £17,500, approximately four days' work per authority. On what basis have you estimated that it will be four days of work for local and national park authorities to implement the legislation and were the authorities consulted on the estimates of potential costs?
15. Can you clarify that there will be no costs to land owners or private individuals?
16. Paragraph 44 of the Explanatory Memorandum states that costs for third sector bodies and amenity societies will be "minimal and probably in the region of one person for one day" but no actual costs are provided. Can you clarify why this is the case?
17. Can you clarify if the £1,400 cost estimated for holding familiarisation workshops for heritage crime officers includes both the costs to Cadw and the costs to police forces?
18. Paragraphs 50 and 52 of the Explanatory Memorandum set out the costs for Welsh Archaeological Trusts and the Royal Commission on the Ancient and Historical Monuments of Wales. On what basis were these costs calculated and were the Trusts and Royal Commission consulted on these costs?

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/JMEWL/2166/22

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN  
Llywydd@senedd.wales

19 July 2022

Dear Llywydd

The Schools Bill (“the Bill”) was introduced in the UK Parliament (House of Lords) on 11 May 2022.

The Bill includes a range of measures on issues such as school funding, regulating independent educational institutions, teacher misconduct, school attendance, implementing a register and support for children not in school and the structure and regulation of academy trusts.

My officials have been in regular contact with Department for Education (DfE) officials since last September to discuss our respective plans for elective home education (EHE), possible cross-jurisdictional issues and the various shared challenges in this policy space. My officials explored the potential for co-operation on school attendance orders (SAOs) and the sharing of EHE data between local authorities in England and Wales.

We did not agree to inclusion of provision in relation to Wales on any aspects of the Bill, so its effect on introduction was stated to be only in relation to England. For that reason, the UK Government were of the view that no Legislative Consent Motion (LCM) was required in respect of the Bill as laid.

However, on 30 May, an amendment “amendment 96” was tabled by Baroness Barran for consideration during House of Lords Committee Stage, which commenced on 8 June and concluded on 27 June. The amendment is to section 494 of the Education Act 1996 and will serve to extend the inter-authority recoupment provisions for excluded pupils set out in section 494 of the Education Act 1996, to encompass academies. The amendment was agreed on 20 June and has been incorporated within the Bill as amended at Lords Committee Stage in Schedule 3, paragraph 1. The amendment makes provision falling within the legislative competence of the Senedd.

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

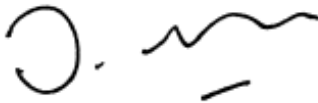
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I therefore laid a Legislative Consent Memorandum on the Bill on 7 July 2022. I apologise that it was laid outside of the normal two-week Standing Order 29 deadline. This is in part due to a failure of the UK Government to notify Welsh Government that the amendment had been tabled.

We are continuing our consideration of the devolution implications of the Bill as it progresses, to ensure there is nothing further that triggers the LCM process. Once the legislative competence analysis in relation to the remainder of the Bill is completed, I will write again should I intend to lay a further Legislative Consent Memorandum.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS, the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS, the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS and the Chair of the Children and Young People Committee, Jayne Bryant MS.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

**Jeremy Miles AS/MS**

Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

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Our ref: RE/741/22

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

22 July 2022

Dear Huw,

### **Legislative Consent Memorandum (LCM) on the UK Infrastructure Bank Bill**

Thank you for your letter relating to the LCM on the UK Infrastructure Bank Bill (the Bill). I have responded to your questions in turn as set out below.

**1. In the Counsel General's written statement on 13 May 2022 on the UK Government's Legislative Programme he said "Following discussions at the first Inter-Ministerial Standing Committee meeting on 23 March, I am encouraged that there has been some positive engagement between UK Government and Welsh Government officials on a number of Bills in the UK Government's legislative programme". A UK Infrastructure Bank Bill is one of the 12 Bills noted in this statement. Can you confirm that the Bill was the subject of intergovernmental discussion before its introduction to the UK Parliament?**

I can confirm that the Bill was subject to intergovernmental discussion before it was introduced to the UK Parliament.

Dialogue took place between HM Treasury and Welsh Government officials throughout last year, before and after the establishment of the Bank. I met with the Chair and CEO of the Bank shortly after their appointment in October 2021 to discuss the Bank's aims and objectives, and its relationship with Wales and the Welsh Government.

Engagement continued between Welsh Government and HM Treasury officials in 2022 as the Bill was proposed to put the Bank on a statutory footing.

During the Finance Inter-Ministerial Standing Committee on June 15, I voiced support for the creation of the UKIB, in principle, but noted that we would have liked to have seen a Bank with a wider remit as the UKIB could not be seen as a genuine successor to the European Investment Bank given its narrow scope. I also raised the fact that the Bill reserves powers for the Chancellor and HM Treasury and Welsh Government would like to see amendments to the Bill, such that there is equivalence of powers across UK administrations, before recommending that the Senedd consents to the passing of the Bill.

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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.

While engagement between officials continues to be reasonably constructive, concerns raised by my officials in respect of the governance of the Bank have not been addressed in the Bill to date.

**2. Did the UK Government share with the Welsh Government the Bill in draft form? If so, when?**

The UK Government shared the Bill in draft form with us on 14 April 2022 prior to the Bill's introduction and First Reading in the House of Lords on 11 May 2022. My officials raised our general concerns with the Bill with the UK Government shortly after the Bill had been shared with us.

**3. If the UK Government did not share a draft Bill with you, given a UK Infrastructure Bank has been operating on a non-statutory footing since June 2021 and given the information the Welsh Government had received from the UK Government as regards its legislative programme, did the Welsh Government proactively seek to directly influence the drafting of the Bill?**

As outlined in my response to questions 1 and 2, the UK Government did share the Bill with us in draft form and we did seek to directly influence the drafting of the Bill.

**4. In the memorandum you state that you have written to the Economic Secretary to the Treasury “to urge him to amend the Bill to enable the Senedd and the Welsh Ministers to take their appropriate role within Governance structures to ensure proper democratic accountability”. What specific amendments have you sought to the Bill?**

The Bill as introduced provides no role for the Senedd, the Welsh Ministers, or Welsh Government officials in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury, such as the power for HM Treasury to amend the Bank's strategic direction including in areas of devolved competence without consulting the Senedd or the Welsh Government.

We continue to advocate that the Senedd and the Welsh Government all exercise equivalent powers to those of our UK counterparts. This is necessary in order to be consistent with Welsh Government Cabinet principles, which have been shared with you previously, i.e., that “The Welsh Government must have an equal status to the UK Government's in governance of cross-border bodies with devolved functions which are established in UK Bills.”

We believe there should be equivalence between UK legislatures and governments in terms of the Bank's governance such that, for example, they have equivalent roles to play in the setting of the Bank's Strategic Priorities and Plans. This would allow for the honing of the Bank's objectives and for priorities and plans to be revisited where necessary while fully respecting devolved competences.

The specific detail of the amendments will be subject to ongoing discussions with UK Government and I will update the Senedd on the outcome of those discussions as appropriate in due course.

**5. The scope of the Bank's activities, including the definition of “infrastructure”, may be changed via delegated powers that will be subject to the affirmative scrutiny procedure in the UK Parliament. At paragraph 49 of the memorandum you state that you have written to the Economic Secretary to the Treasury to advocate that “the**

**Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts”.**

- i) Have you sought amendments to the Bill which would provide the Welsh Minister’s with directly equivalent delegated legislative powers, meaning the Senedd would be responsible for scrutinising the exercise of those powers?**
- ii) Have you sought amendments to the Bill which would provide the Welsh Ministers with a consultative role before UK Minister’s exercise their delegated powers, meaning there would be no role for the Senedd in scrutinising the exercise of those powers?**

We continue to advocate that the Senedd and the Welsh Government all exercise equivalent powers to those of our UK counterparts. This is necessary in order to be consistent with Welsh Government Cabinet principles. We are therefore seeking concessions to the Bill which reflect these principles.

Yours sincerely,



**Rebecca Evans AS/MS**

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

Rebecca Evans MS  
Minister for Finance and Local Government

8 July 2022

Dear Rebecca,

### Legislative Consent Memorandum: UK Infrastructure Bank Bill

At our meeting on Monday 4 July 2022 we considered the Welsh Government's Legislative Consent Memorandum for the UK Infrastructure Bank Bill (the Bill).

To assist us in our scrutiny and to inform our report on the memorandum, there are a number of matters which we would like to raise with you. I would be grateful if you would respond to our questions by 5 August.

1. In the Counsel General's written statement on 13 May 2022 on the UK Government's Legislative Programme he said "Following discussions at the first Inter-Ministerial Standing Committee meeting on 23 March, I am encouraged that there has been some positive engagement between UK Government and Welsh Government officials on a number of Bills in the UK Government's legislative programme". A UK Infrastructure Bank Bill is one of the 12 Bills noted in this statement. Can you confirm that the Bill was the subject of intergovernmental discussion before its introduction to the UK Parliament?
2. Did the UK Government share with the Welsh Government the Bill in draft form? If so, when?
3. If the UK Government did not share a draft Bill with you, given a UK Infrastructure Bank has been operating on a non-statutory footing since June 2021 and given the information the Welsh Government had received from the UK Government as regards its legislative programme, did the Welsh Government proactively seek to directly influence the drafting of the Bill?

4. In the memorandum you state that you have written to the Economic Secretary to the Treasury "to urge him to amend the Bill to enable the Senedd and the Welsh Ministers to take their appropriate role within Governance structures to ensure proper democratic accountability". What specific amendments have you sought to the Bill?
5. The scope of the Bank's activities, including the definition of "infrastructure", may be changed via delegated powers that will be subject to the affirmative scrutiny procedure in the UK Parliament. At paragraph 49 of the memorandum you state that you have written to the Economic Secretary to the Treasury to advocate that "the Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts".
  - i. Have you sought amendments to the Bill which would provide the Welsh Minister's with directly equivalent delegated legislative powers, meaning the Senedd would be responsible for scrutinising the exercise of those powers?
  - ii. Have you sought amendments to the Bill which would provide the Welsh Ministers with a consultative role before UK Minister's exercise their delegated powers, meaning there would be no role for the Senedd in scrutinising the exercise of those powers?

I am copying this letter to the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



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# Agenda Item 18

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

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Vaughan Gething AS/MS  
Gweinidog yr Economi  
Minister for Economy



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
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E-bost: [seneddlic@senedd.wales](mailto:seneddlic@senedd.wales)

22 August 2022

Dear Huw

Section 18(2) of the United Kingdom Internal Market Act 2020 (UKIMA) provides that the Secretary of State for Business, Energy and Industrial Strategy may amend entries in the tables or lists of services contained with the Act.

The Secretary of State makes the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Services) Regulations 2022 ("the exclusion SI") using the powers under section 18(2) of UKIMA. In accordance with section 18(8) of UKIMA, the Secretary of State has sought the Welsh Ministers' consent to the making of the exclusion SI. The effect of these regulations are summarised in Annex A.

I am mindful the Senedd did not consent to the making of UKIMA itself. The Act, which has been imposed on Wales by the UK Parliament, purports to restrict the Senedd's ability to legislate in devolved matters. This is something we simply cannot accept and have set out our objections in a legal challenge.

In consenting to the exclusion SI, our position with regard to UKIMA has not changed. We do not believe UKIMA has the impact on Senedd competence it purports to have. However, with the UKIMA litigation between the Welsh and UK governments yet to conclude, we recognise it may be in our interests to cooperate with the exclusions process. This is without prejudice to our position in the litigation. On this basis, I have consented to the exclusion SI.

Yours sincerely,

**Vaughan Gething AS**  
Minister for Economy

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

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.



## **UK Internal Market Act 2020 (Services Exclusions) Regulations 2022**

The effect of the Regulations would be to amend Schedule 2 (Services Exclusions) to UKIMA. The regulations would:

- Amend the wording of the existing social services exclusions to clarify the scope;
- Add new exclusions to Part 1 (mutual recognition) for gas, electricity, water supply and sewerage services, waste sector services, qualifications-awarding services and heat network services; and
- Remove existing exclusions for financial services, postal services, electronic communications services, services of temporary work agencies, and services of a statutory auditor from their respective entries in Part 1 (mutual recognition) and Part 2 (non-discrimination).



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Legal challenge to the UK Internal Market Act 2020**

**DATE**            **18 August 2022**

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

I have committed in statements to the Senedd, at committee appearances and in correspondence, to keep Senedd Members updated as to the steps the Welsh Government is taking to challenge the United Kingdom Internal Market Act 2020.

Last week, the Supreme Court rejected our application for permission to appeal the Order of the Court of Appeal that our claim for judicial review of the Act was premature.

We are disappointed by the Court's ruling. But in making what is essentially, at this stage, a procedural decision, the Court has not rejected our substantive arguments and has left the door open for this matter to be considered at an appropriate point in the future.

The Welsh Government remains clear in its opposition to the United Kingdom Internal Market Act 2020. It is an unwarranted attack on devolution and the right of the Senedd to legislate without interference in areas devolved to Wales. We will now consider how we can best take forward our challenge to the Act, to protect and assert the democratic right of this institution to make laws for the people of Wales.

I will continue to keep Members updated.

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

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