

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 3 October 2022	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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**1 Introductions, apologies, substitutions and declarations of interest**  
(13.30)

**2 The Environmental Protection (Single-use Plastic Products) (Wales) Bill: Ministerial evidence session**  
(13.30 – 14.30) (Pages 1 – 20)

Julie James MS, Minister for Climate Change

Nick Howard, Senior Government Lawyer, Welsh Government

Richard Clark, Head of Local Environment Quality, Welsh Government

Hefin Gill, Government Lawyer, Welsh Government

[The Environmental Protection \(Single-use Plastic Products\) \(Wales\) Bill](#), as introduced

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-24-22 – Paper 1 – Briefing

LJC(6)-24-22 – Paper 2 – Statement of Policy Intent, September 2022

LJC(6)-24-22 – Paper 3 – Letter from the Climate Change, Environment, and Infrastructure Committee to the Llywydd, 23 September 2022

LJC(6)-24-22 – Paper 4 – Letter from the Minister for Climate Change, 20 September 2022



LJC(6)-24-22 – Paper 5 – Written Statement by the Minister for Climate Change, 15 August 2022

LJC(6)-24-22 – Paper 6 – Letter from the Climate Change, Environment, and Infrastructure Committee to the Minister for Climate Change, 15 July 2022

LJC(6)-24-22 – Paper 7 – Letter from the Llywydd to the Climate Change, Environment, and Infrastructure Committee, 13 July 2022

LJC(6)-24-22 – Paper 8 – Letter from the Climate Change, Environment, and Infrastructure Committee to the Llywydd, 11 July 2022

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

(14.30 – 14.35)

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

(Pages 21 – 24)

Attached Documents:

LJC(6)-24-22 – Paper 9 – Report

LJC(6)-24-22 – Paper 10 – Welsh Government response

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

(Pages 25 – 27)

Attached Documents:

LJC(6)-24-22 – Paper 11 – Report

LJC(6)-24-22 – Paper 12 – Welsh Government response

### **4 Inter-Institutional Relations Agreement**

(14.35 – 14.40)

#### **4.1 Correspondence from the Minister for Finance and Local Government: Inter-ministerial Group for Housing, Local Government and Communities**

(Page 28)

Attached Documents:

LJC(6)-24-22 – Paper 13 – Letter from the Minister for Finance and Local Government, 26 September 2022

#### **4.2 Correspondence from the Minister for Health and Social Services:**

**Memorandum of Understanding – Medicines Information System (MIS)**

(Pages 29 – 30)

Attached Documents:

LJC(6)-24-22 – Paper 14 – Letter from the Minister for Health and Social Services, 28 September 2022

### **5 Papers to note**

(14.40 – 14.45)

#### **5.1 Correspondence from Women’s Equality Network Wales and Oxfam Cymru: Feminist Scorecard 2022**

(Pages 31 – 32)

Attached Documents:

LJC(6)-25-22 – Paper 15 – Letter from Women’s Equality Network Wales and Oxfam Cymru, 29 September 2022

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

(14.45)

### **7 The Environmental Protection (Single-use Plastic Products) (Wales) Bill: Consideration of evidence**

(14.45 – 14.55)

### **8 Historic Environment (Wales) Bill**

(14.55 – 15.15)

(Pages 33 – 53)

Attached Documents:

LJC(6)-24-22 – Paper 16 – Research briefing

LJC(6)-24-22 – Paper 17 – Correspondence from Historic Houses Wales, 17 August 2022

LJC(6)-24-22 – Paper 18 – Correspondence from Natural Resources Wales, 30 August 2022

LJC(6)-24-22 – Paper 19 – Correspondence from Royal Town Planning Institute, 2 September 2022

LJC(6)-24-22 – Paper 20 – Submission from Dr Hayley Roberts, Bangor University, September 2022

LJC(6)-24-22 – Paper 21 – Correspondence from the Association of Local Government Archaeological Officers, 8 September 2022

LJC(6)-24-22 – Paper 22 – Letter from the Business Committee, 23 September 2022

## **9 Legislative Consent Memoranda on the UK Infrastructure Bank Bill: Draft report**

(15.15 – 15.25)

(Pages 54 – 62)

Attached Documents:

LJC(6)-24-22 – Paper 23 – Draft report

## **10 International agreements**

(15.25 – 15.35)

(Pages 63 – 66)

Attached Documents:

LJC(6)-24-22 – Paper 24 – Draft report

## **11 Forward Work Programme**

(15.35 – 15.55)

(Pages 67 – 69)

Attached Documents:

LJC(6)-24-22 – Paper 25 – Briefing

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



Llywodraeth Cymru  
Welsh Government

Llyr Gruffydd MS  
Chair of the Climate Change,  
Environment  
and Infrastructure Committee  
Senedd  
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20 September 2022

### **The Environmental Protection (Single-use Plastic Products) (Wales) Bill**

Following the introduction of The Environmental Protection (Single-use Plastic Products) (Wales) Bill into the Senedd on 20 September 2022, please find attached a statement of policy intent. These documents are provided to support the Committee's scrutiny of the Bill.

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

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

**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.

# The Environmental Protection (Single-use Plastic Products) (Wales) Bill

## Statement of Policy Intent for Secondary Legislation

## Introduction

This paper summarises the Welsh Ministers' powers for making secondary legislation as outlined in The Environmental Protection (Single-use Plastic Products) (Wales) Bill (the Bill), as introduced to the Senedd Cymru on 20 September 2022.

The paper explains why these powers have been chosen and the current government policy for use of these powers. The justification for the Senedd procedure selected is set out in table 5.1 of the Explanatory Memorandum.

Regulations made using these powers will be subject to consultation with key stakeholders in the relevant sectors and representatives of protected characteristics groups.

This document is intended to provide stakeholders with an initial opportunity to provide feedback on the intended use of these powers to ensure robust and effective policy and to assist committees during the scrutiny of the Bill. The Welsh Ministers have considered the use of powers in the Bill as set out below and are satisfied they are necessary and justified.

### Overview of the Bill

The Bill Contains 4 parts and 1 Schedule.

- Part 1 outlines key concepts, sets out what constitutes 'prohibited single-use plastic products', introduces the Schedule that includes the list of prohibited single-use plastic products, associated exemptions, and definitions for the particular prohibited single-use plastics listed in the Schedule. This part also confers a power on the Welsh Ministers to make Regulations to amend the Schedule.
- Part 2 creates the offences of supply and offer to supply a prohibited single-use plastic product and outlines the mode of trial and penalty.
- Part 3 establishes a local authority led enforcement regime and provides the local authorities with powers of entry and inspection. This part also gives the Welsh Ministers a power to make Regulations to confer power on a local authority to impose a civil sanction on any person who commits the offence of supply or offering to supply a prohibited single-use plastic product.
- Part 4 contains miscellaneous provisions, including provisions on interpretation, the regulation making powers and when specific provisions within the Bill will come into force.
- The Schedule sets out the list of 'prohibited single-use plastic products', exemptions and provides key definitions to support interpretation of the Bill.

### **Other documentation**

This document should be read in conjunction with the following:

- The Environmental Protection (Single-use Plastic Products) (Wales) Bill;
- The Explanatory Notes to the Bill; and
- The Explanatory Memorandum to the Bill.

## Power to amend the Schedule

Section	Form	Provision	Procedure
3	Regulations	Prohibited single-use plastic products: power to amend	Draft Affirmative

### Description of power

This provision gives the Welsh Ministers a power to make Regulations to amend the Schedule to the Bill to:

- add or remove a product in column 1 of the Table in paragraph 1 of the Schedule;
- add or remove an exemption relating to a product in column 2 of the Table in the Schedule; and
- to add the definition of a product, or remove a definition from paragraph 2 of the Schedule, or to amend a definition in that paragraph.

In exercising this power, the Welsh Ministers must take into account their duty to promote sustainable development under section 79(1) of the Government of Wales Act 2006 and their duty to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015.

A plastic product that:

- is single-use;
- is listed in column 1 of the table in the Schedule to the Bill, and
- has no exemption in a corresponding entry in column 2 of that Table applicable in respect of—
  - (i) a particular type of the product, or
  - (ii) the purpose for which the product (or particular type of product) is supplied;

would be considered a ‘prohibited single -use plastic product’ under the Bill. The supply of a ‘prohibited single-use plastic product “to a consumer in Wales is effectively prohibited under the Bill as a person supplying such a product- to a consumer in Wales would be committing a criminal offence under section 5 of the Bill.

Given this power enables Welsh Ministers to make subordinate legislation that amends primary legislation, it is appropriate that such regulations are to be made subject to the draft affirmative procedure.

## Policy purpose and intent

The regulation-making provision will enable the legislation to keep pace with any emerging scientific evidence which may suggest other single-use plastic products are problematic or if a shift in consumer behaviour in purchasing single-use plastic products is proven detrimental to the environment.

For example, respondents to our consultation raised concerns of the littering and waste associated with take away or single serving condiment sachets and the presence of certain plastic-containing sanitary products in our rivers and sea. As we gather further evidence on the impact of these plastic products and the availability of suitable alternatives, Ministers will have the ability to take action through regulations to add these items to the Schedule to the Bill and ban or restrict supply of these single-use plastic products.

In bringing forward future bans, we will follow an evidence-based process. Where necessary, we will consult with those affected by any ban, and ensure the impact of banning the products is fully taken into account. We will also establish an oversight project board and advisory panel for single-use products. These groups will regularly review progress of our policy and legislative proposals, through monitoring product-specific projects. We will establish ambitious milestones to ensure rapid progress, enable accountability, delivery and evaluation. We will establish appropriate mechanisms to collaborate with and involve stakeholders in developing and delivering our proposals.

The Bill also places a duty on the Welsh Ministers to set out, in a report they are required to publish under section 79(2) of the Government of Wales Act 2006, information about their consideration of whether to exercise this regulation making power to add further products or make changes to exemptions included in the current Bill.

## Power to make Regulations to confer power on a local authority to impose civil sanctions in relation to an offence

Section	Form	Provision	Procedure
17	Regulations	Civil Sanctions	Draft Affirmative

### Description of power

This provision gives the Welsh Ministers a power to make Regulations to confer power on a local authority to impose a civil sanction on any person who commits the offence of supply or offering to supply a prohibited single-use plastic product under section 5 of the Bill.

This power corresponds to that in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) ("RESA"). Part 3 of RESA allows the Welsh Ministers to make regulations to provide for alternative civil sanctioning powers for relevant criminal offences that relate to regulatory non-compliance. The civil sanctions available under RESA are: fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings. They are an alternative to, rather than a replacement for, criminal conviction especially for minor breaches of regulatory requirements.

This provision applies section 63 to 69 of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA. The effect of this is set out in the following paragraphs.

Where the Welsh Ministers confer power on a local authority to impose a civil sanction in relation to an offence, the Welsh Ministers must also make provision to ensure the following results (see section 63 of RESA)—

- that the authority publishes guidance about its use of the sanction;
- that guidance contains specified information, depending on the type of sanction - such as the circumstances in which a monetary penalty or stop notice is likely to be imposed, the circumstances in which it cannot be imposed; the amount of any monetary penalty; how to discharge penalties and rights of appeal and similar;
- that the guidance is revised where appropriate;
- that the authority consults persons specified in the Welsh Ministers' regulations before publishing any guidance;

- that the authority has regard to the guidance in exercising functions.

Where power is conferred on a local authority to impose a civil sanction in relation to an offence the authority must also—

- prepare and publish guidance about how the offence is to be enforced (see section 64 RESA);
- publish reports about the cases in which the civil sanction has been imposed (see section 65 RESA).

The Welsh Ministers may not make provision enabling a local authority to impose a civil sanction in relation to an offence unless the Welsh Ministers are satisfied that the authority will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—

- that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
- that regulatory activities should be targeted only at cases in which action is needed.

Where the Welsh Ministers have conferred a power to impose civil sanctions, they must review how that power is being operated (see section 67 of RESA) and may suspend the power of a local authority to impose such sanctions (see section 68 of RESA).

Receipts from civil sanctions — e.g. from the payment of monetary penalties — must be paid into the Welsh Consolidated Fund where the local authority has functions only in relation to Wales (see section 69 of RESA).

This provision also applies section 60(1) and (2) of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA. This means that prior to making regulations under this section the Welsh Ministers must consult

- (a) the regulator to which the regulations relate,
- (b) such organisations as appear to the Welsh Ministers to be representative of persons substantially affected by the proposals, and
- (c) such other persons as the Welsh Ministers considers appropriate.

If, as a result of the consultation requirement above it appears to the Welsh Ministers that it is appropriate to substantially change the whole or any part of the proposals, the Welsh Ministers must undertake such further consultation with respect to the changes as it considers appropriate.

Since this is a relatively broad power it is appropriate that such regulations are made subject to the draft affirmative procedure

### **Policy purpose and intent**

The primary aim of this power is to provide Local Authorities with an alternative enforcement mechanism with which to bring people into compliance with the Bill's requirements.

Whilst we anticipate Enforcement Officers will seek to engage with businesses before taking formal enforcement action and the legislation will be accompanied by awareness raising messages, the establishment of a Civil Sanctions regime will allow further action to be undertaken where there are deliberate or significant breaches. This can include compliance notices, stop notices and variable monetary penalties.

Where there is repeated non-compliance with the legislation then enforcement would move to utilise criminal sanctions. Members of the public and retailers will be able to challenge a decision made by appealing through the court system.

A [Welsh Government review of civil sanctions](#) for environmental offences in 2015 reported the use of civil sanctions deterred non-compliance, provided an effective and fair way of enforcement, reducing risks of environmental harm and prevent harm from occurring or continuing.

Elin Jones MS  
Llywydd

23 September 2022

Dear Llywydd

On 17 July, you wrote to me in relation to a request from the Welsh Government to bypass Stage 1 Committee consideration of the Environmental Protection (Single-use Plastic Products) (Wales) Bill. The Committee recognises the Welsh Government's aim to use the Bill as material to support its case in relation to the Internal Market Act in the Supreme Court. That is why it wishes to progress the Bill through the Senedd quickly. This aim was supported by witnesses in our initial scrutiny session on the Bill. However, there are several related matters that need further consideration.

The Welsh Government submitted its request to the Business Committee for consideration in its final meeting before summer recess and before the Bill had even been introduced. At the time of the request, no-one outside the Welsh Government was aware of the detailed provisions of the Bill. The Government has an inbuilt majority on the Business Committee through weighted voting and can exercise that majority in its favour if it so wishes. It was in this context that I requested that the Business Committee defer its decision, so that the CCEI Committee could at least undertake a degree of consultation and scrutiny of the proposals. I subsequently secured from the Minister for Climate Change a commitment to publish a draft Bill.

I can confirm that on 15 August the Welsh Government published a draft Bill and a summary of responses to a related consultation undertaken between 30 July and 22 October 2020. This enabled the Committee to undertake some work over the summer. However, I must emphasise that these arrangements were less than satisfactory, particularly in comparison to Stage 1 committee scrutiny:

- Because of the timing, the CCEI Committee was able to undertake only a short public consultation on the Bill of approximately 3 weeks, starting on 15 August.
- The Government determined that it could not agree to my request to publish explanatory notes, an explanatory memorandum, or an impact assessment alongside the draft Bill. This meant that, for example, stakeholders had no information about the Welsh Government's assessment of the financial impact of the proposals.

- It became apparent that the consultation in 2020 did not cover the exact proposals in the Bill. Two of the proposed banned products in the draft Bill were not subject to consultation during 2020 and were, according to the Government, added in response to the consultation. I am not in a position to know whether this information was shared with the Business Committee at any point.

Despite these constraints, I am pleased to say the Committee received thirty-four written responses to its consultation. This reflects an appetite amongst stakeholders to contribute to scrutiny of the Bill and reinforces the importance of committee scrutiny at Stage 1.

The Committee has now completed the first of two meetings dedicated to hearing oral evidence on the draft Bill. In terms of scrutiny, we are satisfied we have done everything possible given the time available. In considering the timetable for the Bill, we would be grateful if the Business Committee could ensure there is sufficient time available for the Committee to hear from the Minister and to prepare and publish a report.

As I said in my letter of 11 July, a decision by the Business Committee to bypass committee scrutiny would deny stakeholders and the public the only opportunity for them to be consulted on the detailed provisions in the Bill. The CCEI Committee's work, outside the formal Bill scrutiny process, was necessary to avoid a scrutiny deficit. I believe we have succeeded in our aim. However, this approach should not in any way be considered equivalent to, and certainly not an adequate replacement for, formal Stage 1 Committee scrutiny.

Finally, in the light of these events, it may be timely for the Business Committee to consider the appropriateness of a committee with a Government majority deciding on the extent to which Government Bills are scrutinised.

I am grateful that the Business Committee has consulted the Committee on this matter.

Yours sincerely,



Llyr Gruffydd MS,  
Chair, Climate Change, Environment and Infrastructure 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

Eich cyf/Your ref  
Ein cyf/Our ref

Llyr Gruffydd MS  
Chair of the Climate Change, Environment  
and Infrastructure Committee  
Senedd  
Cardiff Bay  
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20 September 2022

Dear Llyr

### **The Environmental Protection (Single-use Plastic Products) (Wales) Bill**

Since the determination of the Environmental Protection (Single-use Plastic Products) (Wales) Bill, ongoing consideration of some complex technical and legal matters has led us to wish to make some minor (but not insignificant) changes to the Bill.

We have not made these changes to the Bill prior to introduction in order to keep as closely to the timetable as possible, following the period of national mourning after the death of Her Majesty, Queen Elizabeth II. The Bill, as introduced, is the same as the draft Bill we published on 15 August 2022 and which your Committee has been able to undertake initial consultation on.

The purpose of this letter, therefore, is to inform you as early as possible of our intention to propose these amendments at Stage 2. The proposed changes are summarised below:

1. A change to section 1 to clarify that for the purposes of the Bill, adhesives, paint and ink are excluded from the definition of the word “plastic” (as is our intention).
2. A change to section 5 to ensure that the offence “offering to supply” a single-use plastic product cannot be interpreted such as to capture actions that we did not intend to capture. In particular, these changes clarify that this offence may only be committed on premises in Wales. In doing this, we also want to take the opportunity to make it clearer that a person who is outside Wales *would* commit an offence if they “supply” a prohibited single-use plastic product to a consumer who is in Wales (for example through an online or mail order sale).

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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. A change to section 20 (interpretation) to move the substance of the definition of “carrier bag” so that it is listed amongst the other definitions of prohibited products set out in the Schedule.
4. A change to correct a technical issue in the drafting of the first exemption in respect of “straws” (listed in the Table in the Schedule). This simplifies the drafting of the exemption, something that is complicated by the fact that it must refer both to the pharmacy business which sells the straw in law, and to the individual who may carry out the transaction on behalf of the business.

In the interests of transparency, and for your convenience, we attach a draft version of the Bill produced in order to show the amendments we will propose within context (in other words as tracked changes of the draft that has been introduced). We will, of course, produce these proposed amendments in the normal way, together a table showing their purpose and effect, for formal consideration by the Senedd at the appropriate time.

Yours sincerely



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



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **Written Statement - The Environmental Protection (Single-use Plastic Products) (Wales) Bill**

**DATE**            **15 August 2022**

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

I am pleased to announce that today I am publishing a draft of The Environmental Protection (Single-use Plastic Products) (Wales) Bill. Many people in Wales are already taking action to reduce our reliance on single-use plastics, changing habits and making products and services more sustainable. As a Government we are committed to supporting their efforts. The Bill will be the first step in a programme of measures aimed at tackling plastic pollution and delivering our Programme for Government commitment to abolish commonly littered single-use plastic products. Members across the Senedd have been calling for urgent action to curb the use of non-essential and non-medical single-use plastics, and I look forward to working with all parties to ensure that action on plastics is as ambitious as possible, building on our common concerns and those of the communities we represent.

The Bill proposes to ban or restrict the sale of some of the most commonly littered single-use plastics in Wales. The draft Bill can be found by clicking the following link: <https://gov.wales/environmental-protection-single-use-plastic-products-wales-bill>. The aim of publishing a draft of the Bill today is to give Senedd Members and interested stakeholders an opportunity to see the proposed scope and direction of the Bill before its formal introduction in the autumn. It is not published for further consultation at this stage. Work continues on the preparation of the Bill and there are likely to be changes before it is introduced to the Senedd. This is not therefore a final version.

I look forward to working with Senedd Members on the provisions of the Bill during scrutiny after the Bill is introduced in the autumn.

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.

Julie James MS  
Minister for Climate Change

15 July 2022

Dear Julie,

Further to our meeting earlier this week to discuss your proposed timetable for the Single Use Plastics Bill, I thought it would be useful to set out the latest position as I understand it.

You will be aware that the Business Committee agreed to postpone a decision on whether or not to refer the Bill until after it has been introduced. The Business Committee agreed that it would return to further consideration of the Bill timetable at the beginning of the autumn term, in light of whether the Bill was published in draft over the summer and whether or not the Climate Change, Environment and Infrastructure Committee has subsequently been able to undertake any consultation work.

During our meeting, you agreed you would explore whether the Bill could be published in draft during the summer recess. I would be grateful if you could publish the draft Bill as early as possible in the summer recess, to enable the Committee to undertake a short public consultation on the draft.

I would also be grateful if you would publish drafts of any supporting documentation, such as an Explanatory Memorandum or Regulatory Impact Assessment, as this would greatly assist the Committee and stakeholders in being able to come to a view on the Bill. It would also be useful if you could publish a summary of the consultation that was undertaken between April and October 2020.

In order to be able to undertake this work in any meaningful way, I believe it is necessary for these documents to be made available in early August.

Finally, I would like to take this opportunity to thank you for your offer to appear before the Committee to be scrutinised in relation to the Bill. Subject to any further decision by the Business Committee, we intend to hold an oral evidence session on the Bill on 22 September and would be grateful if you would confirm your availability for the afternoon.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light yellow rectangular background.

Llyr Gruffydd MS,  
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Llyr Gruffydd MS  
Chair, Climate Change, Environment and Infrastructure  
Committee

13 July 2022

**The Environmental Protection (Single-use Plastic Products) (Wales) Bill**

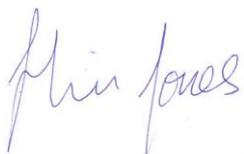
Dear Llyr,

At its meeting this week, the Business Committee considered a paper from the Government on the Environmental Protection (Single-use Plastic Products) (Wales) Bill alongside your correspondence dated 11 July.

As stated in your letter, Standing Orders require a decision over whether a Bill should be referred to a responsible committee for consideration of its general principles to be taken once it has been introduced. We also noted your recent discussions with the Minister for Climate Change, including her commitment to explore whether the Bill could be published in draft during the summer recess.

Consequently, Business Committee agreed that it would return to further consideration of the Bill timetable at the beginning of the autumn term, including in light of whether the Bill was published in draft over the summer and whether or not your Committee has subsequently been able to undertake any consultation work over the summer.

Kind regards,



**The Rt Hon. Elin Jones MS**

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

**Pwyllgor Newid Hinsawdd,  
yr Amgylchedd a Seilwaith**

—  
**Climate Change, Environment,  
and Infrastructure Committee**

Elin Jones MS  
Llywydd

11 July 2022

Dear Llywydd,

I am writing to you in your role as Chair of the Business Committee.

On Tuesday, the First Minister delivered his statement on the Welsh Government's legislative programme for the next parliamentary year. The First Minister announced that a Single Use Plastics Bill would be brought forward shortly. The CCEI Committee has long shown an interest in this subject and I would expect the Bill to be referred to the Committee in due course. In reference to the Bill, the First Minister said:

*"the Bill will also support our ongoing legal challenge to the UK Internal Market Act. In the current litigation, brought by the Counsel General, the Court has indicated it would find it helpful to consider a practical example, in the form of a piece of Senedd legislation, against which it can test the issues under consideration. This Bill will provide that practical example, and in that context we will be seeking the agreement of Business Committee to expedite Senedd scrutiny."*

I would like to share some initial views on this matter with the Business Committee.

First, it would be very difficult for the Business Committee to decide not to refer a Bill for scrutiny without first seeing the Bill in question. Standing Order 26.9 recognises this and says:

*"Once a Bill has been introduced, the Business Committee must decide whether or not to refer consideration of the general principles to a responsible committee"*

**Senedd Cymru**

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The Business Committee can only take such a decision after a Bill has been introduced.

Second, it would be useful if the Business Committee's decision could be informed by consultation with the responsible committee in question. I suggest that the Business Committee uses the time between the introduction of the Bill and the point when it makes its decision to consult with the responsible Committee.

Finally, it should be noted that no one outside the Welsh Government is currently aware of the detailed provisions of the Bill. A consultation took place around 20 months ago (between 30 July and 22 October 2020) on proposals to ban certain single use plastics but the responses have not been published. As it currently stands, the Stage 1 scrutiny process would be the only opportunity for stakeholders and the public to be consulted on the detailed provisions in the Bill.

I was invited to meet the Minister for Climate Change earlier today to discuss the proposed timetable for the Bill. During the meeting, the Minister gave a commitment to explore whether the Bill could be published in draft during the summer recess. If that is possible, it would enable the CCEI Committee (subject to members' agreement) to undertake a limited consultation over the summer to be followed, potentially, with oral evidence sessions early in the autumn. Given that a degree of scrutiny work would already be underway, the Business Committee might feel it would be appropriate to agree a curtailed timetable once the Bill is introduced, and, of course, following consultation with the CCEI Committee.

I hope this is helpful and provides a solution that results in a degree of public consultation and committee scrutiny of the Bill.

Yours sincerely,



Llyr Gruffydd MS,  
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

## **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.



## Committee Consideration

The Committee considered the instrument at its meeting on 26 September 2022 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 23

**Government Response to *the Food Information (Amendment of Transitional Provisions) (Wales) Regulations 2022***

**Technical Scrutiny Points 1, 2 and 3:** The Welsh Government accepts the typographical errors raised by the Committee in the report, and although we feel the legislative intentions of the provisions are clear, we are seeking to correct them via correction slip at the earliest opportunity.

## **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.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 26 September 2022 and reports to the Senedd in line with the reporting points above.



**Government Response: The Non-Commercial Movement of Pet Animals  
(Amendment) (Wales) (No. 2) Regulations 2022**

Merit Scrutiny point 2

The Welsh Government accepts this is a typographical error by omitting this sentence from the Welsh language explanatory note and is seeking to correct this with the SI Registrar through a correction slip.



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: RE/757/22

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

SeneddLJC@senedd.wales

26 September 2022

Dear Huw,

## **Inter-Institutional Relations Agreement: Inter-ministerial Group (IMG) for Housing, Local Government and Communities**

I am writing in accordance with the inter-institutional relations agreement to notify you of a meeting of the IMG for Housing, Local Government and Communities, which will take place on the 24 October 2022.

The virtual meeting will be hosted by the Welsh Government. The meeting will focus on a building safety update, with homelessness as the substantive item on the agenda. As lead Minister for this IMG I have asked the Minister for Climate Change to chair the meeting, as the agenda items fall within her portfolio.

An update will be provided after the meeting.

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

Bae Caerdydd • Cardiff Bay  
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[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[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.

Ein cyf/Our ref : MA-P/EM/2875/22

Llywodraeth Cymru  
Welsh Government

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

28 September 2022

Dear Huw,

### **Memorandum of Understanding - Medicines Information System (MIS)**

I am writing in accordance with the inter-institutional relations agreement to notify you of my intent to sign a Memorandum of Understanding to set out the terms of consultation between UK Government and the Devolved Governments concerning the development of the regulations to establish a UK wide Medicines Information System (MIS).

The Memorandum sets out overarching principles, and describes how the consultation process should be carried out, including sections on:

- Overarching Principles
- Joint Working
- Ministerial Engagement
- Reporting requirements
- Dispute Resolution
- Confidentiality
- Review

The Memorandum of Understanding is not a legally binding document and as such only binds the current UK Government to an extent and will not bind future UK Governments. However, in my view it adds considerable support to the statutory consent process by providing for a consultation process from an early stage in the development of Regulations which will establish the MIS.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
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0300 0604400

[Gohebiaeth.Eluned.Morgan@llyw.cymru](mailto:Gohebiaeth.Eluned.Morgan@llyw.cymru)  
[Correspondence.Eluned.Morgan@gov.wales](mailto:Correspondence.Eluned.Morgan@gov.wales)

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

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

I have also copied this letter to the Health and Social Care Committee as this falls within their remit.

I will write to you further when a final draft of the Memorandum of Understanding is signed and published.

Yours sincerely,

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

**Eluned Morgan AS/MS**

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



29 September 2022

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

Dear Committee Chair,

## **Feminist Scorecard 2022**

We are writing to you to share key recommendations from our Feminist Scorecard 2022 that are relevant to the Legislation, Justice and Constitution Committee. The Feminist Scorecard 2022, launched in July this year, tracks the Welsh Government's progress towards advancing women's rights and gender equality in six policy areas:

- Fair Finance
- Caring Responsibilities
- Global Women's Rights
- Equal Representation and Leadership
- Tackling Gender Health Inequalities, and
- Ending Violence Against Women and Girls

Each area is rated using a traffic light system (red, amber, and green), indicating the level of progress towards equality for women and girls in Wales. Your Committee portfolio crosses several areas and we would like to highlight actions needed to improve women's situation in each area below.

### **Equal Representation and Leadership**

While there has been some progress in this section, it maintained an amber rating overall. The commitment to gender quotas in the Senedd is a crucial step forward. In local government, women's representation has improved since the 2022 elections but is still far from equal. Much more must be done to ensure political institutions fully reflect Wales's diverse population. We recommend the Welsh Government should :

- Ensure the Senedd Reform Act contains legally binding gender quotas with sanctions for non-compliance.
- Ensure that political parties have due regard to the diversity of their candidates lists representing all protected characteristics, including race/ethnic minority status, disability, age, sexuality and gender identity.
- Explore the introduction of intersectionally embedded quotas, in line with emerging global best practice to ensure fair representation of disabled women, racialised women, LGBTQ+ women and younger women.
- Introduce legislation that permits job-sharing candidates in the next Senedd election.



- Extend the Access to Elected Office fund to cover caring expenses and explore how it can be expanded to support candidates with other protected characteristics, in particular socio-economic disadvantage.
- Improve the collection of candidate diversity data across the Senedd, local government and public boards.

### **Ending Violence Against Women and Girls**

The Welsh Government provided swift emergency funding during the pandemic. However, there is a critical need for sustainable funding for specialist services, especially for women with no recourse to public funds, which scored Red in this section. The scorecard recommends that the Welsh Government should:

- Urgently develop a Welsh solution to supporting survivors with no or limited recourse to public funds.
- Ensure the commitment to joined up working across substance misuse, housing, social services and education is reflected on the ground, extends to the legal system and is supportive rather than punitive for mothers leaving abuse.

### **Global Women's Rights**

We were pleased to see some progress in the area of Global Women's Rights, which retained its amber rating. We especially welcome the Welsh Government's commitment to incorporate the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW) and the Convention on the Rights of Disabled People (CRPD) into Welsh law. We urge the Welsh Government to act quickly to enshrine strong human rights obligations for women and disabled people. We also recommend that the Welsh Government should consider incorporating the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to further strengthen the protection of the rights of women who experience intersecting discrimination.

We would be grateful for the opportunity to meet with you to discuss how we can work together to make the recommendations a reality, to ensure that women and girls in Wales will not be held back for many years to come. Please contact Fadhilah Gubari at Oxfam Cymru to arrange a suitable date for a meeting on [fgubari1@oxfam.org.uk](mailto:fgubari1@oxfam.org.uk).

We look forward to your response.

Yours sincerely,

Sarah Rees  
**Head of Oxfam Cymru**

Catherine Fookes  
**Director of WEN Wales**

Document is Restricted

Huw Irranca-Davies MS - Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay, Cardiff,  
CF99 1SN  
SeneddLJC@senedd.wales

17<sup>th</sup> August 2022

Dear Huw,

**Scrutiny of the first Welsh Consolidation Bill – the Historic Environment (Wales) Bill**

Firstly, thank-you for providing Historic Houses with the opportunity to contribute toward the scrutiny of the Consolidation Bill that the Welsh Government recently introduced to the Senedd. In-Principle as far as the impact assessment is correct in assessment and that our members will not be negatively impacted in a significant way by consolidating Wales's historic environment legislation we are broadly satisfied with its competence.

Our primary interest lies with Part 3, Chp 1 to 6. In particular, we are broadly satisfied that the same procedures will be in place for owners of listed buildings who need to undertake works as would have been previously covered by the historic instruments which this will now replace. We are also assured that the management regimes for designated historic assets and their associated consent processes will not change significantly to warrant further amendment at this stage.

We are therefore satisfied:

- i. that the scope of the consolidation is appropriate;
- ii. that the relevant enactments have been included within the consolidation;
- iii. that the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;
- iv. the Bill consolidates the law clearly and consistently

However, we do agree with our colleagues at the CLA in relation to the use of the word 'Preservation' rather than 'Conservation'. As this word will be enshrined in law it in effect carries president above policy where Cadw and the Welsh Government utilise the principle of 'Conservation'. Therefore, under this Bill, the "duty to preserve" will be utilised in planning decisions and in the courts over conservation.

A "duty to preserve" arrests the ability of owners and managers of historic properties to sensitively change a building. Preservation can mean that owners merely abandon buildings to the elements unable to return a building to an academic, often subjective interpretation of a building as it was at a particular point in time. Strict application of preservation over conservation principles blights resale and the asset can cease to exist, financially and ultimately then physically.

It seems a shame that this change cannot be made now, as the alternative is to either insert a new clause when the opportunity arises or it will need to be consistently explained that the words 'preservation' and 'conservation' hold the same and inter-changeable meaning. However, complications such as this are what has gradually given rise to the need for simplification and consolidation, which is why this Bill has been drawn forward.

Yours sincerely,

*Phil*

**Phil Godsal - Chair**  
**Historic Houses (Wales)**

Warwick House, 25-27 Buckingham Palace Road, London. SW1W 0PP

Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

30 August 2022

Dear Mr Irranca-Davies

## Scrutiny of the first Welsh Consolidation Bill – the Historic Environment (Wales) Bill

Thank you for your letter dated 15<sup>th</sup> July 2022 inviting Natural Resources Wales (NRW) to give the Legislation, Justice and Constitution Committee our views on the Bill and the consolidation exercise.

Natural Resources Wales' role relating to the historic environment includes:

- The protection, conservation and management of historic assets on the NRW estate, encouraging public access and appreciation. This includes 145 Scheduled Monuments, 71 Listed Buildings, 46 Registered Parks & Gardens and overlaps with 48 Registered Historic Landscapes, in total there are 11,936 Historic Environment Records.
- Management of archaeological risk on our operational work, projects, and strategies.
- Regulatory advice relating to the historic environment.
- Preparing Area Statements that integrate the historic environment.
- Support the delivery of the purposes set out in Section 5 of the National Park & Access to the Countryside Act 1949 (as amended by Environment Act 1995).
- Complying with the European Landscape Convention, which the UK Government signed up to, which includes historic and cultural landscapes.

As such the Historic Environment (Wales) Bill is relevant to our role and responsibilities in relation to the historic environment.

As the provisions within the Historic Environment (Wales) Bill 2022 does not change the effect of existing legislation, we do not envision any effect on NRW's roles in relation to the historic environment.

NRW's response to the four points that the Committee will be considering:

i. we are satisfied that the scope of the consolidation is appropriate.

As far as NRW is able to ascertain the scope of the consolidation is appropriate.

ii. we are satisfied that the relevant enactments have been included within the consolidation.

As far as NRW is able to ascertain the relevant enactments have been included within the consolidation.

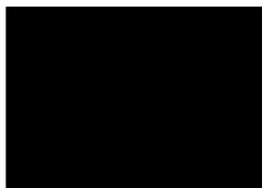
iii. the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2.

We do not have any comment on how the Historic Environment (Wales) Bill meets Standing Order 26C.2 requirements.

iv. the Bill consolidates the law clearly and consistently.

This consolidated, simplified, consistent and bilingual Bill will aid understanding of the law in relation to the historic environment, and will be more accessible to users less familiar with legislation within this subject area. This is very much welcomed.

Yours sincerely



Adrian James  
**Team Leader; Planning, Landscape and Energy**

**Croesewir gohebiaeth yn y Gymraeg a'r Saesneg  
Correspondence welcomed in Welsh and English**



**RTPI Cymru**

Royal Town Planning Institute  
Sefydliad Cynllunio Trefol Brenhinol

Royal Town Planning Institute  
Cymru (RTPI Cymru)  
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██  
██  
[www.rtpi.org.uk/wales](http://www.rtpi.org.uk/wales)

2 September 2022

**e-mail response sent to:** [seneddLJC@senedd.wales](mailto:seneddLJC@senedd.wales)

**Dear Sir/Madam,**

**Response to: Scrutiny of the first Welsh Consolidation Bill – the Historic Environment (Wales) Bill**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 27,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,300 members. The Institute seeks to advance the science and art of planning, working for the long-term common good and well-being of current and future generations. The RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

Thank you for the opportunity to respond on the scrutiny of the Historic Environment (Wales) Bill. The following response highlights the key planning issues in relation to the matters set out by the Legislation, Justice and Constitution Committee.

Firstly, we recognise the complexity and sometimes confusing structure of the existing legislative framework and in particular the lack of clarity about which Westminster legislation applies in Wales and the consequent difficulties this causes for practitioners and users.

We therefore welcome the work taking place on Welsh law, along with the principles of simplification, consolidation and codification of planning law in Wales. RTPI Cymru has responded at all the various developmental stages of this work and look forward to continuing to support the work moving forward.

## **The scope of the consolidation**

### Wider consolidation and implementation

We welcome this consultation focusing on consolidation and the ongoing work that is taking place that forms part of an important bigger picture. Easier terminology, clear unambiguous provisions, identifying redundant provisions and enabling a comprehensive Welsh language translation of single legislation is all supported.

It would have been useful at the outset and to accompany this consultation to have a document that explains the relationships between the affiliated Bills and the transitional arrangements. This is particularly the case in relation to the Historic Environment Bill and Planning Bill. We have previously raised concerns in our response to the Planning Law in Wales (2018) consultation, to the separating out of the rural and historic environment legislation, from planning. Our concern largely related to ensuring that the separation does not undermine the application of core planning law, across urban and rural contexts for example; with the rural/historic legislation divorced from planning. We note that the principle of having a planning code is that it incorporates all the legislation relating to planning, so a document explaining how this will work in practice would have been useful to accompany this first consolidation Bill consultation and the others that will follow.

It would still be extremely useful to understand more about implementation, timescale and resources. For example, how will Cadw support the implementation of the Bill across the sectors, Local Planning Authorities etc.

Consolidation, simplification/easing access are important drivers. We note the significant work that has taken place, for example in relation to case law, we welcome the clarification of curtilage and the definition of listed building within Section 7(b)5, now clarifying the inclusion of curtilage buildings at the time of listing. As part of the update in terminology, Cadw should consider a revision to the '[Managing Change in Listed Building](#)' to include more specific guidance and supporting the codification of the Historic Environment Bill.

### Timescales

RTPI Cymru raises concern regarding the indicative timescale implications of the Bill. For example, the Explanatory Memorandum states,

“third sector bodies and amenity societies currently disseminate information on the operation of the existing legislation, so they will need to update this to reflect the changes. As noted above, Cadw will be providing updated information to such bodies, and we therefore estimate that the burden of updating individual websites will be minimal, and probably in the region of one person for one day.” [pri-ld15211-em-e.pdf \(senedd.wales\)](#) Pg19.

We believe that this timescale is significantly underestimated given the extent of the legislation/new terminology/ new guidance which will need to be read, understood and embedded, at a time where resources and capacity are stretched in many sectors.

**Relevant enactments have been included within the consolidation.**

We raise a general concern regarding the implications of ‘unknowns’ in relation to relevant Acts being included in the consolidation. For example, we note that Subsection (7) of Section 75 clarifies that “a monument situated in, on or under the bed of the sea below the low water mark” can not be considered as a “monument of special historic interest” and while we accept these might be rarely found, we do question whether provision should be made for such an unknown situation, to safeguard the historic environment. We understand in this specific case, protection would have previously been provided by the Protection of Wrecks Act 1973.

If you require further assistance, please contact RTPI Cymru on [REDACTED] or e-mail Roisin Willmott at [REDACTED]

Yours sincerely,

[REDACTED]

Dr Roisin Willmott OBE FRTPI

**Director**

**RTPI Cymru**

**The Historic Environment (Wales) Bill: Written Evidence to the Legislation, Justice  
and Constitution Committee  
Dr Hayley Roberts, Bangor University  
September 2022**

**Introduction**

I am an international lawyer specialising in the law of the sea, particularly underwater cultural heritage and climate change. In the context of this submission, I have published several papers on underwater heritage and have a monograph on ‘State-owned Shipwrecks and International Law’ forthcoming in 2023 (University of Wales Press). I have just completed a research council-funded project examining the protection of marine cultural heritage and climate adaptation policies in Tanzania. I am also Commissioner (Vice Chair) to the Royal Commission on the Ancient and Historical Monuments of Wales; however, I do not make this submission in that capacity.

The submission below relates to two points that the Committee wishes to scrutinise in relation to the Bill: that the Bill consolidates the law clearly and consistently, and that the relevant enactments have been included within the consolidation.

**Submission**

1. The consolidation of law relating to the historic environment in Wales is a very welcome development, particularly given the aim of making that law accessible and available in Welsh. The mammoth effort in preparing this Bill should be commended, which goes a long way towards clarifying this complex area of law.

**Terminology**

2. The move away from ‘ancient’ monuments is a welcome step that better reflects the importance of more recent heritage, including twentieth century heritage and buildings.

3. The new term adopted in Part 2, Chapter 1 of the Bill is ‘monuments of special historic interest.’ While ‘monument’ is defined, ‘special historic interest’ is not. It is not clear what makes a monument of ‘special’ historic interest, and whether this is a qualifier that could alter the way in which a monument’s significance is currently assessed - and if so, in what way.

4. Part 2, Chapter 2 uses the term ‘monuments of national importance.’ It is unclear whether this has effectively the same meaning as ‘monuments of special historic interest’ or if it anticipated that there will be instances where a monument is of national importance but not of special historic interest (or vice versa). The use of both terms is somewhat confusing and could reduce accessibility, i.e., people may be unsure whether they are dealing with a monument of special historic interest or a monument of national importance, and what the difference might be in respect of the law.

5. A better approach may be to adopt a single, more inclusive term that ensures clarity and consistency in the Bill. The historic environment has multiple values: historical, evidential, aesthetic and communal, but also cultural, societal, scientific and environmental. A broader term could also ensure that these values are better reflected, for example, ‘monuments of historic or cultural interest’ or simply ‘monuments of Welsh national interest’ if wanting to retain the national reference.

### ***Wrecks/Maritime Heritage***

6. Much of the law relating to the marine historic environment sits outside this Bill. For example, the Protection of Wrecks Act 1973 (PWA) and the Protection of Military Remains Act 1986 (PMRA) are not included. There are also aspects of the Marine and Coastal Access Act 2009 (MCAA) that are directly relevant to the marine historic environment, i.e., activities that may impact underwater heritage and for which a marine license is required.

7. This means that there is little consolidation of the law relating to the marine historic environment, and ultimately, accessibility remains an issue. For example, if a person wants to engage in an activity that involves a shipwreck, they will still need to look at the PWA if it is a protected or dangerous wreck, consult the PMRA if it is a military wreck, and check the MCAA to see if a marine license is needed for the activity.

8. There is a separate but related argument to be made about whether Section 1 of the PWA should be repealed and the six Welsh protected wrecks re-designated, or rather, re-scheduled. The PWA began its life as a private member's bill, and it is fair to say that it was a reactive measure to protect wrecks following technological developments that enabled easier exploration of the seabed during the 1960s and 1970s. Scotland has already taken action by repealing Section 1 PWA and re-designating its protected wrecks as Historic Marine Protected Areas under the Marine (Scotland) Act 2010.

9. If the PWA has been excluded from the Bill due to the small number of wrecks in question and the likelihood that the PWA would not be utilised in future (i.e., if Welsh policy going forward will be to schedule subtidal monuments), then the need to retain that statute needs to be considered. If it can be shown that re-scheduling the protected wrecks can offer comparable protection and access as appropriate, it would be worth considering the repeal of Section 1 PWA. This could also remove any confusion between designation and scheduling, further improving accessibility of the law.

10. However, if there is no appetite to repeal Section 1 PWA, or it is determined that it offers greater benefits than scheduling for these wrecks, then it should be included in the Bill, and it could easily be incorporated.

11. It should also be noted that Section 2 of the PWA deals with the designation of wrecks as dangerous, which includes the SS *Castilian* off the coast of Anglesey as it contains munitions. This should be included in the Bill and again, could easily be incorporated. Scotland has not repealed Section 2 PWA.

12. The PMRA is also a key statute. While the protection of human remains and wrecked warships may be separate but related issues, remains should also be considered cultural heritage. This is clear from the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, which makes it clear in Article 1(a)(i) that human remains, together with their archaeological and natural context, can constitute underwater cultural heritage where they have been submerged for at least 100 years.

13. While the UK has not yet ratified the UNESCO Convention, the rules in its Annex on activities directed at underwater heritage are internationally considered to constitute best

practice.<sup>1</sup> Much of the wreckage to which the PMRA applies is very likely to constitute underwater cultural heritage, so the Act is directly applicable to the protection of the marine historic environment. For example, HMS *H5* is a First World War submarine that lies off the coast of Anglesey and is designated as a controlled site under the PMRA. Further, the PMRA also applies to any aircraft which has crashed while in military service.

14. To aid accessibility of law relating to the marine historic environment, the Bill could include a specific part on the marine historic environment that consolidates the points above.

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<sup>1</sup> See, for example, H. Roberts, 'The British Ratification of the Underwater Heritage Convention: Problems and Prospects' (2018) 67(4) *International & Comparative Law Quarterly* 833.



8<sup>th</sup> September 2022

Our ref. 0906JE03/ALGAO\_004

[REDACTED]  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

Dear [REDACTED]

### **Scrutiny of the first Welsh Consolidation Bill – the Historic Environment (Wales) Bill**

We write in response to the consultation letter of 15<sup>th</sup> July 2022 inviting comments on the above.

#### About ALGAO

The Association of Local Government Archaeological Officers (ALGAO) is the UK-wide organisation that represents all archaeologists working for local authorities and national parks. Member local authorities are represented by the senior professional archaeologist (employed directly within the authority or in some cases by independent joint services) whose primary responsibility is to advise that authority, principally through the planning process, on conservation and management of the archaeological resource within the boundaries of that authority, and who has been nominated by that authority to represent it. The Association has four key objectives:

- To provide a strong voice for local authority historic environment services and promote these within local government to strengthen and develop their role within local government in delivering local, regional and national government policy.
- To ensure that local government historic environment services are included within policy (national, regional and local) for culture and education.
- To ensure that policy aims to improve the sustainable management of the historic environment.
- To promote development of high standards in the historic environment profession

ALGAO:Cymru is the national ALGAO body for Wales. The membership of ALGAO:Cymru comprises archaeologists who work in a curatorial capacity within the four Welsh Archaeological Trusts as well as archaeologists working for local authorities and Wales' three national parks. Members provide archaeological advice on activities carried out through the planning process, environmental permitting regimes, statutory provisions and other regulatory processes. The proposed consolidation of legislation is therefore of direct relevance to members' work.



## Consultation response

ALGAO:Cymru generally supports the proposed consolidation and welcomes the opportunity to contribute to this process. Our comments on the specific points listed in the consultation letter of 15<sup>th</sup> July 2022 are set out below. Please note that these comments are based on members' experience as historic environment professionals rather than any legal expertise.

- i. we are satisfied that the scope of the consolidation is appropriate;*  
ALGAO:Cymru considers the scope to be appropriate.
- ii. we are satisfied that the relevant enactments have been included within the consolidation;*  
ALGAO:Cymru believes this to be the case.
- iii. the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;*  
ALGAO:Cymru generally agrees that this is the case but considers that some minor changes may have the unintended effect of weakening protection for the historic environment. It is recommended that the following changes to provisions are examined so that the Committee can be satisfied that the existing regulatory framework is not undermined:
  - **Section 97 (5)** carries forward the legal right of the RCAHMW to be given the opportunity to record a listed building proposed for demolition, currently provided by Section 8(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, but proposed to be enshrined as an obligatory condition. Whilst this may initially appear to be a strengthening of provision, there is a potential for conflict or duplication with current planning practice.

The principle of allowing access for archaeological recording in advance of development predates the inclusion of archaeology as a material planning consideration and the establishment of structured procedures for archaeological work in a development context. These procedures are set out clearly in both local and national policies, and include the ability for local authorities to require archaeological work at all stages of the planning process. In members' experience it has been relatively uncommon for the RCAHMW to undertake emergency recording through the planning and listed building consent process in recent years. It is however commonplace for conditions requiring archaeological building recording to be attached to consents, which would normally be undertaken by an archaeological contractor, commissioned by the applicant. This can often be more comprehensive and analytical than the RCAHMW emergency recording, where limited resources necessitate the prioritisation of high quality survey and images.

The explanatory notes<sup>1</sup> for the change draw a parallel with the scheduled monument consent process (Section 18 *Power to grant consent subject to conditions*). The two are not directly comparable, because scheduled monument consent is independent of planning, and administered by Cadw rather than local authorities. In addition, the wording of the proposed Section 18 is more flexible, discussing what conditions *may* be applied and does not name a specific organisation. In practice, archaeological mitigation undertaken as a condition of

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1 Explanatory Memorandum Annex C: Explanation of Changes Made to Existing Provisions (Drafters' Notes), p.34 - <https://senedd.wales/media/fedpgiaa/pri-ld15211-em-c-e.pdf>



scheduled monument consent is comparable to planning-led work, generally undertaken by archaeological contractors to an agreed programme and monitored by Cadw. It is not clear if an equivalent process would be followed for a listed building consent condition allowing access for recording by the RCAHMW. The scope of such work can vary considerably, and submission of a detailed project specification for prior approval by the local authority is normally required in order to meet the test of precision.

ALGAO:Cymru is concerned that including the right of access for the RCAHMW as a condition could prevent local authorities from attaching separate conditions for archaeological building recording, because this could be regarded as duplication and thus fail the test of necessity. Without this ability, were the RCAHMW to decline to record a threatened building, there would be no means of securing proportionate mitigation. The resulting loss to built heritage and archaeological evidence would conflict with objectives to manage the historic environment as a public resource for the benefit of current and future generations.

ALGAO:Cymru would therefore recommend that this matter is reviewed to ensure that there would be no reduction in powers to secure archaeological mitigation.

- **Section 194(1)** *The Welsh Ministers must maintain a historic environment record for every local authority area* replaces Section 35(1) of the Historic Environment (Wales) Act 2016, *The Welsh Ministers must compile and keep up to date a historic environment record for each local authority area in Wales.*

The explanatory notes<sup>2</sup> state that this alteration to wording has been made because “records have already been compiled, and the requirement to maintain is consistent with other provisions of the Bill (the duty to maintain a schedule of monuments, for example)”. However, the proposed provisions for scheduled monuments, listed buildings, registered historic parks and gardens, and historic place-names all include the requirement to maintain and publish the up-to-date schedule, list or register. Omission of this phrase is therefore inconsistent with the duties applicable to other assets.

More importantly, however, Historic Environment Records (HERs) are complex information management systems with thousands of new entries added each year. They need active management, not only to incorporate new data, but to curate existing digital and archive material, and to advise enquirers on its usage. The requirement in existing legislation to 'keep up to date records' is crucial in securing the resources for HER staff and ensuring that the HERs are fit for purpose as the statutory evidence base for planning decisions and other activities by public bodies. Simplifying wording to 'maintain' – particularly set against the phrasing used elsewhere in the Bill - could be interpreted as meaning that the HERs are complete, or a static archive. With continuing pressure on public funds, this perception could result in HERs being mothballed or under-funded, causing potential loss of HER staff with associated expertise, and an inadequate evidence base for heritage management advice: this in turn would lead to increased threat to undesignated archaeology and increased risk to development through unforeseen discovery.

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2 Explanatory Memorandum Annex C: Explanation of Changes Made to Existing Provisions (Drafters' Notes), p.63 - <https://senedd.wales/media/fedpgiaa/pri-ld15211-em-c-e.pdf>



ALGAO:Cymru would therefore urge the new Bill to retain the specific requirement to keep HERs up to date.

*iv. the Bill consolidates the law clearly and consistently*

ALGAO:Cymru believes this to be the case.

It may be beneficial to clarify whether references to demolition include partial demolition (or if this is stipulated in other legislation, to include a note to this effect).

Yours faithfully



**Jenny Emmett (Chair) and Tomos Jones (Vice Chair)**  
ALGAO:Cymru

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

23 September 2022

**The Historic Environment (Wales) Bill – timetable**

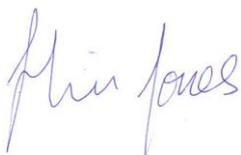
Dear Huw,

At its meeting this week, the Business Committee received an oral update from the Trefnydd on the Historic Environment (Wales) Bill. The Welsh Government has considered the impact of the period of National Mourning for Her Majesty The Queen on the scrutiny process but does not currently propose to amend the timetable for consideration of this consolidation Bill.

However, the Trefnydd indicated that the Government would be open to discussing a short extension to the deadline for the Initial Consideration stage for the Bill should your Committee find it helpful.

Consequently, Business Committee agreed to consult with your Committee and would be grateful if you could respond to me outlining your views on the timetable by noon on Friday 30 September, if possible.

Kind regards,



**The Rt Hon. Elin Jones MS**

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

# Agenda Item 9

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

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