

# 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: 28 November 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 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(13.30 – 13.35)

(Pages 1 – 4)

Attached Documents:

LJC(6)-31-22 – Paper 1 – Draft report

### Made Negative Resolution Instruments

#### 2.1 SL(6)285 – The Child Minding and Day Care (Disqualification) (No. 2) (Wales) Regulations 2022

### Affirmative Resolution Instruments

#### 2.2 SL(6)283 – The Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2022

(Page 5)



Attached Documents:

LJC(6)-31-22 – Paper 2 – Written Statement by the Minister for Finance and Local Government, 15 November 2022

**2.3 SL(6)284 – The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022**

(Pages 6 – 7)

Attached Documents:

LJC(6)-31-22 – Paper 3 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 23 November 2022

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

(13.35 – 13.45)

**Made Negative Resolution Instruments**

**3.1 SL(6)279 – The Animal Health (Poultry Compartments and Animal Gatherings) (Fees) (Wales) (Amendment) Order 2022**

(Pages 8 – 10)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-31-22 – Paper 4 – Draft report

**3.2 SL(6)280 – The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022**

(Pages 11 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-31-22 – Paper 5 – Draft report

### **3.3 SL(6)282 – The School Teachers’ Pay and Conditions (Wales) Order 2022**

(Pages 16 – 19)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–31–22 – Paper 6 – Draft report

**Composite Negative Resolution Instruments**

### **3.4 SL(6)278 – The Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2022**

(Pages 20 – 21)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–31–22 – Paper 7 – Draft report

## **4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered** (13.45 – 13.50)

### **4.1 SL(6)272 – The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022**

(Pages 22 – 33)

Attached Documents:

LJC(6)–31–22 – Paper 8 – Report

LJC(6)–31–22 – Paper 9 – Welsh Government response

LJC(6)–31–22 – Paper 10 – Addendum to the Welsh Government response

## **5 Written Statements under Standing Order 30C** (13.50 – 13.55)

**5.1 WS-30C(6)020 – The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022**

(Pages 34 – 41)

Attached Documents:

LJC(6)-31-22 – Paper 11 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 21 November 2022

LJC(6)-31-22 – Paper 12 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 21 November 2022

LJC(6)-31-22 – Paper 13 – Commentary

**6 Inter-Institutional Relations Agreement**

(13.55 – 14.00)

**6.1 Correspondence from the Deputy Minister for Mental Health and Wellbeing: Food Supplement and Food for Specific Groups (Miscellaneous Amendments) Regulations 2022**

(Pages 42 – 43)

Attached Documents:

LJC(6)-31-22 – Paper 14 – Letter from the Deputy Minister for Mental Health and Wellbeing, 21 November 2022

**6.2 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Plant Health (Amendment) (EU Exit) Regulations 2022**

(Pages 44 – 45)

Attached Documents:

LJC(6)-31-22 – Paper 15 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 23 November 2022

**6.3 Correspondence from the Minister for Finance and Local Government: Finance: Interministerial Standing Committee meeting**

(Page 46)

Attached Documents:

LJC(6)-31-22 – Paper 16 – Letter from the Minister for Finance and Local Government, 24 November 2022

## **7 Papers to note**

(14.00 – 14.05)

### **7.1 Correspondence from the Minister for Climate Change: Legislative Consent Memoranda for the Energy Prices Bill**

(Pages 47 – 50)

Attached Documents:

LJC(6)-31-22 – Paper 17 – Letter from the Minister for Climate Change, 18 November 2022

LJC(6)-31-22 – Paper 18 – Letter to the Minister for Climate Change, 2 November 2022

### **7.2 Correspondence from the Minister for Finance and Local Government: The Procurement Bill**

(Pages 51 – 52)

Attached Documents:

LJC(6)-31-22 – Paper 19 – Letter from the Minister for Finance and Local Government, 18 November 2022

### **7.3 Correspondence from the Minister for Finance and Local Government: Welsh Government response to the Committee's report on the Legislative Consent Memoranda for the UK Infrastructure Bank Bill**

(Pages 53 – 54)

Attached Documents:

LJC(6)-31-22 – Paper 20 – Letter from the Minister for Finance and Local Government, 21 November 2022

**7.4 Correspondence from the Economy, Trade and Rural Affairs Committee to the First Minister: Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence**  
(Pages 55 – 58)

Attached Documents:

LJC(6)-31-22 – Paper 21 – Letter from the Economy, Trade and Rural Affairs Committee to the First Minister, 21 November 2022

LJC(6)-31-22 – Paper 22 – Letter to the Economy, Trade, and Rural Affairs Committee, 7 October 2022

**8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
(14.05)

**9 Historic Environment (Wales) Bill: Draft report**  
(14.05 – 14.50) (Pages 59 – 190)

Attached Documents:

LJC(6)-31-22 – Paper 23 – Briefing

LJC(6)-31-22 – Paper 24 – Draft report

## Statutory Instruments with Clear Reports 28 November 2022

### **SL(6)283 – The Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2022**

#### **Procedure: Affirmative**

Paragraph 5(1B) of Schedule 9 to the Local Government Finance Act 1988 (“the Act”) provides that a county council or county borough council in Wales (a “billing authority”) may serve a notice on certain persons requiring them to supply information in relation to a hereditament in that billing authority’s area. Those persons include a person who is carrying on a business in relation to that hereditament, of a description specified in regulations made by the Welsh Ministers.

These Regulations specify descriptions of the types of business being carried on by a person in relation to a hereditament.

These Regulations also make provision as to how a billing authority may effect service of a notice on a person to whom paragraph 5(1D) of Schedule 9 to the Act applies.

**Parent Act:** The Local Government Finance Act 1988

**Date Made:** Not stated

**Date Laid:** Not stated

**Coming into force date:** 1 April 2023



# Statutory Instruments with Clear Reports

## 28 November 2022

### **SL(6)284 – The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022**

#### **Procedure: Affirmative**

The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022 (“these Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred on them by paragraph 2 of Schedule 6 to the Fisheries Act 2020 (“the 2020 Act”).

These Regulations establish a Scheme for the giving of grants and making of loans by the Welsh Ministers. Paragraph 2(1) of Schedule 6 to the 2020 Act specifies the purposes for which financial assistance can be given.

Part 1 of these Regulations contains general introductory provisions. Part 2 provides for the establishment of the Scheme. Part 3 constitutes the Scheme and makes provision for the payment of grants and the making of loans by the Welsh Ministers. The Welsh Ministers may pay grants or make loans in respect of the activities listed in the Schedule to these Regulations.

These Regulations set out the basis on which the Welsh Ministers may pay grants and make loans, and lays down a procedure for applications. Payment of a grant or loan is dependent on the Welsh Ministers being satisfied as to the expenditure incurred, or to be incurred, and as to compliance with any conditions of approval.

These Regulations also provide that payment of a grant or loan is conditional on the applicant retaining relevant records and notifying the Welsh Ministers of any material change in circumstances. The Welsh Ministers have the ability to vary, suspend and revoke the approval of an application for a grant or loan and may, by notice, require the repayment of a grant or loan if certain conditions are not satisfied (with any sums outstanding ultimately recoverable as a civil debt).

Representations may be made in respect of decisions relating to applications for grants and loans, and notices of variation, suspension and revocations. The Welsh Ministers must notify the applicant of their decision following such representations.

These Regulations confer an enforcement function on marine enforcement officers appointed by the Welsh Ministers under the Marine and Coastal Access Act 2009 (“the 2009 Act”). The function is for the enforcement of any potential offences committed in relation to an application for a grant or loan under the Scheme (for example, an offence under the





Fraud Act 2006). Relevant enforcement powers for marine enforcement officers under Part 8 of the 2009 Act are also applied for the purposes of this function.

These Regulations replace a previous set of draft regulations laid on 27 September 2022 and considered by the Legislation, Justice and Constitution Committee (“the Committee”) at its meeting of 17 October 2022, where a report was issued containing a number of reporting points. These revised Regulations have been laid to address the points raised in that report.

The Committee welcomes the inclusion of a detailed regulatory impact assessment in the revised Explanatory Memorandum that accompanies these Regulations (in response to reporting point 6 of its previous report).

**Parent Act:** The Fisheries Act 2020

**Date Made:** Not stated

**Date Laid:** Not stated

**Coming into force date:** 1 December 2022



Senedd Cymru

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

—  
Welsh Parliament

**Legislation, Justice and Constitution Committee**

# Statutory Instruments with Clear Reports

## 28 November 2022

### **SL(6)285 - [The Child Minding and Day Care \(Disqualification\) \(No. 2\) \(Wales\) Regulations 2022](#)**

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

The Child Minding and Day Care (Disqualification)(No.2)(Wales) Regulations 2022 (the "**Regulations**") set out the categories of persons who are disqualified from registration in Wales as a child minder or provider of day care under Part 2 of the Children and Families (Wales) Measure 2010.

The Regulations revoke and replace the Child Minding and Day Care (Disqualification)(Wales) Regulations 2022, and address the [technical points](#) raised by the Committee in its scrutiny of those regulations.

Persons disqualified under these Regulations must not act as child minders in Wales, provide day care or be concerned in the management of any provision of day care.

The Regulations update the list of offences, orders and determinations which disqualifies a person from working in regulated childcare in Wales.

Schedule 3 to the Regulations includes further additional criminal offences over and above those which currently appear in the equivalent regulations applying in England. These include offences associated with voyeurism and the use of violence, threats or any form of coercion to force another person into marriage.

The Regulations remove provisions which disqualify people from being registered to provide regulated childcare based on the fact that they live with someone who is disqualified or someone who works in their household is disqualified. The Regulations also remove some anomalies in existing regulations to ensure that people who have been subject to a Care or Supervision Order themselves in the past are not automatically disqualified from registration.

**Parent Act:** Children and Families (Wales) Measure 2010

**Date Made:** 14 November 2022

**Date Laid:** 15 November 2022

**Coming into force:** in accordance with regulation 1(2)



**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>The draft Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2023</b>
<b>DATE</b>	<b>15 November 2022</b>
<b>BY</b>	<b>Rebecca Evans MS, Minister for Finance and Local Government</b>

Today I am publishing a summary of responses to the technical consultation on the draft Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2023 (“the Regulations”). I am also confirming that the Regulations, as drafted and consulted on, will be laid before the Senedd and, subject to agreement, will come into force on 1 April 2023.

Non-domestic rates provide a vital revenue stream that contribute towards the costs of local government services, services that we all benefit from. A range of measures to combat non-domestic rates fraud and avoidance were consulted upon in the summer of 2018, following an evidence gathering exercise that took place in 2017. Following the consultation, the Welsh Government [announced](#) a range of measures on 16 October 2018.

One of these measures was to introduce a new legal power for local authorities to request information from ratepayers and third parties providing a service in relation to a property, to support their role in the billing and collection of non-domestic rates.

A technical consultation on a draft of the Regulations ran from 24 June to 16 September 2022. It asked for views on the clarity of the Regulations and for any other comments about them. Following the consultation, no changes to the drafting of the Regulations are required.

A summary of responses to the technical consultation is available at:  
<https://gov.wales/draft-non-domestic-rating-regulations-address-fraud-and-avoidance>

# Agenda Item 2.3

Minister for Rural Affairs,  
Cyfiawnder a'r Cyfansoddiad

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## Legislation, Justice and Constitution Committee

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Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and

Trefnydd

23 November 2022

Dear Lesley

The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022

Thank you for your letter of 15 November requesting that we expedite our scrutiny of the draft Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022.

We acknowledge the reasoning set out in your letter meaning that, in order for the Senedd to be asked to approve the draft Regulations on 29 November so that the scheme can open before the end of 2022, we would need to complete our scrutiny earlier than the 20 days we are permitted to use in accordance with Standing Orders.

We welcome you writing to us, to provide an explanation and to seek our assistance in expediting scrutiny.

We, and our supporting Senedd Commission officials, will do our best to undertake scrutiny of the draft Regulations within the required timeframes.

I would draw your attention to the requests we also have received from the Minister for Finance and Local Government to expedite our consideration of regulations relating to non-domestic rates, and

from the Minister for Climate Change to expedite our consideration of regulations relating to the implementation of the *Renting Homes (Wales) Act 2016*.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

# Agenda Item 3.1

## **SL(6)279 – The Animal Health (Poultry Compartments and Animal Gatherings) (Fees) (Wales) (Amendment) Order 2022**

### **Background and Purpose**

This Order amends:

- the Poultry Compartments (Fees) (Wales) Order 2010 (S.I. 2010/1781) (W. 170) (“the 2010 Order”); and
- the Animal Gatherings (Fees) (Wales) Order 2018 (S.I. 2018/645) (W. 119) (“the 2018 Order”).

This Order revokes provisions in the 2010 Order which currently provide for Value Added Tax (VAT) to be added to fees charged under that Order.

It also uplifts fees payable to the Welsh Ministers for services provided by the Animal and Plant Health Agency in relation to the 2018 Order.

Article 2 amends the 2010 Order to omit the words “+ VAT” each time they occur in the table in the Schedule. As such, VAT will no longer payable in respect of the fees set out in the table.

Article 3 amends the 2018 Order, including to substitute a new Schedule providing for increased fees for the licensing of premises for animal gatherings.

This new Schedule provides as follows.

- Table 1 sets out fees payable for the licensing of premises for animal sales or collection centres that are not exempt. Column 2 provides for an interim increase for applications received and renewals undertaken on or before 30th November 2023. Column 3 applies to applications received and renewals undertaken after 30th November 2023 and provides for a further increase.
- Table 2 sets out fees payable for the licensing of premises for shows or exhibitions that are not exempt. Column 2 provides for an interim increase for applications received and renewals undertaken on or before 30th November 2023. Column 3 applies to applications received and renewals undertaken after 30th November 2023 and provides for a further increase.
- Table 3 sets out additional fees payable for the licensing of premises. Column 2 provides for an interim increase for veterinary visits undertaken on or before 30th November 2023. Column 3 applies to veterinary visits undertaken after 30th November 2023 and provides for a further increase.



Article 4 makes transitional provision so that these amendments do not apply in relation to an application made before the coming into force of this Order.

## 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 point is 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)**

There is a difference between the English and Welsh texts of article 3(2). The English text has been drafted in the usual way when introducing amendments to both language texts of bilingual legislation. It suggests to the reader that amendments are being made to both the language texts.

However, the Welsh text of article 3(2) doesn't amend the Welsh text of the definition of "collection centre" in article 2 of the 2018 Order as it is already correct. So, it has added the words "yn y testun Saesneg" ("in the English language text") and the substituted words are noted in English only. This is the correct approach when it is only necessary to amend the English language text of a bilingual enactment, so that both language texts of the amending instrument will be making the same change to one language text of the existing legislation.

The English language text of article 3(2) of this Order should also have included the words "in the English language text" to identify that the amendment is only being made to the English language text of the existing text in article 2 of the 2018 Order.

## Merits Scrutiny

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

### **2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.**

The Order makes changes to the fees payable in relation to statutory services delivered by Animal and Plant Health Agency, pursuant to the 2010 Order and the 2018 Order.



### **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)**

The Explanatory Memorandum (“EM”) accompanying the Order does not explain the reason why VAT is being removed from the fees included in the Schedule to the 2010 Order. It is therefore difficult for a reader to understand the rationale for this change.

Additionally, the final paragraph of section 4 of the EM states as follows:

*Due to the lack of Wales specific data has been presented and used to estimate the impact to businesses in Wales, where possible.*

The meaning of this paragraph is unclear, which makes it difficult for the reader to understand what data has been used to estimate the impact to businesses in Wales, and whether it is sufficient.

### **Welsh Government response**

A Welsh Government response is required in respect of points 1 and 3, above.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**23 November 2022**



Senedd Cymru

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

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Welsh Parliament **Pack Page 10**

**Legislation, Justice and Constitution Committee**



## **SL(6)280 – The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022**

### **Background and Purpose**

These Regulations make saving and transitional provisions in relation to the Renting Homes (Wales) Act 2016 ("the 2016 Act").

On the date that the 2016 Act comes into force (1 December 2022) existing tenancies and licences in Wales will convert to occupation contracts (with certain exceptions as set out in Schedule 2 to the 2016 Act) and will be subject to the provisions of the new legislative regime.

These Regulations make saving and transitional provisions in relation to:

- particular processes relating to existing tenancies and licences (for example possession proceedings) that have been commenced on the date at which the 2016 Act comes into force;
- certain entitlements which exist for particular types of current tenancies (for example a request for improvement) that are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract; and
- confirmation that certain provisions relating to temporary accommodation will not apply until 12 months after the coming into force of the 2016 Act.

### **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 6 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.**

It is not clear why there are some express saving provisions, whilst other similar provisions are not set out in an express saving provision. It would be helpful to understand why certain provisions are expressly saved under the Regulations and whether the Welsh Government are relying on the general saving provision in regulation 19 where there is a difference in approach in not providing an express saving provision.

By way of example, regulations 2(1)(c) to (g) contain saving provisions in relation to the application of section 83A of the Housing Act 1985. This includes regulation 2(1)(f) in relation to section 83A(6), which sets out what a notice served under section 83A(4) must contain. Sections 83 and 83ZA of the Housing Act 1985 contain provisions that specify the requirements of notices in relation to possession proceedings. Although regulations 2(1)(a) and (b) respectively refer to the substantive provision within those sections, there is no express saving provision in relation to the content of notices contained in those sections.

Further, regulation 5(1)(e) saves the whole of section 143G of the Housing Act 1996. In contrast, regulation 4(1)(e) saves section 130(1) to (3) of the Housing Act. Sections 130(4) and 143G(4) make provision in relation to a tenant's right to buy. It is not clear why section 130(4) is not saved but section 143G(4) is saved.

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

In the Welsh text, in the italics above the preamble, the year "2022" is missing from the date after the words that correspond to "Laid before Senedd Cymru".

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

Some references do not identify where the provision can be found, namely:

- in regulation 3(1)(f), there is a reference to "Ground 14A", which is contained Schedule 2 to the Housing Act 1988 (in contrast, regulation 2(1)(f) identifies the Schedule and Act where "Ground 2A" is to be found);
- in regulation 3(2)(b), there is a reference to "section 8(1)(a)", which is contained in the Housing Act 1988 (in contrast, other paragraphs in the regulations have identified the Act if it is not already stated in the opening words, for example, regulation 2(2)(c)); and
- in regulation 5(1), the sections that are referred to later in each of sub-paragraphs (a), (b), (c) and (d) have not identified the Act in which they are found for example sub-paragraph (a) states "in accordance with section 143E" (in contrast, regulations 2(1), 3(1) and 4(1) refer to the specific Act).



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

In regulation 13(2), the inserted words of the modification “contract holder” is spelt incorrectly. The defined term in section 7 of the Renting Homes (Wales) Act 2016 includes a hyphen: “contract-holder”.

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

Regulation 13(2) modifies the Secure Tenancies (Right to Repair Scheme) Regulations 1985 by adding words that are to be read as if they have been inserted after “secure tenant” in each place it occurs. There are references to “the tenant” or “tenant” throughout those Regulations.

It is not clear whether references to “the tenant” and “tenant” should also be modified by inserting “or contract-holder” after them to achieve the legal effect of the modification.

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

In regulation 18(1), there are references to “category of dwelling” that have been specified in paragraph 1 of Schedule 1 to the Rent Officers (Universal Credit Functions) Order 2013. However, that paragraph uses “categories of accommodation” rather than “of dwelling”.

### **Merits Scrutiny**

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

#### **7. 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 terms defined by reference to the Rent Act 1977 are not clear. A reader would likely benefit from additional clarity from those terms:

- the term “protected shorthold tenancy” is defined by reference to the Rent Act 1977 – although the term is used within that Act, it is not defined under that Act, except by a cross-reference to the definition contained in the Housing Act 1980;
- the term “restricted contract” is defined in section 19 of the Rent Act 1977 (which is saved by Schedule 18 to the Housing Act 1988), but there is no specific reference to where in the Act the definition can be found – this could be confusing for a reader, particularly as section 19 of the Rent Act 1977 has been repealed (subject to the saving).



**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 12(2)(b) saves section 99B of the Housing Act 1985 as if section 99B(2)(b) to (f) were omitted. Section 99B(2)(b) to (f) specify persons that qualify for compensation for improvements carried out by a tenant. These include a joint tenant, a person in whom the tenancy was vested, a person to whom the tenancy was assigned and a spouse, civil partner or cohabitee of a tenant that undertakes the improvements (amongst others). This means that the saving provisions will only apply to an improving tenant, and those others identified in section 99B(2)(b) to (f) will lose their rights.

It is noted that in setting out the primary purposes of these Regulations, the Explanatory Memorandum states:

*“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”*

Article 1 of the First Protocol to the European Convention on Human Rights protects a person’s enjoyment of their property – the courts have recognised that legitimate expectation in connection with property interests are within the scope of this right. The Explanatory Memorandum does not contain any details of a human rights impact assessment.

The Welsh Government is asked to confirm whether it has undertaken a human rights impact assessment in relation to these Regulations and to provide further information as to the outcome of such assessment.

**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.**

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

*“As these Regulations are technical in nature and are not intended to make changes to Welsh Government policy a formal public consultation did not take place.”*

However, on 15 July 2022 Julie James MS, Minister for Climate Change, announced the publication of the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022 in draft form. In a written statement, the Minister explained that:

*“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.”*



## Welsh Government response

A Welsh Government response is required in relation to points 1 to 8 only.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**23 November 2022**



Senedd Cymru

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

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Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 15

# Agenda Item 3.3

## **SL(6)282 – The School Teachers’ Pay and Conditions (Wales) Order 2022**

### **Background and Purpose**

This Order makes provision for the determination of the remuneration of school teachers (within the meaning of section 122 of the Education Act 2002) in Wales and other conditions of employment of school teachers in Wales which relate to their professional duties and working time.

The Order makes this provision by reference to section 2 of a document entitled “School Teachers’ Pay and Conditions (Wales) Document 2022 and guidance on school teachers’ pay and conditions” (“the Document”). The Document can be found on the Welsh Government website: [www.gov.wales](http://www.gov.wales).

The Document provides for a 5% uplift from 1 September 2022 to be applied to all scale points and allowances. It also makes miscellaneous changes such as a change in the number of days and hours that teachers must be available to work as a result of additional Bank Holidays to mark the funeral of Her Majesty The Queen and the coronation of His Majesty King Charles III.

The Order makes retrospective provision to provide that the provisions set out in section 2 of the Document have effect on and after 1 September 2022 notwithstanding that the Order comes into force after that date (article 2).

The Order revokes the School Teachers’ Pay and Conditions (Wales) Order 2021, which made reference to the “School Teachers’ Pay and Conditions (Wales) Document 2021 and guidance on school teachers’ pay and conditions”.

### **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**

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

### **Merits Scrutiny**

The following 3 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**

The Explanatory Memorandum (“EM”) to this Order contains numerous errors which are likely to lead to confusion as to the effect of both this Order and section 2 of the Document. These include:

- a. In one instance, both the English and Welsh language versions of the EM refer to section 2 of the Document having retrospective effect from 1 September **2021** (emphasis added). In fact, article 2 of the Order provides that section 2 of the Document has retrospective effect from 1 September **2022** (emphasis added). The correct date is referred to in other parts of the EM;
- b. The EM contains a short summary as to the changes that have been made to the Document since its 2021 predecessor. However, both the English and Welsh language versions of the EM state that teachers must be available to work for **194** days (**1258.5** hours of directed time) (emphasis added). The Document actually provides that teachers must be available to work for **193** days (see paragraph 50.2 of the Document) (**1252** hours of directed time – see paragraph 50.5, or paragraph 50.6 in relation to proportioning for a teacher employed part-time) (emphasis added);
- c. The EM does not indicate when the Order comes into force, instead stating “*The order will come into force on **xxxx***” (emphasis added). This error also occurs in the Welsh language version of the EM;
- d. In both the English and Welsh language versions of the EM, it indicates that the Document is a replacement for the “School Teachers’ Pay and Conditions (Wales) Document **2020** and guidance on school teachers’ pay and conditions” (emphasis added). In reality, the Document replaces the “School Teachers’ Pay and Conditions (Wales) Document **2021** and guidance on school teachers’ pay and conditions” (emphasis added).

### **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**

It is noted that this Order was not laid before the Senedd until 15 November 2022 and does not come into force until 7 December 2022, more than 3 months after which section 2 of the Document has retrospective effect (as provided for by article 2 of the Order).

In the EM, the Welsh Government explains that:

*“...due to tight timing between each stage in this year’s pay process and the need for further discussion around the funding of the pay award it was not possible to lay the Order earlier.”*

### **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**



Dispute between unions and the Welsh Government as to the level of pay award is noted and some unions are currently in the process of balloting their members in relation to associated industrial action.

For example, NASUWT, the Teachers' Union, states on its [website](#) that it:

*"...has confirmed to governments and employers in England, Scotland and Wales that we are in dispute over their failure to pay all teachers a minimum 12% pay award this year.*

*Whilst decisions may be taken by government and employers to implement below-inflation pay awards this year, we will remain in dispute on the basis of the failure to pay a 12% award.*

*[...] For the avoidance of doubt, pay awards of less than 12% are not acceptable and our negotiators are not authorised to agree pay awards that do not meet the 12% demand."*

In a [Written Statement](#) on 14 November 2022, Jeremy Miles MS, Minister for Education and Welsh Language, stated that:

*"On 21 July, subject to consultation with key stakeholders, I agreed in principle to accept all of the Independent Welsh Pay Review Body's recommendations for 2022/23 including an uplift of 5% to all statutory salary points on all pay scales and for all allowances from September 2022. I can confirm today that we will be accepting the Review Body's recommendations.*

*[...] I accept that some may be disappointed that a higher award could not be provided and recognise the legitimate right of all workers to seek a fair and decent pay rise during this challenging time of inflation and cost of living rises.*

*However, as additional funding has not been made available by the UK Government, we are not in a position to further address these issues over and above what has previously been considered..."*

Furthermore, the Regulatory Impact Assessment (RIA) connected to this Order states that:

*"Overall, the response to the consultation was generally negative indicating disappointment and concerns that the increase of 5% for 2022/23 (and potential 3.5% for 2023/24) would not be sufficient.*

*A number of consultees also called for the pay award to be reconsidered following significant changes to inflation since the completion of the report by the IWPRB in May 2022 (rate of Consumer Prices Index (CPI) inflation, which is the main measure of inflation, rose to 9.9% in August, compared to 9.1% in May).*





*The majority welcomed the other recommendations, such as: an undifferentiated increase for all pay scales and allowances; and proposed amendments to terms and conditions.*

*Following consideration of the consultation responses, no compelling new evidence was provided that necessitated reconsideration of the Minister's proposals. In particular, the consultation responses did not provide sufficient additional evidence necessary to support a higher pay award across all pay ranges than had already been considered and rejected on grounds of affordability and potential impact on budgets."*

## **Welsh Government response**

A Welsh Government response is required in relation to point 1 only.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**22 November 2022**



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

**Pack Page 19**

# Agenda Item 3.4

## **SL(6)278 – The Education (Student Loans) (Repayment) (Amendment) (No. 3) 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(8) makes provision for a temporary reduction of the interest rate on undergraduate loans specified in regulation 21A of the Principal Regulations and regulation 3(11) makes similar provision in respect of postgraduate degree loans specified in regulation 21B of the Principal Regulations.

The interest rate is set at 6.5% for the period beginning with 1 December 2022 and ending with 28 February 2023. 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**

**22 November 2022**



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 21

# Agenda Item 4.1

## **SL(6)272 – The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022**

### **Background and Purpose**

The Child Minding and Day Care (Disqualification)(Wales) Regulations 2022 (the “Regulations”) set out the categories of persons who are disqualified from registration in Wales as a child minder or provider of day care under Part 2 of the Children and Families (Wales) Measure 2010.

Persons disqualified under these Regulations must not act as child minders in Wales, provide day care or be concerned in the management of any provision of day care.

The Regulations revoke similar regulations from 2010 and update the list of offences, orders and determinations which disqualifies a person from working in regulated childcare in Wales.

Schedule 3 to the Regulations includes further additional criminal offences over and above those which currently appear in the equivalent regulations applying in England. These include offences associated with voyeurism and the use of violence, threats or any form of coercion to force another person into marriage.

The Regulations remove provisions which disqualify people from being registered to provide regulated childcare based on the fact that they live with someone who is disqualified or someone who works in their household is disqualified. The Regulations also remove some anomalies in existing regulations to ensure that people who have been subject to a Care or Supervision Order themselves in the past are not automatically disqualified from registration.

### **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 11 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.**

A “guardianship order” constitutes a “relevant order” for the purposes of the Regulations.



A guardianship order is defined in footnote 1 on page 5 by reference to section 30(1) of the Criminal Justice and Court Services Act 2000 (the “2000 Act”).

As explained in the footnote, section 30 of the 2000 Act has been repealed. It is subject to specific savings provisions in SI. 2012/2231, but these do not extend to section 30.

It is therefore unclear whether the term ‘guardianship order’ has been intentionally defined by reference to a repealed provision, or whether it is an error.

A Welsh Government response is requested to clarify.

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

Regulation 12(3) purports to amend and substitute a date in the Child Minding and Day Care (Wales) Regulations 2010. It states:

*[...] in regulation 2(1), **in paragraph (a)** for “2010” insert “2022”. [emphasis added]*

There are four separate paragraphs (a) in regulation 2, therefore, we do not consider that the drafting of this substitution is sufficiently precise.

Regulation 2 is an interpretation provision and is in the form of an unnumbered list. Paragraph 7.17(1) of [Writing Laws for Wales](#) states that when inserting an entry into an unnumbered list, the most precise way to identify the location of the amendment is usually to specify the existing entry after which the insertion is to be made.

In this regard, we consider the following drafting would more clearly identify the intended location of the substitution:

*[...] in regulation 2(1), **in the definition of “disqualified”**, in paragraph (a) [...]*

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

Schedule 1 to the Regulations list a number of orders and determinations which disqualify a person from registering as a child minder in Wales.

In particular, paragraphs 21(b) and (c) of Schedule 1 (the “Relevant Paragraphs”) relate to circumstances which disqualify a person as a consequence of certain determinations under the Care Standards Act 2000 (“CSA 2000”).

For these purposes, the Relevant Paragraphs both refer to section 20(1) of the CSA 2000. This section makes provision about the “urgent procedure for cancellation [in England](#)”. Similar provision is made for Wales in section 20A of the CSA 2000, but this section is not captured by the Relevant Paragraphs.

A Welsh Government response is requested to clarify whether section 20A of the CSA 2000 has been intentionally omitted from the Relevant Paragraphs.



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

In paragraph 2(e) of Schedule 2 to the Regulations, “gross indecency” has been translated as “anwedduster garw”.

Whilst we note that “anwedduster garw” has previously been used in Welsh statutory instruments; “garw” is not an obvious translation for “gross” in this context.

We note that “gross indecency” is more often translated as “anwedduster difrifol” or “anwedduster dybryd”, which we consider as more appropriate.

In this respect, it would be useful to standardise the translation to ensure the accuracy and consistency of Welsh legislation.

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

In paragraph 2(j) of Schedule 2, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 30 of the Sexual Offences Act 1965. The Welsh text refers to section 29 of the same.

On the basis of the words in brackets in paragraph 2(j), it appears that the English text is accurate.

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

In paragraph 1(4)(i) of Schedule 3, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 63 of the Terrorism Act 2000. The Welsh text refers to section 64 of the same.

On the basis of the words in brackets in paragraph 1(4)(i), it appears that the English text is accurate.

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

The reference to section 23 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(c) of Schedule 3 to the Regulations should be a reference to section 3 of the 2003 Act.

Section 3 of the 2003 Act relates to the offence of assisting a non-UK person to mutilate overseas a girl’s genitalia, as referenced in the Schedule to the Regulations. The 2003 Act does not contain a section 23.



This error is also in the Welsh text.

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

The reference to section 4 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(d) of Schedule 3 to the Regulations is incorrect.

Section 4 of the 2003 Act makes provision relating to the extra-territorial nature of offences committed under the 2003 Act.

However, paragraph 1(16)(d) of Schedule 3 refers to the offence of “failing to protect a girl from risk of female genital mutilation”, which is section 3A of the 2003 Act.

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

Paragraph 2(6)(c) to Schedule 3 refers to “offences relating to private fostering” within section 15 of the Foster Children (Scotland) Act 1984 (the “1984 Act”).

Section 15 of the 1984 Act is entitled ‘Offences related to foster children’.

Our understanding is that ‘private fostering’ has a distinct meaning, generally referring to fostering arrangements made without the involvement of local authorities.

Section 15 of the Act does not seem to encompass such arrangements, and the inclusion of the word ‘private’ in paragraph 2(6)(c) to the Regulations may cause confusion.

A Welsh Government response is requested to clarify.

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

The statutory reference in paragraph 3(9) of Schedule 3 to the Regulations is incorrect.

The provision cites the Sexual Offences (Northern Ireland) Order 2009. As far as can be ascertained, there is no such order from 2009

The Welsh text refers to the Sexual Offences (Northern Ireland) Order 2008 (SI. 2008/1769), which appears to be the correct reference.

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

The reference to “Jersey Law 1969” in paragraph 4(a) of Schedule 3 to the Regulations is inaccurate and incomplete. It should state the “Children (Jersey) Law 1969”.

### **Merits Scrutiny**

The following 5 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



**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.**

The Regulations revoke, replace and update the “2010 Regulations”<sup>1</sup>. One key policy change from the 2010 Regulations is in respect of disqualification from regulated childcare by association.

Under the 2010 Regulations, a person can be disqualified from working in childcare in Wales based on their association with someone who lives or works in their household who is disqualified (i.e. who has committed an offence or been made subject of orders or determinations falling within the scope of the 2010 Regulations).

The 2022 Regulations have been drafted to remove the disqualification by association provision in respect of registered persons providing childcare on non-domestic premises (normally a person providing care away from their home, such as in a day care setting).

The effect of this is that a person is not disqualified from providing regulated childcare at a non-domestic premises, notwithstanding that they live with someone who is disqualified. However, the [consultation document](#) for the Regulations states:

*“the provision will still apply to the majority of child minders who work from their home”.*

A Regulatory Impact Assessment in respect of this policy change (and others) is contained in the Explanatory Memorandum.

It notes that the level of risk to children’s safety arising from the association of a registered person in non-domestic settings “is considerably lower” than the risk posed in domestic settings. It also notes that such change will align policies across England and Wales

**13. 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 [consultation](#) was undertaken on a draft of the Regulations between 31 March – 23 June 2022. The Committee notes the following paragraphs from the Explanatory Memorandum:

*The consultation was drawn to the attention of a wide audience of key stakeholders including all registered childcare and play work providers, local authorities, the Children’s Commissioner for Wales, and third sector organisations representing the childcare and play work organisations. [...]*

*There was broad agreement to all the proposals in the consultation. No amendments were considered necessary to the Regulations. [...]*

**14. 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 Committee notes certain concerns about the accessibility of the Regulations

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<sup>1</sup> The Child Minding and Day Care (Disqualification)(Wales) Regulations 2010





Users of the Regulations must check the Schedules to ascertain which orders, determinations or offences disqualify them from being involved in regulated childcare in Wales. Generally, the entry listed in the Schedules clearly identify the disqualifying provision. For example:

*"a refusal of P's application for registration **under section 13** of the Care Standards Act 2000" [emphasis added]*

However, a reference to the relevant sections of each legal instrument has not been included for every entry. One example is paragraph 15 of Schedule 1 to the Regulation. This provides that a person is disqualified if they have been subject to:

*"A fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968".*

This Act contained 182 sections. By not expressly inserting the relevant section number under which such orders were made, it is challenging for the reader to identify the relevant provisions of the cited Act. In this particular example, the difficulties are compounded as the relevant provisions have subsequently been repealed and may not be accessible without specialist legislative software.

We also note accessibility concerns in respect of citing legal instruments from the Channel Islands and the Isle of Man.

One particular example is in respect of paragraph 23(f) of Schedule 1 which refers to the Children and Young Persons Act 2001. The Regulations state that this is an "Act of Tynwald". The first time this phrase is used, we consider it would be useful to assist the reader by adding a footnote explaining this means an Act passed by the Isle of Man parliament. Further, as the relevant provisions of this Act have been repealed, they are not easily accessible.

**15. 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 40 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.

**16. 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 the Explanatory Note does not form part of these Regulations themselves, it is unclear whether a paragraph outlining regulation 9 is accurate.

Under regulation 9, a person is not disqualified from registering as a child minder or from providing day care if they receive a waiver by way of written consent, and such written consent has not been withdrawn.



The Explanatory Note states:

*Regulation 9 does not apply where the disqualification arises from inclusion on List 99 or the list kept under section 1 of the Protection of Children Act 1999, being barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 or where a court has ordered that a person must not work in contact with children following a conviction for certain offences against children.*

We interpret 'does not apply' in this context to mean that waivers are not permissible where a person has been subject to one of these outcomes.

However, our understanding of regulation 9 is that waivers are permissible in relation to all of these outcomes, except in relation to certain offences against children under the Criminal Justice and Court Services Act 2000 (as set out in regulation 9(2)).

A Welsh Government response is requested to clarify.

### **Welsh Government response**

A Welsh Government response is required in relation to all reporting points, save for points 12 and 13.

### **Committee Consideration**

The Committee considered the instrument at its meeting on 7 November 2022 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022**

### **Technical Scrutiny points**

The Committee has raised eleven points under Standing Order 21.1 in respect of this instrument.

Individual responses are provided below to each of the points raised. Welsh Government has determined, in light of the number and nature of the issues, to remake the Regulations to address the points raised. A further set of Regulations will be laid which will come into force immediately after this set which will revoke and replace them.

### **Technical Scrutiny point 1**

#### **Response**

Section 30(1) of the Criminal Justice and Court Services Act 2000 was used as the reference point to explain the extent of the meaning of “guardianship” in the 2010 regulations although it was already repealed at that time.

The definition of “guardianship order” in section 30(1) of the Criminal Justice and Court Services Act 2000 is a useful reference point notwithstanding its repeal because, as well as including reference to the most commonly understood form of guardianship order under the Mental Health Act 1983, it also includes reference to the much rarer forms of guardianship under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. Even though each of these three Acts has been repealed in its entirety by the Armed Forces Act 2006, the saving is an indicator that there is still potential for orders made under them to be live. Section 30 is an interpretation section so was not itself included in the saving.

Welsh Government acknowledges that it may be more accessible to refer directly to other legislative provisions which are included within the scope of a term’s meaning, even if they are repealed, rather than through a secondary reference which is itself repealed.

### **Technical Scrutiny point 2**

#### **Response**

We acknowledge that there are four separate paragraphs (a) in regulation 2(1) of the Child Minding and Day Care (Wales) Regulations 2010. However, as only one paragraph (a) includes the year “2010” (or indeed, any date), it is considered that the reference to be substituted by paragraph 12(2) is unambiguous and does provide legal certainty. Welsh Government respectfully queries whether it is correct to raise this point under standing order 21.2 (vi) which refers to defective drafting or drafting which fails to fulfil statutory requirements.

However, Welsh Government acknowledges that it may provide greater assistance to the reader to identify the particular definition within an unnumbered list to indicate where the amendment is to be made.

### **Technical Scrutiny point 3**

#### **Response**

Welsh Government agrees that absence of a reference to an order under section 20A CSA 2000 as a disqualifying order is an omission and will take steps to correct this.

### **Technical Scrutiny point 4**

#### **Response**

The Welsh Government acknowledges the recommendation in favour of standardisation of translation of "*gross indecency*".

"*Anwedduster garw*" has been used as the means of translating "*gross indecency*" in the 2010 Regulations and is the suggested translation in separate sources which suggests that this translation is both correct and acceptable. However, Welsh Government notes that "*anwedduster difrifol*" has been used in more recent Regulations in 2019.

We have raised this matter with professional colleagues concerned with legislative translation but in the short space of time between receiving the legal adviser's report and drafting a response colleagues have not been able to give the matter full consideration. Welsh Government is content to feed back to the committee once consideration has been given and a view reached.

### **Technical Scrutiny point 5**

#### **Response**

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct the Welsh text.

### **Technical Scrutiny point 6**

#### **Response**

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct the Welsh text.

### **Technical Scrutiny point 7**

#### **Response**

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct it.

### **Technical Scrutiny point 8**

#### **Response**

The Welsh Government agrees with the point and will take steps to correct the reference so that it refers to section 3A Female Genital Mutilation Act 2003 (offence of failing to protect a girl from risk of genital mutilation).

### **Technical Scrutiny point 9**

#### **Response**

The legal adviser's comment that "private fostering" generally refers to fostering arrangements made without the involvement of local authorities is correct and it is correct that the section heading for section 15 of the Foster Children (Scotland) Act 1984 ("the 1984 Act") is "Offences related to foster children" without indicating any limitation of the scope of the section to private fostering alone.

However, the drafting of the 1984 Act is done in such a way that all children of school age who are cared for by someone other than a parent or guardian are termed "foster children" (see section 1) and section 2 then exempts nearly all the sorts of foster children other than those who, in England and Wales, would be referred to as children who are "privately fostered". The inclusion of the word "private" will we think assist a reader familiar with the terminology used in England and Wales law to understand that the offences in question are those which relate to "private fostering" as understood in this jurisdiction.

### **Technical Scrutiny point 10**

#### **Response**

The Welsh Government is grateful to the LJCC for highlighting this point and will take steps to correct the English text to make reference to Sexual Offences (Northern Ireland) Order 2008.

### **Technical Scrutiny point 11**

#### **Response**

The Welsh Government thanks the LJCC for raising this point. Welsh Government will take steps to amend the reference to Children (Jersey) Law 1969.

### **Merit Scrutiny points**

The Committee has raised five points under Standing Order 21.13 in respect of this instrument; three of which require a response.

### **Merit Scrutiny point 14**

#### **Response**

Welsh Government acknowledges that it would provide greater assistance to the user of the legislation to identify the particular section numbers under which the orders in question are

made. References to the appropriate section number will be made at the same time that other matters requiring correction are addressed.

The Welsh Government agrees that inserting a footnote to explain that an “Act of Tynwald” means an Act passed by the Isle of Man Parliament would be helpful to the reader.

### **Merit Scrutiny point 15**

#### **Response**

Whilst footnotes don't have legal effect, the Welsh Government acknowledges the importance of ensuring that footnotes are accurate to ensure they are of assistance to the reader.

### **Merit Scrutiny point 16**

#### **Response**

The exclusion from the waiver procedure under regulation 9(2) applies in relation to persons who have been convicted of offences against children as defined in section 26(1) of the Criminal Justice and Court Services Act 2000 where the offence itself has since been repealed. Certain of those persons would, in addition to any other sentence, have been the subject of a disqualification order imposed by the court.

It is accepted that the explanatory note is not accurate because persons who were the subject of disqualification orders under sections 28(4), 29(4) or 29A(2) would not necessarily be on one or other of the lists kept by the Secretary of State and others who were on those lists would not necessarily have been subject to disqualification orders made by the court.

## **ADDENDUM TO GOVERNMENT RESPONSE: The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022**

On 7 November 2022, the Government submitted a response to the draft LJCC report dated 31 October 2022 in respect of the above Regulations.

The response given in relation to Technical Scrutiny point 4 indicated that further feedback would be provided to the committee once further consideration of the issue raised had taken place. The full response given in relation to Technical Scrutiny point 4 is reproduced below for ease of reference:

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

#### ***Response***

*The Welsh Government acknowledges the recommendation in favour of standardisation of translation of “gross indecency”.*

*“Anwedduster garw” has been used as the means of translating “gross indecency” in the 2010 Regulations and is the suggested translation in separate sources which suggests that this translation is both correct and acceptable. However, Welsh Government notes that “anwedduster difrifol” has been used in more recent Regulations in 2019.*

*We have raised this matter with professional colleagues concerned with legislative translation but in the short space of time between receiving the legal adviser’s report and drafting a response colleagues have not been able to give the matter full consideration. Welsh Government is content to feed back to the committee once consideration has been given and a view reached.*

Relevant colleagues concerned with legislative translation have now had an opportunity to fully consider this issue and concluded in favour of using ‘*anwedduster difrifol*’ as the standard translation of ‘*gross indecency*’. The term will be added to the Translation Service online terminology database – TermCymru - as the standard translation of ‘*gross indecency*’ to ensure consistent use of the term in the future.



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

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**TITLE**            **The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022**

**DATE**            **21 November 2022**

**BY**                **Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd**

Members of the Senedd will wish to be aware that I have granted consent for the Secretary of State to exercise a delegated legislative power in a devolved area in relation to Wales.

This Written Statement has, therefore, today been laid before the Senedd in accordance with Standing Order 30C.

Members of the Senedd will also wish to be aware that this Written Statement replaces the one laid in error on 21 October of the same title.

The former Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, requested consent to make The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022.

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.

### **The purpose of the amendments**

The Regulations propose amendments to retained direct European Union (EU) law relating to official controls on imports to Great Britain (GB) of animals and animal products, plant products (including food) as well as rules on animal health and welfare, following the United Kingdom's withdrawal from the EU. Such amendments are necessary to ensure that the laws operate effectively in the domestic context and to safeguard human and animal health. Part 5 of the above titled SI also makes changes to the Plant Varieties and Seeds Act 1964,



which is subject to the Statutory Instrument Consent Motion procedure in accordance with Standing Order 30A.

The SI also makes the following amendments:

- Part 2 of this instrument concerns corrective amendments to Regulation (EU) No 2016/2031.
- Part 3 consists of several amendments to the Official Controls Regulations (Regulation (EU) No 2017/625).
- Part 4 addresses minor operability amendments to other retained EU Law:
  - Amendment of Regulation (EC) No 999/2001.
  - Amendment of Council Regulation (EC) No 1/2005.
  - Amendment of Annex 2 to Commission Decision 2007/777/EC.
  - Amendment of Annex 1 to Commission Regulation (EC) No 798/2008.
  - Amendment of Annex 1 to Commission Regulation (EC) No 119/2009.
  - Amendment of Commission Implementing Regulation (EU) 2020/625.

It also makes changes to the following legislative regulations:

- Part 6 consists of amendments to The Trade in Animals and Related Products (England) Regulations 2011; and Animal Health (Miscellaneous Fees) (England) Regulations 2018.

The Regulations were laid in draft before the UK Parliament on 20 October 2022 and are expected to come into force on 13 December 2022:

<http://www.legislation.gov.uk/id/ukdsi/2022/9780348239911>.

### **Impact on competence**

The SI has no impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

### **Why consent has been given**

The SI addresses minor EU exit related deficiencies, further deficiencies not anticipated at the time of withdrawal from the EU and ensures the functioning of a GB-wide imports regime. For these reasons, for efficiency and expediency, and to ensure consistency and coherence of the statute book, I consider it appropriate to consent to the above titled SI. I do so whilst reserving the ability to diverge in future as per our devolved competence.



Ein cyf/Our ref MA/LG/3455/22

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

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

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)  
[SeneddEconomy@senedd.wales](mailto:SeneddEconomy@senedd.wales)

21 November 2022

Dear Huw and Paul,

Huw, thank you for your letter of 14 November. As you will both be aware on 18 October, I wrote to inform you I had granted consent for the UK Government to make [The Animals and Animal Health, Feed and Food, Plants and Plant Health \(Amendment\) Regulations 2022, \(the Regulations\)](#), which were laid in draft before the UK Parliament on 20 October and I laid a Written Statement in respect of the Regulations under Standing Order (SO) 30C on 21 October.

Following, subsequent review of the Regulations, I confirm, it is considered the Regulations are a "relevant Statutory instrument" for the purposes of SO 30A, as the proposed amendments to the Plant Varieties and Seeds Act 1964 contained in one provision in part 5, paragraph 20, of the Regulations, fall within the legislative competence of the Senedd. Accordingly, I also confirm a Statutory Instrument Consent Memorandum (SICM) ought to have been laid rather than the Written Statement in respect of this provision. I offer my sincerest apologies for this error.

I therefore, seek to correct the record and inform you I have withdrawn the original SO 30C Written Statement and have today laid a revised Written Statement under SO30C, and a SICM under SO30A before the Senedd in respect of the Regulations.

The link to the revised Written Statement can be found here:

<https://senedd.wales/media/15rdeu5j/ws-ld15411-r-e.pdf>

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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 link to the SICM can be found here: <https://senedd.wales/media/kxunirmr/sicm-ld15473-reg-e.pdf>

In relation to the provisions of the UK SI that you will consider under SO 30C, as originally set out in my letter of 18 October, the Regulations propose amendments to retained direct EU law relating to official controls and animal and plant health, to ensure that the laws operate effectively following the withdrawal of the United Kingdom from the European Union.

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 and other devolved administrations where there is a clear rationale for doing so.

On this occasion, I am giving my consent to these Regulations, which make corrections and address operability matters in relation to, and on behalf of, Wales for reasons of efficiency and expediency, and to ensure consistency and coherence of the statute book. I do so whilst reserving the ability to diverge in future as per our devolved competence.

This instrument addresses minor EU exit related deficiencies, further deficiencies not anticipated at the time of withdrawal from the EU and ensures the functioning of a GB-wide import regime. It would therefore seem appropriate to exercise these functions jointly as they need to work for the whole of the UK, or Great Britain (where there is freedom of movement), to ensure there are common standards and to minimise disruptions to traders, local authorities, and inspection agencies alike.

Huw, I note the Legislation, Justice and Constitution Committee's comments regarding information provided to the Committee but not in the Written Statement. We will ensure all relevant information provided to committees is included in Written Statements in accordance with Standing Orders in the future.

In accordance with SO 30A any SICM may be considered by "the responsible committee", in this case, the Legislation, Justice and Constitution Committee (LJCC) and such other committees as the LJCC invites to consider the SICM. SO 30A further provides the committee(s) must report to the Senedd within 35 days of the SICM being laid. You will wish to be aware the draft Regulations are subject to the affirmative procedure in the UK Parliament and are expected to come into force on 13 December. In this instance, therefore, given the delay in the laying of the SCIM, there isn't sufficient time before the Regulations are due to come into force for the 35-day reporting period to be observed. I can only apologise again for this. Consequently, I would ask, therefore, should your Committees wish to consider the SICM, you please report to the Senedd no later than 12 December.

I am not minded to table a motion for a debate in plenary about this Statutory Instrument. I reached this decision on the basis that this instrument addresses minor European Union Exit related deficiencies, further deficiencies not anticipated at the time of withdrawal from the EU and ensures the functioning of a GB-wide import regime. It would seem appropriate for a single set of GB wide amendments to be made as they need to work for the whole of the UK, or Great Britain (where there is freedom of movement), to ensure there are common standards and to minimise disruptions to traders, local authorities, and inspection agencies alike. SO30A provides that any Member of the Senedd may table a motion for a debate on this Statutory Instrument after relevant Committees have reported.

I am copying this letter to the Llywydd as Chair of the Business Committee, as well as all Members of the Senedd.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

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

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **020 - [The Animals and Animal Health, Feed and Food, Plants and Plant Health \(Amendment\) Regulations 2022](#)**

*Laid in the UK Parliament: 20 October 2022*

#### **Sifting**

Subject to sifting in UK Parliament?	N/A
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	2 November 2022
Date of consideration by the House of Commons Statutory Instruments Committee	Unknown
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	1 November 2022

#### **Background**

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### **Summary**

These Regulations propose amendments to retained EU law relating to official controls on imports to Great Britain of animals and animal products, plant products (including food) as well as rules on animal health and welfare, and rules on the marketing of planting and propagating material, following EU Exit. The amendments are intended to ensure that the laws operate effectively in the domestic context in order to safeguard human and animal health.

For example, the Regulations:

- Make provision relating to penalties for failing to comply with plant health regulations.
- When the appropriate authority is able to act as a competent authority to carry out official controls, there will no longer be a need for the appropriate authority to designate itself as a competent authority (instead, the appropriate authority will, by default, be a competent authority).
- Transfer functions from the European Commission to domestic appropriate authorities. For example, appropriate authorities (the Welsh Ministers, in Wales) are given powers to make regulations to control biosecurity risks (but there is no obligation to do so).
- Extend the transitional periods relating to official controls to detect certain substances and residues in products of animal origin intended for human consumption.

### **Statement by the Welsh Government**

Senedd Legal Advisers agree with the general position set out in the Welsh Government's statement dated 21 November 2022 regarding the effect of these Regulations.

However, the written statement does not give practical examples (like those given above) of the changes being made by these Regulations. These Regulations make important changes to the law on animals, animal health, feed and food, plants and plant health, but they are described only in the most general and high level way in the written statement.

Note also that the original version of this statement was withdrawn, therefore this statement is a re-laid version. As regards the original version, LJC committee wrote to the Welsh Government, raising concerns that the original statement did not provide a helpful explanation of what the Regulations actually do. The re-laid statement still does not provide a helpful explanation.

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

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

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

### **Consent motion under Standing Order 30A.10**

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 21 November 2022, because the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, section 29 of the Plant Varieties and Seeds Act 1964).

In a letter to the LJC and ETRA committees dated 21 November 2022, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, says she is not minded to table a motion to debate the SICM in Plenary.



Llywodraeth Cymru  
Welsh Government

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

21 November 2022

Dear Huw

I am writing to give you early notification of an amending SI entitled the Food Supplement and Food for Specific Groups (Miscellaneous Amendments) Regulations 2022, which will be laid before UK Parliament on (14 December) to come into force on 18 January 2023, except for the amendment to update the unit of measurement used for copper in food supplements, which will come into force on 11 July 2024 to allow for an 18-month transition period.

The proposed SI will amend the following legislation to effect changes in Scotland, Wales and England.

- The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/651) as amended,
- Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009<sup>1</sup>,
- Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding<sup>Error!</sup>  
Bookmark not defined. and,

<sup>1</sup> Retained EU regulation as amended by The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 and 2020

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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.



- Commission Delegated Regulation (EU) 2016/128 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes<sup>Error! Bookmark not defined.</sup>


These amendments will:

- update the unit of measurement used for copper in food supplements;
- update the unit of measurement used for zinc in food supplements;
- update the forms of niacin which are permitted for use in the manufacture of food supplements to include nicotinamide riboside chloride;
- update the forms of magnesium which are permitted for use in the manufacture of food supplements to include magnesium citrate malate;
- update the forms of folate that are permitted for use in the manufacture of infant formula and follow-on formula (IFFOF) to include calcium L-methylfolate;
- update the forms of folate that are permitted for use in the manufacture of processed cereal-based foods and baby foods to include calcium L-methylfolate;
- standardise the definition of pesticide residues used in the regulations on IFFOF; and
- standardise the definition of pesticide residues used in the regulations on food for special medical purposes developed to satisfy the nutritional requirements of infants and young children (iFSMPs).

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility. In this circumstance, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

I have also sent a letter to the Chair of the Children, Young People, and Education Committee and Chair of Health and Social Care Committee.

Yours sincerely,



**Lynne Neagle AS/MS**

Y Dirprwy Weinidog Iechyd Meddwl a Llesiant  
Deputy Minister for Mental Health and Wellbeing



Llywodraeth Cymru  
Welsh Government

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

huw.Irranca-Davies@senedd.wales

23 November 2022

Dear Huw,

I wish to inform the Committee of the intention to consent to the UK Government making and laying The Plant Health (Amendment) (EU Exit) Regulations 2022 by 20 December.

On 7 November I have received a letter from Defra Minister of State, Mark Spencer MP, seeking consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales.

The Regulations enable the establishment of demarcated areas outside of the country in which plant pests or diseases have been found. These are important biosecurity measures which are put in place during plant pest or disease outbreaks which restrict the movement of timber, plants for planting or forestry material. This is needed as current legislation does not allow a demarcated area to be established based on the findings of a pest within another GB territory. This means when one nation has a plant pest or disease outbreak alongside the border, currently the other nation has no power to bring in demarcated areas as a biosecurity measure.

In this case the provisions could not be made by Welsh Ministers in exercise of our own powers as the power to amend is consequential on an amendment being made by the Secretary of State. As the Welsh Regulations are made under section 2(2) of the European Communities Act 1972, under section 8 of the European Union (Withdrawal) Act (EUWA) 2018 these Regulations can be amended by a Minister of the Crown. The Plant Health (Amendment) (EU Exit) Regulations 2022 are being made under section 8(1) of EUWA and Paragraph 21 of Schedule 7 of EUWA provides power allowing consequential amendments to be made to regulations as necessary (in this case, following the amendment of the Plant Health Regulations). The Regulations will extend to England, Scotland and Wales.

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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.

Since receipt of the letter additional provisions have been included to correct minor drafting errors within The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 relating to Lebanese Potatoes not for planting.

There is an urgent need to introduce this legislation, to protect biosecurity in Wales. I consider this is the most appropriate way to give effect to the necessary changes. In accordance with Standing Order 30C, I will lay a Written Statement before the Senedd within three working days of the Regulations being laid before the UK Parliament.

I have written similarly to the Chair of the Climate Change, Environment and Infrastructure Committee, Llyr Gruffydd MS.

Yours sincerely,

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**

# Agenda Item 0.3

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



Llywodraeth Cymru  
Welsh Government

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

24 November 2022

Dear Huw,

Further to my recent letter advising you of the Finance: Interministerial Standing Committee (F:ISC) meeting, which I attended on 20 October virtually, I would like to briefly report on the discussions.

John Swinney MSP, Deputy First Minister (Scottish Government), chaired the meeting on behalf of Kate Forbes MSP, Finance and Economy Minister (Scottish Government), who is on maternity leave. I attended alongside Rt Hon Edward Argar MP, the then Chief Secretary to the Treasury, and Conor Murphy MLA, Minister of Finance (Northern Ireland Executive).

The meeting focused on the current economic and fiscal crisis. However, the meeting was cut short due to the Prime Minister resigning during the meeting. In the short time available, I pressed for early transparency regarding the UK Government's plans noting the implications for our own Budget. I strongly opposed cuts to public spending, advocated for infrastructure investment and emphasised that the UK Government must deliver on its commitment to support the most vulnerable in society, including by increasing benefits in line with inflation.

It was not possible to reschedule the F:ISC meeting ahead of the UK Government's Autumn Statement, and I will inform the Committee of the next meeting date when it is confirmed.

The Committee may also wish to be aware that I had written to the Chancellor ahead of the UK Autumn's Statement to set out the priorities for Wales, including protecting public services, targeting support to the most vulnerable and boosting economic growth through capital stimulus and green investment. I reiterated these points when I met with the Chief Secretary to the Treasury, John Glen MP, on 14 November.

Yours sincerely,

**Rebecca Evans AS/MS**  
Minister for Finance and Local Government

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

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

18<sup>th</sup> November 2022

Dear Huw

Thank you for your letter of 2 November 2022, regarding the Energy Prices Bill and the process of inter-governmental working prior with the UK Government.

There was very limited opportunity to engage the UK Government ahead of introduction of the Bill. The announcement on 8 September by the then Prime Minister, the Rt Hon Liz Truss MP, of the support to be provided to deal with the energy prices, was made without prior discussion at official or Ministerial level. In mid-September, officials were made aware of the need for new legislation to underpin the support announced. There was no detail available at that time.

The outline contents of the Bill was shared with officials on 6 October and the Bill was sent to Ministers and officials on the evening of 11 October, ahead of its introduction into the House of Commons on 12 October. We received a second letter, outlining the UK Government's analysis of the territorial extent of provisions and their assessment of areas within devolved competence, on 12 October. Welsh Government officials made it clear that the lack of advanced sight of the Bill would make it challenging for Ministers and Members of the Senedd to scrutinise the content in line with the usual practice for the legislative content process.

With regards consultation following the Bill's introduction, I responded to the Secretary of State's letter on 18 October, seeking consultation on any measures that engaged the devolution settlement. My officials were also in contact with the UK Government policy teams seeking further detail of the mechanisms being introduced. However, the Bill's passage through the UK Parliament was extremely swift. Following its introduction on 12 October, it was debated for one day in each House before receiving Royal Assent on 25 October. Consequently, there was no opportunity to influence the content of the Bill.

Whilst there was an urgency around this Bill, the pattern of behaviour from UK Government has been similar for other Bills introduced by this UK Government. The lack of meaningful consultation or opportunity to influence drafting is unacceptable. The First Minister raised the UK Government's approach to the Sewel Convention and devolved affairs at his first meeting with the Prime Minister, and we will continue to press UK Government to engage with us effectively.

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

I appreciate the frustration expressed by Members of the Senedd about the lack of time afforded to Members to meaningfully scrutinise and influence UK legislation. We share that frustration, and we will continue to make representation to the UK Government in anticipation the change in leadership may result in a more open and constructive intergovernmental relationship going forward.

Yours sincerely



**Julie James AS/MS**

Y Gweinidog Newid Hinsawdd

Minister for Climate Change

Julie James MS  
Minister for Climate Change

2 November 2022

Dear Julie

### Legislative Consent: Energy Prices Bill

At our meeting on 24 October 2022, we considered the Legislative Consent Memorandum for the Energy Prices Bill, and the letter sent by the Minister for Rural Affairs and North Wales and Trefnydd to the Llywydd.

During the plenary debate on the legislative consent motion for the Bill you said, when questioned, that the Welsh Government had no sight of the Bill prior to it being published.

In her letter to the Llywydd, the Minister for Rural Affairs and North Wales and Trefnydd stated that the Welsh Government did not have sight of the Bill until the evening before it was introduced to the House of Commons.

We note that, in her letter to the Llywydd, the Minister states that "The regrettably limited opportunity for scrutiny in the Senedd arising from the UK Government's timetable and the lack of advance sharing of the Bill, will be pursued further with the UK Government."

We would be grateful if you would confirm:

- the exact nature of any intergovernmental working which took place ahead of the Bill's introduction to the UK Parliament, including when the Bill was shared with Welsh Government ministers and officials;
- what representations have been made to the UK Government as regards the lack of opportunity for scrutiny of the Bill by the Senedd during the legislative consent process and the lack of advance sharing of the Bill.

During the plenary debate on the legislative consent motion you also said:

*"Regarding the devolution of constitutional issues, the Bill intrudes upon devolved matters by conferring functions on the Secretary of State in devolved areas. As such, this approach is inconsistent with our principles for consenting to UK Government Bills. I have therefore called on the UK Government to consult on any measures that impact on devolved areas. While I acknowledge that taking action forward on energy prices is a matter of urgency, implementation must be done through effective consultation to ensure that the responsibilities of this Senedd are respected."*

We would be grateful if you would confirm:

- the specific details of what has been requested of the UK Government as regards a consultation mechanism before measures are taken which impact on devolved areas;
- whether the Bill has been amended to include provision for such a consultation process.

I am copying this letter to the First Minister of Wales, and to the Minister for Rural Affairs and North Wales and Trefnydd.

I would be grateful to receive your response by 16 November 2022.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



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

Agenda Item 7.2



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: RE/787/22

Elin Jones MS  
By Email: Llywydd@senedd.wales

18 November 2022

Dear Llywydd,

### Procurement Bill

The Procurement Bill (“the Bill”) was introduced into the UK Parliament on 11 May 2022 and the passage of the Bill started in the House of Lords. I laid a Legislative Consent Memorandum (LCM) in the Senedd on 9 June. The UK Government tabled amendments for consideration during the House of Lords committee stage and I laid a supplementary LCM on 11 July.

UK Government will be tabling further amendments for consideration during the House of Lords report stage. Sittings for report stage will take place on 28 and 30 November and the amendments will be tabled on two separate dates. The first batch of amendments was tabled on 15 November and we have been informed that the second batch will be tabled on or by the 21 November.

We will prepare a single supplementary LCM dealing with both batches of amendments and aim to lay it by 5 December which is two weeks after the tabling of the second batch of UK Government amendments. We acknowledge that this will mean that the supplementary LCM will be laid more than two weeks after the tabling of the first batch of amendments.

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

Yours sincerely,

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

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

Chair of the Legislation, Justice and Constitution Committee,

21 November 2022

Dear Huw,

Thank you for your report on the Legislative Consent Memoranda for the UK Infrastructure Bank Bill.

I appreciate the work the Committee has undertaken in scrutinising the LCMs on this Bill, and I note we share a number of the same concerns.

I continue to believe that the Bank could potentially play an important role in scaling up and accelerating investment to support Wales' transition to net zero. We have therefore been engaging actively with the UK Government to bring forward sensible amendments to the Bill – amendments that would ensure that devolution is respected.

I note Conclusion 1 in your Report, where we agree that the Senedd's consent is needed for the entirety of the Bill.

I note Conclusions 2 and 3 of your Report and share your frustrations that the Bill as introduced contained clauses of constitutional concern, and that such concerns, which were foreseeable, were not addressed properly prior to the introduction of the Bill in the UK Parliament.

I note Recommendation 1, which queries why we have not escalated matters via the intergovernmental structures including the reformed dispute resolution procedure. Since the draft Bill was introduced, there has been constructive dialogue with HM Treasury, which is ongoing, in respect of possible amendments to address our concerns. With that in mind, it has not been necessary to escalate matters. I do share your frustration that we are yet to come to an agreed position, but during the past few months there has been significant instability at Westminster which has hampered the progress of our discussions towards any prospective agreement. This instability has resulted in delays to the Bill's passage through the Commons due to the changes in UK ministerial responsibilities, and other announcements such as the Growth Plan 2022. I understand that the Bill will now progress to Committee Stage on 22 November. The Welsh Government will continue to engage with UK Government and seek appropriate amendments that respect devolution.

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.

I note Recommendations 2 and 3 of your Report. I can assure you that any amendments to the Bill will result in a further SLCM and an opportunity for the Committee to scrutinise and report further on the matter. I do appreciate that this may be frustrating, but as negotiations are ongoing, I cannot at this time be more specific about the exact nature of the amendments that could be introduced, save that to observe that I and my officials have been clear that issues of constitutional concern must be addressed in a manner that is satisfactory to me and ultimately to the Senedd.

I can confirm that the concessions we are seeking are amendments to the face of the Bill.

I can also confirm that I, alongside the Counsel General and Minister for the Constitution, have actively directed negotiations with HM Treasury through my officials. I also raised the Bill during the Finance Inter-Ministerial Standing Committee on June 15, where I outlined our concerns with the Bill to the Chief Secretary to the Treasury. I can assure you that I ultimately will make the final decision about what is to be recommended to the Senedd.

Yours sincerely,

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

**Rebecca Evans AS/MS**

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

# Agenda Item 7.4

**Pwyllgor yr Economi,  
Masnach a Materion Gwledig**

**Economy, Trade and  
Rural Affairs Committee**

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Mark Drakeford MS  
First Minister

21 November 2022

Dear Mark,

I am writing following the Legislation, Justice and Constitution Committee's Report on International Agreements Considered on 26th September 2022. The report discussed, amongst other international agreements, the Second Additional Protocol to the Council of Europe Convention on Cybercrime and highlights your role in relation to "national security, including counterterrorism and cyber security".

Cyber security is a fast developing area with a lot of opportunity. I am looking forward to following the development of the new South Wales Cyber Security Hub. A strong cyber security sector will bring high quality jobs and support a host of innovative businesses.

As well as being a burgeoning, emerging industry in its own right, cyber security is of course also absolutely vital for securing our businesses and public sector bodies against potential harm. As such it is vital that we ensure Wales has a well-skilled cyber security workforce.

Following on from the LJC report I would be keen to hear your views on the Second Additional Protocol to the Council of Europe Convention on Cybercrime.

I would also like some more detail on the way the Welsh Government is supporting and promoting cyber security and the wider industry. Please can you let me know:

- In addition to the financial support for the hub, what work has the Welsh Government undertaken to upskill our workforce around real risk, governance and policy cyber security skills?

- Does Welsh Government have any plans to help boost the employability of people in the cyber security industry post qualification?
- Currently the cyber security sector is male dominated, is or will the Welsh Government be taking any action to encourage more women into the sector?

I also note that the UK Government has ordered Nexperia BV to sell 86% of its share in Nexperia Newport Limited, the Semi-Conductor manufacturer in Newport formerly known as Wafer Fab. The order cited two reasons for the forced sale:

- Technology and know-how that could result from a potential reintroduction of compound semiconductor activities at the Newport site, and the potential for those activities to undermine UK capabilities; and
- The location of the site could facilitate access to technological expertise and know-how in the South Wales Cluster ("the Cluster"), and the links between the site and the Cluster may prevent the Cluster being engaged in future projects relevant to national security.

I note from the news coverage the Welsh Government said the UK Government's announcement had brought "welcome clarity" and it's priority is to "safeguard jobs." As you will now have had time to consider the facts of the matter please could you set out any implications as you see them of this sale and any actions the Welsh Government will be taking as a result?

I have copied this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee and Delyth Jewell MS, Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Kind regards,



Paul Davies MS

Chair: Economy, Trade and Rural Affairs Committee

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



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

7 October 2022

Dear Paul

## Second Additional Protocol to the Council of Europe Convention on Cybercrime

You will be aware that the Legislation, Justice and Constitution Committee is responsible for monitoring the implementation of non-trade international agreements in the Sixth Senedd.

During our meeting on 26 September 2022 we considered the Second Additional Protocol to the Council of Europe Convention on Cybercrime.

The purpose of this agreement is to enable relevant authorities in one Party to the Convention to directly cooperate with authorities and service providers in another Party, including to expediate the provision of stored computer data via a 24/7 contact point. This builds on the original Convention, which was ratified in 2011. It will also provide a legal basis for enhanced cooperation in criminal investigations and proceedings and to the collection of electronic evidence for criminal offences relating to computer systems and data.

During our consideration of the Convention we agreed to draw it to the attention of both the Culture, Communication, Welsh Language, Sport and International Relations Committee and the Economy, Trade and Rural Affairs Committee should you wish to request more information from the Welsh Government on its effect on areas within your remits.

Our latest report is enclosed for your information.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

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