

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Committee Room 4 – Tŷ Hywel	P Gareth Williams
Meeting date: 16 January 2023	Committee Clerk
Meeting time: 12.15	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

12.15

2 Welsh Government's Draft Budget for 2023–24 (spending in relation to justice) and general scrutiny: Evidence Session with Counsel General and Minister for the Constitution

12.15 – 13.45

(Pages 1 – 41)

Attached Documents:

LJC(6)–02–23 – Paper 1 – Research Briefing

LJC(6)–02–23 – Paper 2 – Paper from the Counsel General and Minister for the Constitution, 21 December 2022

LJC(6)–02–23 – Paper 3 – Letter to the Counsel General and Minister for the Constitution, 23 November 2022

Break

13.45 – 13.50

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

13.50 – 13.55

(Pages 42 – 43)

Attached Documents:

LJC(6)–02–23 – Paper 4 – Draft report



Made Negative Resolution Instruments

3.1 SL(6)302 – The National Health Service (Pharmaceutical Services) (Wales) (Amendment) Regulations 2022

3.2 SL(6)311 – The Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2023

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

13.55 – 14.00

Affirmative Resolution Instruments

4.1 SL(6)301 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2023

(Pages 44 – 45)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-02-23 – Paper 5 – Draft report

Made Affirmative Resolution Instruments

4.2 SL(6)307 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022

(Pages 46 – 49)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-02-23 – Paper 6 – Draft report

LJC(6)-02-23 – Paper 7 – Letter from the Minister for Finance and Local Government to the Llywydd, 13 December 2022

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

14.00 – 14.05

5.1 SL(6)299 – The Seed (Equivalence) (Amendment) (Wales) Regulations 2022

(Pages 50 – 52)

Attached Documents:

LJC(6)-02-23 – Paper 8 – Report

LJC(6)-02-23 – Paper 9 – Welsh Government response

6 Written Statements under Standing Order 30C

14.05 – 14.10

6.1 WS-30C(6)022 – The Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022

(Pages 53 – 58)

Attached Documents:

LJC(6)-02-23 – Paper 10 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 20 December 2022

LJC(6)-02-23 – Paper 11 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 20 December 2022

LJC(6)-02-23 – Paper 12 – Commentary

7 Common frameworks

14.10 – 14.15

7.1 Correspondence from the Minister for Climate Change to the Climate Change, Environment, and Infrastructure Committee: Waste and Resources common framework

(Page 59)

Attached Documents:

LJC(6)-02-23 – Paper 13 – Letter from the Minister for Climate Change to the Climate Change, Environment, and Infrastructure Committee, 4 January 2023

8 Inter-Institutional Relations Agreement

14.15 – 14.20

8.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Organic Production (Amendment) (No. 2) Regulations 2022

(Pages 60 – 63)

Attached Documents:

LJC(6)-02-23 – Paper 14 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 11 January 2023

LJC(6)-02-23 – Paper 15 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022

9 Papers to note

14.20 – 14.25

9.1 Correspondence from the Business Committee to the Local Government and Housing Committee: Legislative Consent Memoranda

(Pages 64 – 67)

Attached Documents:

LJC(6)-02-23 – Paper 16 – Letter from the Business Committee to the Local Government and Housing Committee, 11 January 2023

LJC(6)-02-23 – Paper 17 – Letter from the Local Government and Housing Committee to the Business Committee, 8 December 2022

**9.2 Correspondence from the Counsel General and Minister for the Constitution:
Historic Environment (Wales) Bill**

(Pages 68 – 69)

Attached Documents:

LJC(6)–02–23 – Paper 18 – Letter from the Counsel General and Minister for the Constitution, 12 January 2023

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

14.25

**11 Welsh Government's Draft Budget for 2023–24 (spending in
relation to justice) and general scrutiny: Consideration of evidence**

14.25 – 14.40

12 Legislative Consent: Retained EU Law (Revocation and Reform) Bill

14.40 – 14.55

(Pages 70 – 90)

[Legislative Consent Memorandum: Retained EU Law \(Revocation and Reform\)
Bill](#)

[Supplementary Legislative Consent Memorandum: Retained EU Law
\(Revocation and Reform\) Bill](#)

Attached Documents:

LJC(6)–02–23 – Paper 19 – Legal Advice Note

LJC(6)–02–23 – Paper 20 – Letter from the Counsel General and Minister for the Constitution, 12 January 2023

LJC(6)–02–23 – Paper 21 – Letter to the Counsel General and Minister for the Constitution, 14 December 2022

LJC(6)–02–23 – Paper 22 – Letter to the Business Committee, 21 December 2022

LJC(6)-02-23 – Paper 23 – Letter to UK Government Ministers, 21 December 2022

13 Supplementary Legislative Consent Memoranda (Memoranda No. 3 and No. 4) on the Online Safety Bill

14.55 – 15.05

(Pages 91 – 95)

Attached Documents:

LJC(6)-02-23 – Paper 24 – Legal Advice Note

14 Agriculture (Wales) Bill: Draft report

15.05 – 15.30

(Pages 96 – 114)

Attached Documents:

LJC(6)-02-23 – Paper 25 – Draft report

LJC(6)-02-23 – Paper 26 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 December 2022

LJC(6)-02-23 – Paper 27 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022

LJC(6)-02-23 – Paper 28 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 25 November 2022

15 Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the UK Infrastructure Bank Bill: Draft report

15.30 – 15.40

(Pages 115 – 121)

Attached Documents:

LJC(6)-02-23 – Paper 29 – Draft report

16 Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill: Draft report

15.40 – 15.50

(Pages 122 – 123)

Attached Documents:

LJC(6)-02-23 – Paper 30 – Draft report

LJC(6)-02-23 – Paper 31 – Letter from the Business Committee to the Minister for Rural Affairs and North Wales, and Trefnydd, 11 January 2023

17 Legislative Consent Memorandum on the Shark Fins Bill: Draft report

15.50 – 16.00

(Pages 124 – 130)

Attached Documents:

LJC(6)-02-23 – Paper 32 – Draft report

18 Historic Environment (Wales) Bill : Detailed Committee Consideration proceedings in Committee (subject to the Initial Consideration debate)

16.00 – 16.15

(Pages 131 – 139)

Attached Documents:

LJC(6)-02-23 – Paper 33 – Briefing

19 Monitoring report

16.15 – 16.25

(Pages 140 – 153)

Attached Documents:

LJC(6)-02-23 – Paper 34 – Draft report

20 International agreements

16.25 – 16.30

(Pages 154 – 157)

Attached Documents:

LJC(6)-02-23 – Paper 35 – Draft report

Document is Restricted

Legislation, Justice and Constitution Committee

Date: 16 January 2022

Title: The Welsh Government's Draft Budget for 2023-24

1. Introduction

- 1.1. The Counsel General and Minister for the Constitution is attending the Legislation, Justice and Constitution Committee on 16 January to give evidence as part of the Committee's scrutiny of the Government's Draft Budget proposals for the forthcoming 2023-24 financial year.
- 1.2. The Chair's letter of 22 November to the Counsel General set out a number of areas where the Committee requested further detail on the Welsh Government's proposed spending in relation to justice and the accessibility of Welsh law, as detailed in the Annex to the letter. This paper sets out that further detail, utilising the headings as used in the Annex to the letter.

2. General

- 2.1. The schedule at [Annex 1](#) provides a breakdown of the Draft Budget proposals for 2023-24 by Main Expenditure Group ("MEG"), Spending Programme Area ("SPA") and Budget Expenditure Line ("BEL") from which planned justice-related actions will be funded. The schedule provides a narrative description of the justice-related activity resourced by each BEL, together with a comparison of the allocation in the 2023-24 financial year with the previous financial year.
- 2.2. The 2023-24 Draft Budget is underpinned by difficult choices, containing several reductions in funding. Ministers have made difficult choices and are having to pass on cuts in funding in areas where ordinarily they would not wish to do so.
- 2.3. To enable the Welsh Government to protect key areas, a reprioritisation exercise has been undertaken to release funding from within existing plans and to re-focus the limited resources in the areas of greatest need. The intention is to ensure every pound invested makes the greatest positive impact. It is recognised in doing so, this will regrettably have negative impacts for those areas from which funding has been reprioritised.
- 2.4. Through using funding released from the reprioritisation exercise, together with some limited positive changes to our overall settlement as a result of the Autumn Statement, the Welsh Government has targeted additional allocations towards protecting frontline public services and delivering our Programme for Government commitments, helping those affected by the cost-of-living crisis and supporting our economy through recessionary times.

- 2.5. Turning to the level of information provided on planned spending on justice-related activity in the Draft Budget, the “Budget Process Protocol” (“the Protocol”) between the Senedd and the Welsh Government agreed by the Senedd on 21 June 2017 is the document that currently sets out the understanding between the Finance Committee and the Welsh Government on budgetary related matters. In accordance with the Protocol, the Draft Budget for 2023-24 sets out budget proposals for each portfolio at the BEL level.
- 2.6. Justice-related activity cuts across portfolios and is allocated funding from within a number of BELs across MEGs as detailed in the schedule at [Annex 1](#). In many cases, expenditure will largely be on costs of staff whose time is not precisely divided between justice and non-justice related activity, or forecasts of expenditure cannot be disaggregated in this way. The granularity of detail on budget allocations for justice-related activity does not, therefore, go beyond BEL level in the Draft Budget for 2023-24. This approach is consistent with the Protocol, and the structure and presentation of the Draft Budget for 2022-23 is therefore consistent with previous years’ budgets.
- 2.7. There has been a change in the description of the BEL that supports the Welsh Government’s justice transformation programme. Formerly the BEL for the budget allocated to the Commission on Justice in Wales (“the Thomas Commission”), the BEL now allocates the budget that resources the Justice Policy Division to take forward activity supporting the justice transformation agenda in Wales. This principally comprises of taking forward the Thomas Commission recommendations and the Programme for Government commitment to pursue the case for the devolution of policing and justice, together with co-ordinating leadership on justice activity across Government through supporting the Cabinet Sub-Committee on Justice. The BEL has therefore been renamed from “Justice Commission in Wales” to “Justice Transformation” to better reflect the purpose of the budgetary allocation.
- 2.8. The costs to be met from the Justice Transformation BEL are primarily staffing costs. This includes the costs of staff working on taking forward the recommendations of the Law Commission’s report on reform of devolved tribunals. However, this BEL is also expected to be used for commissioning external services such as research or analysis. For example, the Welsh Government has recently issued an invitation to quote for an assessment of need for solicitor apprenticeships in Wales. The costs of this work are expected to be met from the Justice Transformation BEL across the 22/23 and 23/24 financial years.
- 2.9. The Protocol acknowledges that the budget process is evolving, and that presentation of budget proposals will change. There is always more that can be done to improve transparency. As the Committee is aware, we intend to bring forward an annual report setting out progress against our *Delivering Justice for Wales* work programme. As part of this, we continue to explore whether there

are ways in which we can improve the level of granular information we can provide about justice expenditure across government.

3. Delivering Justice for Wales

3.1. The Committee asked for information on planned spending on the Law Council of Wales. While the Welsh Government worked with the legal sector to establish the Law Council of Wales, the Council is independent in its operation and it does not receive any funding from the Welsh Government. This reflects the importance of the Law Council having complete autonomy in determining and delivering its own work programme. Consequently, the Welsh Government is not responsible for any expenditure on this activity. It is therefore not possible to provide a breakdown of its planned spending for 2023-24. The Welsh Government continues to work in partnership with the Law Council and an update on that activity will be provided in the Delivering Justice for Wales annual report.

3.2. That aside, Delivering Justice for Wales sets out an ambitious forward work programme, covering 59 actions across 10 thematic areas. While many of these activities will have concluded by the end of 2023-24, other actions have a longer-term focus. As noted above, we intend to produce an annual report setting out progress against this work programme and are continuing to explore the extent to which we can provide meaningful detail on expenditure to date and planned expenditure going forward.

3.3. The schedule at [Annex 1](#) details proposed spending allocations in the Draft Budget for 2022-23 on justice programmes in partnership with the Ministry of Justice. These include the Women's Justice and Youth Justice Blueprints, the Partnership Agreement for Prison Health and offender learning.

3.4. The Justice Transformation BEL as set out in the schedule at [Annex 1](#) resources the tribunal reform project. The Welsh Government endorses the principle of the Law Commission's conclusions for reform of the Welsh Tribunals and other devolved tribunals in Wales and *Delivering Justice for Wales* set our intention to take forward structural reform of devolved tribunals to create a modernised tribunal system for Wales. A new, unified system of tribunals can only be put in place with primary legislation. The scheduling of that legislation is subject to its own separate processes and we are taking forward preparatory work ahead of that legislation being timetabled.

4. The Future of Welsh Law

4.1. As explained in my letter of 22 February, our work to deliver the legislative programme is an element of the work of the Government as a whole and this is the same for the accessibility of law programme – the total overall costs, including that of the Bill work, are met from across a number of portfolios as part

of the wider legislative activity of the organisation. The indicative costs of the additional staffing that were required to increase drafting and translation capacity, as well as other staff to work on the non-legislative projects, were set out in the Explanatory Memorandum to the Legislation (Wales) Bill.

- 4.2. In my recent annual report on “The Future of Welsh Law” programme I explained our early work on understanding the role that machine learning and artificial intelligence has shown there is scope for using emerging technology to help make information about the law more accessible and easier to understand in respect of specific issues (such as tax liabilities or housing rights).
- 4.3. We have allocated an indicative sum of £350,000 in the Draft Budget for 2023-24 to Canolfan Bedwyr of Bangor University for language technology work, which includes machine translation. Part of this funding will go towards continuing to gather training data to develop domain-specific machine translation for the justice domain which we started in the 2022-23 financial year.
- 4.4. Work on annotating Welsh law published on the legislation.gov.uk website is in its infancy but is progressing well. Much of the project to date has focussed on working with legislation.gov.uk to develop and test the new functionality and to undertake the necessary training. However, in the first two months of full rollout the small team within Welsh Government have brought all Acts of Senedd Cymru up to date in both languages and have now begun on Acts of the National Assembly. There are three Executive Officer grade staff and one Higher Executive Officer staff trained to work on annotation, and they perform this work alongside other duties, primarily work associated with making, registering and publishing subordinate legislation. We are trialling a number of ways of working to ensure progress on annotation can be maintained and the staff develop the range of skills necessary to perform this work effectively, but I am delighted with the progress made to date. I will ensure the Senedd is kept informed of their work.

Welsh Government's draft budget proposals for 2023-24 and allocation of resources to justice related activity

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
Central Services & Administration	External Bodies & Services	Justice Transformation	490	480	Co-ordinating the Justice Transformation programme across Government and the response to the recommendations of the Commission on Justice in Wales, supporting engagement with the UK Government on the devolution of justice, developing the legal sector including engagement with the Law Council of Wales, taking forward work relating to the Welsh Tribunals including reform pursuant to the Law Commission review of devolved tribunals in Wales.
Central Services & Administration	External Bodies & Services	Tribunals	4,193	4,110	Administration and support of the Welsh Tribunals through the Welsh Tribunals Unit.
Central Services & Administration	Central Programmes	Civil Contingencies & National Security	0	0	Counter terrorism, serious organised crime. No budget is assigned to the BEL, and it is not included in the Draft Budget tables. Any spend in previous years has been managed within the CSA MEG.
Finance & Local Government	Healthcare Inspectorate Wales	Healthcare Inspectorate Wales	4,339	4,339	While Her Majesty's Inspectorate of Prisons (HMIP) has a statutory duty to inspect health care and substance misuse in prisons in England and Wales, there is a Memorandum of Understanding between HMIP and Healthcare Inspectorate Wales (HIW), in which HIW may accompany HMIP on routine inspections of public sector prisons. HIW's focus regarding prisons is in relation to the quality and safety standards and governance arrangements for the provision of prison health services by the health boards in Wales. ²

¹ "MEG": Main Expenditure Group, "SPA": Spending Programme Area, "BEL": Budget Expenditure Line.

² Justice-related activity has been allocated funding within the draft budget for that BEL.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
Social Justice	Equality, Inclusion & Human Rights	Equality, Inclusion & Human Rights	16,886	17,316	<p><u>Human Rights</u>³ Work will be taken forward in relation to five main action areas:</p> <ul style="list-style-type: none"> • preparatory legislative work; • development of Human Rights guidance; • review of Public Sector Equality Duty Welsh Regulations; • incorporation of Human Rights into Integrated Impact Assessment processes; and • widening Awareness of Human Rights. <p>Work on these issues will be undertaken mainly by existing staff in the newly formed Human Rights Team.</p> <p><u>Anti-Racist Wales Action Plan</u> Programme for Government commitment to ensure the justice elements of the Anti-racist Wales Action Plan are robust and to address these matters with the police and the courts. The Plan includes a specific chapter on crime and justice, and we have also worked with criminal justice partners on a separate Criminal Justice Anti-Racism Action Plan for Wales.</p> <p><u>Hate Crime</u> Funding of the Wales Hate Support Centre, run by Victim Support, to provide support and advocacy through the criminal justice system to all victims of hate crime in Wales. Funding of anti-hate crime communications campaign Hate Hurts Wales to help raise awareness and increase reporting of hate crime. Exploring preventative work with perpetrators.</p>
Social Justice	Supporting Communities	Social Partnerships	806	861	The budget allocation covers a wide range of work within Social Partnership, Employability and Fair Work directorate including wider Programme for Government commitments

³ See footnote 2.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
					and their associated programme staff costs. It provides the resource for modern slavery justice related activity. ⁴
Social Justice	Supporting Communities	Basic Income	5,000	12,200	The budget allocation resources exploring how children entering or leaving custody might be included in and engaged with the basic income for care leavers pilot. ⁵
Social Justice	Advocacy Services	Advice Services	11,875	11,675	Under the Information and Advice Action Plan for Wales: through the Single Advice Fund grant funding a framework of strategically planned and integrated social welfare advice services; implementation of the Advice Quality Framework; and promotion of networking as a means of helping people attain a better understanding of accessing their individual rights.
Social Justice	Violence against Women, Domestic Abuse and Sexual Violence	Violence against Women, Domestic Abuse and Sexual Violence	7,875	8,005	Leading the strategic direction and implementation of the Violence Against Women, Domestic Abuse & Sexual Violence (Wales) Act 2015, which includes an objective to 'increase the focus on holding those who commit abuse to account and supporting those who may carry out abusive or violent behaviour to change their behaviour and avoid offending.
Social Justice	Female Offending and Youth Justice Blueprints	Female Offending and Youth Justice Blueprints	1,075	1,075	Welsh Government contributions towards the Women's Justice and Youth Justice Blueprint for Wales.
Social Justice	Community Support and Safety	Community Support and Safety	22,625	22,998	Funding for Police Community Support Officers.
Economy	Business Wales / Entrepreneurship and Regional Economy	Business Wales	17,116	26,559	Bespoke business support to the legal sector in Wales through the Business Wales service with interventions

⁴ See footnote 2.

⁵ See footnote 2.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
					focusing on their challenges with recruitment, retention and resilience. ⁶
Economy	Employability Including Young Persons Guarantee	Employability Including Young Persons Guarantee	90,936	83,758	Delivery of recommendations from David Hanson's review of offender learning. ⁷
Economy	Sectors & Business	Valleys Task Force	100	100	Preventative services that may help us with youth justice, including child poverty and food poverty. ⁸
Economy	Skills	Communities for Work	3,972	23,034	Preventative services that may help us with youth justice. Delivery of intensive employment mentoring and training to those furthest from the labour market. ⁹
Economy	Apprenticeships	Apprenticeships	117,033	140,033	Provision of post-16 education pathways, including A-level, FE and apprenticeship provision. ¹⁰
Education & Welsh Language	Welsh Language	Welsh Language	22,404	22,404	The budget allocation funds a range of activity including provision of education pathways and language technology work, e.g., including funding of Canolfan Bedwyr of Bangor University. ¹¹
Education & Welsh Language	Youth Engagement & Employment	Offender Learning	7,328	7,328	Funding for learning and skills delivery in prisons, delivered through HMPPS through procured contracts and direct delivery. An MoU is in place with HMPPS.

⁶ See footnote 2.

⁷ See footnote 2.

⁸ See footnote 2.

⁹ See footnote 2.

¹⁰ See footnote 2.

¹¹ See footnote 2.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
Education & Welsh Language	Wellbeing	Whole School Approach to Wellbeing	5,200	7,400	<p>The whole school approach relates to supporting the emotional, mental health and wellbeing of learners and staff in schools as well as trusted adults as part of the school community. The whole school approach framework places an emphasis on early identification and prevention. Funding provided to local authorities as part of this approach can be used to provide targeted support for early identification of young people at risk of disengaging from education, who are more vulnerable to ending up in the criminal justice system.</p> <p>There are several ongoing projects that make up the policy area funded from this MEG and BEL.¹² For example, around £2m per year is invested in the Wales Police Schools Programme which provides lessons and support on topics including substance misuse, wider community and personal safety issues.</p>
Health & Social Services	Health Central Budgets	Mental Health	88,212	83,601	<p>The budget allocation provides resource to the whole school approach, supporting the emotional, mental health and wellbeing of learners and staff in schools as well as trusted adults as part of the school community. There are several ongoing projects that make up the policy area funded from this MEG and BEL.¹³</p>
Health & Social Services	Enabling Children and Communities	Children and Communities Grant ("CCG") (transferred from the FLG MEG)	149,937	171,045	<p>Implementation of Children (Abolition of Defence of Reasonable Punishment) (Wales) Act is supported by a funding stream of £810,000 for the out of court parenting support grant, which is administered through the CCG</p> <p>Ownership of cross-government approach to safeguarding and vulnerable children and young people in education. Poverty and mental health in schools and learning outcomes for the most disadvantaged - looked after children VCYPs workstream, anti-bullying, school attendance.¹⁴</p>

¹² See footnote 2.

¹³ See footnote 2.

¹⁴ See footnote 2.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
Health & Social Services	NHS Delivery	Core NHS Allocations	8,253,211	8,611,185	<p>Partnership agreement for Prison Health in Wales. This includes WG led work streams on mental health, substance misuse and medicines management.</p> <p>There is also a workstream on the prison environment which is led by HMPPS. Welsh Government allocated an additional recurrent funding from 2019/20 (£1.2 million) to support local health boards to improve access to health services in the public prison estate. The aim of the funding is to support improvements to health, mental health and co-occurring mental health and substance misuse services for people in prisons and has been allocated to those Health Boards that have public sector prisons (Swansea Bay UHB, Aneurin Bevan UHB, and Cardiff and Vale UHB). Separate funding arrangements are in place for HMP Berwyn, and also HMP Parc.¹⁵</p>
Health & Social Services	Supporting Children	Supporting Children	4,865	3,865	<p>Funding for family justice policy and activity that enables reductions in the number of children coming into care, improved outcomes and experiences of children.¹⁶</p> <p>Recurrent funding of £850K is provided to local authorities to support Reflect Services through the Revenue Support Grant.</p> <p>There was a grant awarded in 2020-21 (to South-East Wales Local Family Justice Board - pilot of a Family Drug and Alcohol Court model ref 20-21/073) which was paid in advance in 20-21 that covered the period February 2021 to 31 August 2023.</p>
Health & Social Services	Sustainable Social Services	Sustainable Social Services	99,715	109,715	<p>Analysis and evaluation of the implementation of the Social Services and Wellbeing (Wales) Act 2015.¹⁷ The Act set out requirements to ensure local services are provided to prevent children from offending and to promote their future welfare.</p>

¹⁵ See footnote 2.

¹⁶ See footnote 2.

¹⁷ See footnote 2.

MEG ¹	SPA	BEL	Allocation £000s 22-23	Indicative 23-24 Allocation	Justice related activity resourced by BEL
Health & Social Services	Supporting Children	Support for Families and Children	6,720	5,170	Framework to support positive change for those at risk of offending in Wales, 2018-2023 and removal of the defence of "reasonable chastisement" and supporting implementation of the legislation making the physical punishment of children illegal (Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020) by funding the out of court parenting support scheme. The funding allocated is £810,000 for 2023-24. ¹⁸
Health & Social Services	CAFCASS Cymru	CAFCASS Cymru	14,725	15,195	Funding for CAFCASS Cymru.
Climate Change	Housing Policy	Homelessness	31,147	46,147	<p>Accommodating Welsh offenders, WG and HMPPS in Wales have committed to taking a collaborative strategic approach to prevent and address homelessness for all Welsh offenders. This work is aimed at ensuring policy differences do not affect prisoners' housing outcomes on release.</p> <p>Improving implementation of the National Pathway for homelessness services for Children, Young People and Adults in the secure estate</p> <p>Housing solutions for offenders in the Welsh Criminal justice system being tested and evaluated through a number of projects including a specific Housing First project in Cardiff.¹⁹</p>

¹⁸ See footnote 2.

¹⁹ See footnote 2.

Mick Antoniw MS

Counsel General and Minister for the Constitution

23 November 2022

Dear Mick

The Welsh Government's Draft Budget for 2023-24

To assist our scrutiny of the Welsh Government's Draft Budget for 2023-24, anticipated to be published on 13 December 2022, we would be grateful to receive further detail around the Welsh Government's proposed spending in relation to justice and the accessibility of Welsh law.

You will recall that I wrote to you and the First Minister in similar terms last year ahead of the publication of the draft budget for 2022-23. We were grateful then for the information provided by the First Minister and oral evidence you provided once the draft budget had been published, and for the commitments you made in subsequent correspondence.

The Committee's clerking team has been in touch to arrange a suitable date in January for an evidence session with you on the draft budget. We would therefore be grateful to receive further detail within the areas set out in the Annex ahead of the session.

Yours sincerely,



Huw Irranca-Davies

Chair

Annex

General

- 1.** A breakdown of planned spending on justice-related actions within the 2023-24 draft budget and future indicative budgets, by Spending Programme Area (SPA), Action and Budget Expenditure Line (BEL), both revenue and capital, and, where relevant, year-on-year comparison to planned expenditure in 2022-23.
- 2.** A detailed narrative description of any planned spending on justice in the 2023-24 draft budget and any year-on-year changes identified.
- 3.** A summary of the work undertaken to improve the level of information provided on planned justice spending within the draft budget, in line with the recommendation made by the Committee last year and accepted by the Welsh Government, and detail on any changes made to the structure and presentation of the budget compared to previous years as a result.

Delivering Justice for Wales

- 4.** A breakdown of planned spending on the Law Council of Wales in 2023-24, including detail on specific programmes and projects.
- 5.** An overview of planned spending in 2023-24 on the Delivering Justice in Wales work programme including:
 - the outcomes the Welsh Government are hoping to deliver as a result of this spending;
 - an explanation of what areas of work will be prioritised in 2023-24; and
 - details of how this planned spend compares to expenditure on the Delivering Justice in Wales work programme in the current 2022-23 financial year.
- 6.** Detail on planned spending on justice programmes in partnership with the Ministry of Justice in 2023-24.
- 7.** An overview of any resources in the 2023-24 draft budget to take forward the recommendations of the Law Commission's Devolved Tribunals in Wales report.

The Future of Welsh Law

- 8.** A breakdown of any planned spending within the 2023-24 draft budget relating to the delivery of the Welsh Government's programme to improve the accessibility of the law including:

- funding for Canolfan Bedwyr at Bangor University to develop domain-specific machine translation for the law and legislation, and any funding for other future projects in relation to the use of machine learning or artificial intelligence in the field of legislation;
- resourcing the Welsh Government's plans to take on responsibility for the provision of up-to-date bilingual legislation on legislation.gov.uk.

Agenda Item 3

Statutory Instruments with Clear Reports 16 January 2023

SL(6)302 – [The National Health Service \(Pharmaceutical Services\) \(Wales\) \(Amendment\) Regulations 2022](#)

Procedure: Made Negative

These Regulations amend the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020 (S.I. 2020/1073 (W. 241)) (“the Pharmaceutical Regulations”). The Pharmaceutical Regulations govern the provision of pharmaceutical services as part of the National Health Service in Wales under Part 7 of the National Health Service (Wales) Act 2006 (“the 2006 Act”).

The scheme for paying for pharmaceutical and local pharmaceutical services in Part 7 of the 2006 Act is based on determining authorities for pharmaceutical remuneration ordinarily including, in the payments for services, an amount in respect of the price paid by service providers when they purchased the prescription items that they supply or administer to NHS patients.

Powers in Part 7 enable alternatives to these ordinary remuneration arrangements in some circumstances.

Regulation 4 inserts new regulation 55A into the Pharmaceutical Regulations . This provides that, where the Welsh Ministers or the Secretary of State have centrally purchased coronavirus vaccines, coronavirus antivirals or influenza vaccines, and those products are made available to community pharmacies at no cost, the determining authorities for pharmaceutical remuneration are to set a zero or nominal NHS reimbursement price for those products if certain conditions are met.

Determining authorities are not prevented from paying community pharmacies for the services that they provide in conjunction with the supply or administration of those vaccines or antivirals.

Parent Act: The National Health Service (Wales) Act 2006

Date Made: 11 December 2022

Date Laid: 13 December 2022

Coming into force date: 06 January 2023



Statutory Instruments with Clear Reports

16 January 2023

SL(6)311 – The Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2023

Procedure: Made Negative

Billing authorities are required to serve NDR demand notices (rates bills) under Part II of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989. Demand notices must be accompanied by explanatory notes.

The content of the explanatory notes is reviewed on a regular basis to ensure they accurately reflect the system for NDR in Wales. Changes are required to ensure that the information accompanying demand notices is relevant to the arrangements that will be in place from 1 April 2023. For example:

- The current NDR list was compiled on 1 April 2017, based on an antecedent valuation date (AVD) of 1 April 2015. The next NDR list will be compiled on 1 April 2023, following revaluation based on an AVD of 1 April 2021. The prescribed explanatory information to be provided by billing authorities alongside a demand notice currently includes specific references that are relevant only to the 2017 rating list. These Regulations update these references so that they are relevant to the 2023 rating list.
- A new NDR appeals process will apply from 1 April 2023, therefore these Regulations amend the explanatory notes to reflect that change.
- A now-outdated reference in the explanatory notes to uplifting the NDR multiplier by reference to the Retail Price Index is being removed.
- The reference to transitional relief is amended to reflect the transitional relief that applies to the 2023 rating list.

Parent Act: the Local Government Finance Act 1988

Date Made: 05 January 2023

Date Laid: 09 January 2023

Coming into force date: 31 January 2023



Agenda Item 4.1

SL(6)301 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the 2014 Regulations”) which make provision for which persons subject to immigration control are eligible for an allocation of housing accommodation and for housing assistance.

Regulation 3 amends regulation 3 of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under Part 6 the Housing Act 1996 (“the 1996 Act”). It prescribes an additional class of persons (Class M) subject to immigration control who are eligible for an allocation of housing accommodation under the 1996 Act.

Class M applies to persons who are victims of human trafficking or slavery and who have been granted temporary leave to remain in the United Kingdom in accordance with the Immigration Rules made under the Immigration Act 1971.

Regulation 4 amends regulation 5(1) of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for housing assistance under the Housing (Wales) Act 2014. It prescribes an additional class of persons, namely Class N who are eligible for such assistance. This class is equivalent to Class M inserted by regulation 3.

Procedure

Draft Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

The following 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 to the Regulations has been laid in English only.

The Welsh Government is asked to explain why a Welsh language version of the Explanatory Memorandum has not been laid.

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

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

“As the TPS is a product of reserved UK Government policy (immigration), it would not be possible to undertake a meaningful consultation on alternative approaches, as the effect of the 2022 Regulations¹ is to ensure consistency between Welsh housing law and immigration law.”

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

11 January 2023

¹ The reference should be to the 2023 Regulations. This appears to be an error in the Explanatory Memorandum.



Agenda Item 4.2

SL(6)307 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022

Background and Purpose

The Regulations are made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”). The LDT Act establishes and sets out the framework and operational arrangements for landfill disposals tax which replaced UK landfill tax (Lft) in Wales. These Regulations prescribe the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax, which will apply to taxable disposals made on or after 1 April 2023.

The rates from 1 April 2023 are as follows:

- The standard rate is **£102.10** per tonne (increased from £98.60 per tonne),
- The lower rate is **£3.25** per tonne (increased from £3.15 per tonne), and
- The unauthorised disposals rate is **£153.15** per tonne (increased from £147.90 per tonne).

Taxable disposals made on or after 1 April 2022 but before 1 April 2023 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2021.

Procedure

Made Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

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

- 1. Standing Order 23.1(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.**



Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund. The Welsh Revenue Authority is responsible for the collection and management of landfill disposals tax. These Regulations prescribe the three rates of landfill disposals tax in Wales.

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

The Welsh Tax Policy Report 2022, published alongside the Welsh Government’s draft budget for 2023-24, refers to an independent review, the purpose of which is to evaluate the effectiveness of the LDT Act. This arrangement seeks to meet the commitment given by the then Cabinet Secretary for Finance and Local Government during Stage 3 proceedings for the LDT Act that there should be an independent review of landfill disposals tax, similar to that agreed in the context of land transaction tax, covering the whole of the tax.

The Explanatory Memorandum to these Regulations states that an independent review of landfill disposals tax is underway to meet that commitment. Specifically, the Explanatory Memorandum notes:

“4.22 An interim report, outlining initial findings, was completed on 30 September 2022 and contained findings drawn from a review of key data and literature. The findings of the interim report are limited, and more detailed research is needed to fully explore the questions we are seeking to answer through the review. However, the interim report highlights the challenge of isolating the impact of LDT in terms of incentivising increases in recycling and reuse of materials, encouraging use of more sustainable technologies and influencing behaviour change across the waste management sector. This is because LDT is one of a range of policy tools which are in place to support the achievement of the Welsh Government’s environmental goals. The role of LDT in working alongside these other policy tools will be explored in more detail during the next phase of the review.

4.23 The final review report is expected to be published towards the end of spring 2023.”

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.

Welsh Government has relied on Standing Order 15.4 to justify the laying of an English only Explanatory Memorandum, on the grounds that *“it is not considered appropriate in the circumstances or reasonably practicable to lay it in English and Welsh”*. A Welsh language Explanatory Memorandum would help any Welsh speakers who are interested in the background and purpose of, and regulatory impact assessment for, the Regulations.

Welsh Government should explain why it is not considered appropriate or reasonably practicable to lay the Explanatory Memorandum in Welsh.



Welsh Government response

A Welsh Government response is required in relation to point 3.

Legal Advisers

Legislation, Justice and Constitution Committee

4 January 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 48**

Legislation, Justice and Constitution Committee

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/3483/22

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

13 December 2022

The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022

I have today made The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022 under sections 14(3) and (6), 46(4), 93 and 94(1) of the Landfill Disposals Tax (Wales) Act 2017 which comes into force on 1 April 2023. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in section 95 of the Landfill Disposals Tax (Wales) Act 2017, this instrument must be approved by the Senedd by 30 January 2023 in order for it to remain in effect. In these circumstances, I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the Plenary debate for this item of subordinate legislation on 24 January 2023.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd; Huw Irranca-Davies (MS), Chair of the Legislation, Justice, and Constitution Committee; Peredur Owen Griffiths MS, Chair of the Finance Committee; Sian Wilkins, Head of Chamber and Committee Services; and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

Agenda Item 5.1

SL(6)299 – The Seed (Equivalence) (Amendment) (Wales) Regulations 2022

Background and Purpose

The Seed (Equivalence) (Amendment) (Wales) Regulations 2022 (“the Regulations”) amend Article 6 of Council Decision 2003/17/EC of 16 December 2002 on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries. The Regulations extend the expiry date of this Decision from 31 December 2022 to 31 December 2029.

The proposal to extend the Council Decision was subject to a six week period of informal stakeholder engagement. This was undertaken jointly by the Welsh, Scottish and UK Governments.

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

1. Standing Order 21.2(ii) - that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made.

In the preamble, clarification is required as to whether the powers used are correct. The corresponding instruments for England and Scotland only refer to “section 16 **(1) and (1A)**” instead of “section 16**(1) to (4)**”. It is unclear whether the powers in sub-sections (2) to (4) are used in this instrument.

Merits Scrutiny

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

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



In the Explanatory Notes, there is no paragraph noting whether or not a Regulatory Impact Assessment (“RIA”) exists, or where it is possible to find it. The Explanatory Memorandum explains that a RIA exists but this is not explained in the Regulations.

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 following points are made regarding terms used in the Welsh text for “equivalence” and “field inspections”.

- a. “Cywerthedd” is used in the translation for the word “equivalence” in the Welsh text. This form does appear in the Welsh Academy Dictionary as a possible spelling of this noun, and there are some examples in recent statutory instruments. But the Welsh Government’s Legislative Translation Unit mostly follow the University of Wales Dictionary (Geiriadur Prifysgol Cymru) which notes “cyfwerthedd” as the standard spelling for this noun. Furthermore, “cywerthedd” is not referred to on the BydTermCymru website, but “cyfwerthedd” is used instead for this noun. It therefore appears that the translation has not used the Welsh Government’s translation guidance by using “cywerthedd” rather than “cyfwerthedd” in these Regulations.
- b. In these Regulations, in the Welsh text, “archwiliadau maes” is used as the translation for “field inspections”. But it appears there has been some variation between “archwiliadau maes” and “arolygiadau maes” in the translation of the statutory instruments. It appears that “arolygu” is the standardised term for “inspection” in the Legislative Translation Unit’s Legislative Terminology, and there is a need to differentiate between “examine” and “inspect” at times.

Welsh Government response

A Welsh Government response is required to the technical reporting point and both merits points.

Committee Consideration

The Committee considered the instrument at its meeting on 9 January 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Seed (Equivalence) (Amendment) (Wales) Regulations 2022

Technical Scrutiny point 1:

The Welsh Government has considered the relevant provisions. It does not consider the reference to sections 16(2) to 16(4) affects the vires of the regulations. However, on reflection the powers under section 16(1) and 16(1A) for making provision for regulating seed importation are sufficiently wide enough to cover the extension of Council Decision 2003/17/EC of 16 December 2002.

Merit Scrutiny point 2:

A Regulatory Impact Assessment exists as set out in the Explanatory Memorandum and the Welsh Government is grateful to the Committee for bringing this point to our attention.

Merit Scrutiny point 3a:

In respect of the use of the term “cywerthedd” for “equivalence”, this term was used in order to ensure consistency with previous regulations in the same field. It was used in The Seed Marketing (Wales) Regulations 2012 and subsequent amending SIs. Upon further consideration, however, the Welsh Government agree that, for accessibility, it would be better to use the term “cyfwerthedd”, unless SIs using “cywerthedd” are being quoted.

Merit Scrutiny point 3b:

In relation to the use of the term “archwiliadau maes” the Welsh Government accept there has been inconsistency in previous regulations, and “arolygiadau maes” will be used in future.

An amending SI making corrections in respect of Technical Scrutiny Point 1 and Merit Scrutiny Point 2 will be made at the earliest opportunity.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Plant Health and Trade in Animals and Related Products
(Amendment) Regulations 2022**

DATE **20 December 2022**

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

Members of the Senedd will wish to be aware we are giving consent to the Secretary of State to exercise a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by Mark Spencer MP, Minister of State for Defra, to make a Statutory Instrument (SI) titled The Plant Health (Amendment) (EU Exit) Regulations 2022 to apply in relation to Great Britain.

The above titled SI will be made by the Secretary of State in exercise of powers conferred section 8(1) of EUWA. 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 were laid before Parliament on 19 December 2022. The commencement dates for the measures are split into urgent measures (the power to introduce demarcated areas) which are scheduled to come into force on the 20 December and non-urgent measures (minor drafting error relating to Lebanon potatoes) to come into force on 4 February 2023.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Previous Plant Health Amendments put in place previous corrections required to the regulatory regime for plant health. These broadened the executive competence of the Welsh Ministers by conferring functions on them (in their capacity as the 'Competent Authority' for Wales) without encumbrance. The Minister will wish to note that the Regulations do not transfer any functions to the Secretary of State.

The purpose of the amendments

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.

The regulations also correct minor drafting errors within The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 relating to Lebanon Potatoes not for planting.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://www.legislation.gov.uk/ukxi/2022/1367/contents/made>

Why consent has been given

Consent has been given for the UK Government in relation to demarcated areas as 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.

Consent has been given in relation to Lebanon potatoes to make these corrections on behalf of Wales for reasons of efficiency, expediency and to protect biosecurity. The amendments have been considered fully and there is no divergence in policy.

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



Llywodraeth Cymru
Welsh Government

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

20 December 2022

Dear Huw,

Further to my letter of 23 November, I wish to inform the Committee I have given my consent to the Minister of State for the Department for Environment, Food and Rural Affairs to lay The Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022 by 19 December. I have laid a Written Statement which can be found at: <https://senedd.wales/media/crij4zc4/ws-ld15574-e.pdf>

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 intersect with devolved policy and will apply to England, Scotland and Wales.

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

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

The regulations also 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.

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

Yours sincerely,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in a dark ink and is positioned above the printed name and title.

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

WS-30C(6)022 - [The Plant Health and Trade in Animals and Related Products \(Amendment\) Regulations 2022](#)

Laid in the UK Parliament: 19 December 2022

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
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	Made negative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

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

Summary

The Regulations enable the establishment, within Great Britain, 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 Great Britain country. This means when one country has a plant pest or disease outbreak alongside

the border, currently the other country has no power to bring in demarcated areas as a biosecurity measure.

The Regulations also correct minor errors to ensure that potatoes (other than planting potatoes) originating in certain regions of Lebanon meet specific entry requirements.

Statement by the Welsh Government

Senedd Legal Advisers agree with the statement laid by the Welsh Government dated 20 December 2022 regarding the effect of these Regulations.

It is also noted that the UK Government regulations amend a set of Welsh regulations. While we understand that the Welsh Government would usually make its own amendments to Welsh regulations, in this case the specific power being used to make the amendments belongs to the Secretary of State only.

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.

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

4 January 2023

Llyr Gruffydd
Chair Climate Change, Environment, and Infrastructure Committee

Dear Llyr Gruffydd,

I would like to share with the Climate Change Environment and Infrastructure, (CCEI) Committee links to the published Framework Outline Agreement and Concordat for the following common frameworks which fall within my portfolio:

- Waste and Resources

<https://www.gov.uk/government/publications/resources-and-waste-provisional-common-framework>

This document will aid your committee in its scrutiny of provisional framework. Should you wish to scrutinise; my officials stand ready to assist.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Senedd Legislation, Justice and Constitution Committee.

Yours sincerely,



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

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

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/3813/22

Huw Irranca Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Huw.irranca-davies@senedd.wales

11 December 2022

Dear Huw,

Thank you for your letter of 7 December, regarding The Organic Production (Amendment) Regulations (No. 2) 2022.

As you note, I chose to consent to Great Britain-wide regulations to extend derogations for the use of non-organic gellan gum, pullets and protein feed in organic production. To clarify, our starting position is legislative powers in devolved areas should be exercised by the Welsh Ministers in relation to Wales, rather than the UK Government.

Whilst this SI could have been taken forward in Welsh legislation, in the last few months work on other areas has been prioritised. The coming into force date for these regulations would have been further in the future if they had been drafted in Wales, due to the need to remove any inconsistencies in drafting between the nations and to translate the draft in Wales. It was my view resources could be used on other pressing legislative issues where policy divergence occurred, meaning this SI may not have been ready before the expiration of the previous derogations. This would have meant different regulations being in place in Wales and England, which would have caused cross-border enforcement issues, as DEFRA acts as the Competent Authority for organics on behalf of the Welsh Ministers.

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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 operation of the Provisional Common Framework on Organic Production was a factor which influenced my decision to provide consent, as DEFRA followed the processes agreed within it to properly inform the Welsh Government of their plans and discuss the appropriateness of a Great Britain-wide SI.

The draft SI was reviewed by my policy and legal officials before recommendation to consent was given, to assess what level of impact it would have. They requested minor amendments to the Explanatory Memorandum drafted by DEFRA to reflect the position of the Welsh Government in providing consent to this SI. This contributed to the increased length of time which it took to notify you of my consent as I wished to be certain the changes requested had been made. As this SI made changes which were only minor and technical in nature, and there was no significant devolved policy interests at risk, I was content to give my consent for it to be made on a Great Britain-wide basis, in line with the agreed position set out by the Cabinet for the use of UK Parliament SIs making provision in a devolved area.

Yours Sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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

Lesley Griffiths MS

Minister for Rural Affairs, North Wales and Trefnydd

7 December 2022

Dear Lesley

The Organic Production (Amendment) Regulations (No. 2) 2022

Thank you for your [letter of 25 November](#) informing my Committee of your decision to provide consent for the UK Government to make the above Regulations yesterday, 6 December.

We considered your letter at our meeting on 28 November. We note the reasons you provide for giving consent and acknowledge your explanation of the role the Organics Four Nations Working Group played in developing the Regulations.

In particular, we note the following reason you provided for giving consent for these Great Britain-wide regulations to be made:

"Organic stakeholders have often pressed their desire for consistent regulation across Great Britain when it comes to organic standards, because of cross-border supply chains. It is in the interest of Wales to ensure these regulations be consistent and come into force at the same time across Great Britain."

However, you also state that new organic regulations will be developed, and "this substantive update to organic policy will be made in Welsh legislation".

To us, these statements do not appear to be compatible: if organics stakeholders require consistent regulation across Great Britain, and future organic regulations made by the Welsh Ministers may enable consistent regulation, it is unclear why the currently proposed regulations cannot also be made by the Welsh Ministers.

In this regard, you also said: "If Wales were to use a Wales-only SI to extend these derogations, it may not be possible to have them in place before the current derogation expires". As part of the Organics Four Nations Working Group, it is not clear why you were unaware of the need to extend the derogations in sufficient time to enable Wales-only regulations to be prepared and laid before the Senedd, in parallel with regulations laid before the UK Parliament. Such parallel regulations could have come into force on the same date, avoiding any inconsistency across Great Britain.

In light of the above, please can you therefore provide some further explanation as to why you could not prepare and lay Wales-only regulations in parallel with regulations prepared by Defra.

Finally, please you can explain why it took four weeks to notify us of these Regulations (and your decision to consent to them) once a formal request was received on 24 October, and why you were not in a position to notify us of your intention to consent much earlier, given that, presumably, the need to make these Regulations was being discussed much earlier in the Working Group?

I would be grateful to receive a response by 5 January 2023.

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

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Agenda Item 9.1

Y Pwyllgor Busnes

Business Committee

Senedd Cymru

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John Griffiths MS

Chair of the Local Government and Housing Committee

11 January 2023

Legislative Consent Memoranda

Dear John,

Thank you for your letter of 9 December 2022 drawing the Business Committee's attention to the volume of Legislative Consent Memoranda (LCMs) that your Committee has received so far during the Sixth Senedd.

Business Committee considered the letter on 13 December and noted your concerns on the impact that the recent volume of LCMs has upon the work of committees in general.

The issue of the increased use of UK Bills and the legislative consent convention to legislate in devolved areas has been raised with us by other committees, as well as on the floor of the Senedd. I and other Members of the Business Committee agreed with the concerns expressed in your letter about the impact that the increased use of the LCM process during the Sixth Senedd to date is having on Senedd committees. We also agree that Senedd legislation, brought forward by Welsh Government, is preferable in several respects, not least because it allows for full scrutiny by the Senedd. We also note the short amount of time available for scrutiny of specific LCMs in recent times, and the impact that this also has on the amount of scrutiny that is possible.

At the same meeting that we considered your letter, we agreed to write to the Minister for Rural Affairs and North Wales, and Trefnydd to raise concerns about the extremely



restrictive deadline available for the scrutiny of a specific LCM and will use that letter to stress to the Government the importance of ensuring that LCMs are brought forward in such a way that affords committees with sufficient time for scrutiny prior to the Senedd being asked to decide whether it wishes to provide consent.

I will enclose a copy of this letter to the Legislation, Justice and Constitution Committee who have previously raised similar concerns.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Elin Jones', is positioned above the typed name.

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Elin Jones MS
Y Llywydd
Chair, Business Committee

8 December 2022

Annwyl Elin,

Legislative consent memoranda

You will be aware that the Local Government and Housing Committee is currently considering legislative consent memoranda (LCMs) in relation to two Bills: the Social Housing (Regulation) Bill and the Levelling-up and Regeneration Bill. We have already considered three other LCMs, as well as a number of supplementary LCMs, during the Sixth Senedd. Whereas our predecessor committee considered a total of six LCMs during the entirety of the Fifth Senedd. As a result, the Committee agreed that I should write to you to raise our concerns at the increased use of UK Bills and the legislative consent convention to legislate in devolved areas, rather than via Senedd legislation. I have previously raised the Committee's concerns to the Legislation, Justice and Constitution Committee and the Welsh Government.

Primary legislation brought forward by Welsh Government allows for full scrutiny by the Senedd.

As Members of the Senedd, it is our responsibility to ensure that all primary legislation relating to devolved areas is thoroughly scrutinised and tested with stakeholders to ensure it meet the needs of the people of Wales. We strongly believe that the short amount of time allocated to the legislative consent process is insufficient to enable us to fully understand the impact of provisions on the lives of people in Wales. We are concerned that legislating in this way could disadvantage people in Wales as they have fewer opportunities to feed their views to those making the legislation and we do not have sufficient time to consult Welsh stakeholders on the provisions.

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

Yours sincerely

John

John Griffiths MS

Chair, Local Government and Housing Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/8/2023

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

12 January 2023

Dear Huw,

HISTORIC ENVIRONMENT (WALES) BILL

My thanks to you and the Committee for your detailed and considered report on the Bill, which I was pleased to receive just before Christmas. I will respond more fully in the debate scheduled to take place on 17 January.

Recommendation 10 of the Committee's report seeks clarification, ahead of the debate, on matters relating to section 2(3) of the Bill. I trust this letter provides the information the Committee is seeking.

Section 2 of the Bill sets out the meaning of "monument" and "site of monument"; subsection (3) removes from consideration as a monument any religious building that is currently used for religious purposes.

The Government's view is that section 2(3) of the Bill would still be compliant with human rights without the new regulation-making power. However, the Government is also of the view that the existence of the power strengthens the compliance of section 2(3).

As to whether the regulation making power is a minor change, we agree with the Committee's statement in paragraph 317 of its report that the provision is not limited to providing clarity. But we do think it is a minor change for the purposes of Standing Order 26C. I hope it is helpful to explain further the rationale behind the inclusion of the regulation-making power.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

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

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

The issue is not straightforward. It involves making difficult judgements about how to accurately restate the current legal position in as accessible a way as possible.

Our decision to avoid replicating the current uncertain meaning of “ecclesiastical” in section 2 of the Bill introduces a different issue that we think needs to be addressed in the drafting. The effect of the opening words of section 61(8) of the 1979 Act is uncertain for the reasons set out in my letter of 17 October 2022, it is an expression that’s open to interpretation, particularly because of the effect of human rights legislation.

The wording of the restated provision in the Bill isn’t open to interpretation in the same way: the general rule in section 2(3) has been expressed to apply to religions generally, an approach which we’ve based on our starting point that all religions ought to be treated in the same way. But an approach based on that general principle only could have adverse and discriminatory effects in practice, depending on the circumstances of a given case. We have therefore taken the view that flexibility is appropriate to allow Ministers to adjust the operation of the general rule.

We also need to recognise that it is possible that future case law affecting the interpretation of the ECHR could require a change in approach to religious buildings in particular circumstances.

There would of course also be legal constraints on the exercise of that power, for instance, it wouldn’t allow regulations to hollow out the general rule in section 2(3) of the Bill so as to deprive it of any meaning; and any regulations would of course have to be ECHR-compliant. Any regulations made under that section would be subject to the affirmative procedure and, in line with our well-established practice, any change in policy would be subject to proper consultation.

For these reasons I am of the view that including the regulation making power in section 2(3) of the Bill is a minor change to the law.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Agenda Item 12

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

Document is Restricted

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/9/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@Senedd.Wales

12 January 2023

Dear Huw,

Thank you for your letter of 14 December seeking a response to further questions following my appearance on 5 December in relation to the Retained EU Law (Revocation and Reform) Bill.

Given that the deadline for your committee to report on the Bill has since been extended by three weeks, and to enable more time to consider a response now that the Christmas and New Year recess has finished, I will respond by 19 January.

Yours sincerely,

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

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

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

Mick Antoniw MS
Counsel General and Minister for Constitution

14 December 2022

Dear Mick

Legislative Consent: Retained EU Law (Revocation and Reform) Bill - Follow-up to the meeting of 5 December 2022

Thank you for appearing before the Committee on 5 December and giving evidence on matters relating to Retained EU Law (Revocation and Reform) Bill (the Bill).

There are a number of issues which we were not able to raise with you during the meeting. There are also matters we would like to pursue further.

I would therefore be grateful to receive your responses to the questions listed in the Annex by 12 January 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Yours sincerely,



Huw Irranca-Davies
Chair

Annex

Wales-made REUL

Q1 – You told us that the Welsh Government’s focus “has got to be firstly to ensure that we analyse and retain our own EU retained law, that we focus on that law that's been made within Wales” (RoP, 242). Has that analysis been completed? If not, what is your target date for its completion?

Reviewing REUL

Q2 – You and your officials said that Welsh Government policy teams are working closely with their Whitehall counterparts to analyse spreadsheets of data prepared by those Whitehall departments “to see whether [you] agree with that analysis” (RoP, 242 to 254). What is the target date for the completion of that work?

Welsh Government’s approach

Q3 - Has the Welsh Government had any reassurance from the UK Government that it will not change or remove devolved REUL without the consent of the Welsh Government? If so, does the UK Government intend to amend the Bill to reflect this commitment?

Q4 – You told us that “if you don't take measures to be able to identify and understand what it is you want to retain, then everything else is going to go.” (RoP, 295). You also told us that you have not yet decided on your approach to retaining REUL but that you want to “make sure that [the Welsh Government] focus on those areas that are most important to us”.

- a. Can you therefore confirm that you do not intend to save all REUL in devolved areas?
- b. On what basis will you decide which areas are most important to the Welsh Government?
- c. Can you tell us which areas these are, or if not, when you will be able to tell us?
- d. What are the risks to the areas deemed not important or less important and how have they been determined?
- e. How will you mitigate and manage the risks associated with this, particularly if you are not carrying out your own impact assessment (RoP, 256)?

Q5 - You told us that you may adopt a “triage approach”, where you try to “identify those that are most obviously relating to devolved issues that may be the most important issues, rather than technical issues, so that we make sure we focus on those areas that are most important to us” (RoP, 277). What do you mean by “technical issues”?

Q6 – You told us that you think the Bill has created a great deal of uncertainty for the Welsh Government. However, stakeholders have accused you of ‘fuelling’ / exacerbating this by not clearly setting out your approach. To what extent could the Welsh Government reduce this uncertainty?

Q7 - What will the Welsh Government do to reassure stakeholders of its overall strategy in relation to REUL and about the steps it is taking to address their concerns?

Q8 - You told us “We will want to retain law and not see any diminution of standards. So, we will want to ensure that we retain those standards out of this.” (RoP, 277) How will you maintain or improve standards if they are weakened or reduced under the Bill, either by omission or by action taken by the UK Government?

Saving REUL

Q9 – You said “The complexity comes in knowing the scale of what we're going to do. If, for example, in a whole large area of these 3,800-plus pieces of legislation, the UK Government equally decides that what they should do is retain a large number of them, then that actually solves part of that problem. It solves part of that problem and it makes it a lot easier to manage those areas that have not been retained.”

- a. This suggests to us that the Welsh Government will defer decision-making and action to the UK Government to make regulations. Is this correct? Do you have concerns for what this approach means for Wales, including the Senedd?
- b. Will the Welsh Government wait to see what the UK Government saves and subsequently decide what it may need to save itself?

Amendments

Q10 – In addition to the single amendment to the Bill we know you have requested (in relation to the Welsh Ministers having the ability to extend the sunset date up to 23 June 2026), you said that you would be “encouraging changes to be made that give us the guarantees that we have sought” and you specifically mentioned concurrent powers in the Bill and the powers of the law officers in devolved Governments (RoP, 285). You also said that the Welsh Government would “do the normal things in terms of briefings, in terms of discussions, in terms of engagement with the UK Government and interested parties, who will all make their own representations” (RoP, 289).

- a. What specific changes to the Bill are you seeking?
- b. Can you confirm that you have made formal requests to the UK Government and, if not, when will you do so?

- c. Why are your suggested changes not detailed in your LCM, which only lists one amendment put forward, for consideration by this Committee and wider Senedd?
- d. You said that we can expect the Welsh Government to put forward further amendments and that you have set these out. When will the Senedd have the opportunity to scrutinise these?
- e. You mention that an option available to the Welsh Government is to rely on others to bring forward amendments which reflect your position rather than acting collaboratively. Could you provide more information on this and confirm who the “others” might be?

Q11 – Under clause 15 of the Bill, Ministers will be prevented from increasing the regulatory burden when revoking or replacing REUL. You described this as a “constraint that is totally unacceptable” (RoP, 269). Why have you not, therefore, requested an amendment to remove this constraint from the Bill?

Q12 – You have previously commented on the enormous powers that will be given to Ministers via this Bill. You told us that these are “powers that, in normal circumstances, you would not wish to give to governments”. You also said “it’s not a question of whether we want them; we will probably have no choice because if we want to do anything about retaining legislation that maintains standards and so on, things that we agree with them in devolved areas, then we’re going to have to exercise them” (RoP, 291). Have you requested that the Bill be amended to uplift the scrutiny procedures attached to the powers if and when they are exercised by the Welsh Ministers?

Divergence and disputes

Q13 – Have you identified any areas where you have policy intentions which diverge from those of the other governments of the UK?

Q14 – When we asked you how disputes could be resolved you told us that the new inter-governmental process that has been established “is probably not going to be particularly ideal process” and “It may be that you can create something specifically to try and resolve those disagreements” (RoP, 279).

- a. Can you clarify why the recently created structures for intergovernmental dispute resolution would not be the appropriate structures to use to resolve any disputes in this area?
- b. Can you confirm that, where relevant, disputes would go through the relevant common framework process in the first instance?
- c. Given the need for timely action because of the 31 December 2023 sunset date, how realistic is it that a new dispute resolution process could be created?

Capacity and resource

Q15 - The First Minister told the Scrutiny of the First Minister Committee on 9 December that, as the Welsh Government has no spare capacity, "diverted capacity" will be needed away from its legislative programme to work on the Bill. Given the First Minister's comments, when will decisions be taken about when and where resources will be diverted, and will you commit to updating the Senedd as soon as decisions are made?

Q16 – You told us that the Welsh Government wants to deliver its legislative programme but there was uncertainty around the demands the Bill will place on resources. Are you coordinating Cabinet discussions regarding your concerns about delivery of the legislative programme?

Impact and role of the Senedd

Q17 – You also said "I think one thing is clear: it makes the sort of detailed scrutiny and the timescale for that scrutiny incredibly difficult" and "we have to look at how that will work". You told us that there is "going to be a need for very close co-operation between the Government and the Senedd in terms of an understanding as to precisely what is required, what is happening and how we best manage that. It's not just an issue for the Welsh Government; obviously, it's an issue for the Senedd itself, in terms of how it scrutinises and assesses those steps as well" (RoP, 307).

- a. How will the Welsh Government maximise the scrutiny opportunities afforded to the Senedd?
- b. How will the Welsh Government involve the Senedd in determining what is required as a consequence of the Bill?

Q18 – You did not confirm to us that you are liaising with the Llywydd and the Business Committee regarding the potential impact on the Senedd's timetable. Could you confirm that discussions are taking place? If not, is the Welsh Government waiting on clarity from the UK Government before doing so?

Regulatory landscape

Q19 - Would the Bill introduce a regulatory ceiling?

Q20 - How could the Bill impact the Welsh Government's policy and ability to improve standards, where possible, post-Brexit?

Q21 - The UK Government has stated that environmental protections will not be weakened and that the devolved nations can preserve legislation within competence. Which environmental protections will the Welsh Government preserve?

Stakeholders

Q22 -You told us "there's going to have to be engagement with stakeholders because we're going to have to have that understanding of some of the steps that have been taken. I think the problem is, at this stage, it's not completely clear who we will be engaging with, to what extent, and within what framework." (RoP, 350)

- a. Could you clarify whether the Welsh Government is engaging stakeholders on the Bill at this stage, or when it plans to if this is not yet the case?
- b. You identified agriculture and environment as areas where there will be a "big focus" which you anticipate to be "very intense" (RoP, 323). Is the Welsh Government prioritising stakeholder engagement in these fields?
- c. How will you engage stakeholders in order to determine what issues are important to them?

Agriculture Bill

You told us that the Agriculture Bill "contains within it elements of retained EU law, and there may be issues that will arise during this process that need to be addressed; it's just not clear what they might be at this stage" (RoP, 335).

Q23 - Why was it appropriate to use the Agriculture Bill as a vehicle to provide broad powers for the Welsh Ministers to amend retained EU law when the Welsh Government has undertaken no analysis of the implications of the REUL Bill in this policy area?

Q24 - Is it the Welsh Government's intention to save the REUL on which the Agriculture Bill relies under the REUL Bill? What happens if the REUL on which it relies is revoked by the UK Government? Is the UK Government aware of the Welsh Government's need for the REUL to remain in place for the operation of the Agriculture Bill?

Q25 - When do you anticipate being in a position to understand the breadth and detail of any issues which need to be addressed during the passage of the REUL / Agriculture Bills?

Q26 - Is it your attention to make amendments to the Agriculture Bill to address any such issues?

Q27 - Does the Welsh Government intend to adopt this approach of taking broad executive powers to deal with the uncertainty of REUL rather than bring forward primary legislation when the picture is clearer?

Rt Hon Elin Jones MS
Llywydd
Chair, Business Committee

21 December 2022

Annwyl Lywydd

Retained EU Law (Revocation and Reform) Bill

The Business Committee will be aware of my Committee's interest in the Retained EU Law (Revocation and Reform) Bill (the Bill), such that you have referred the Welsh Government's legislative consent memorandum for the Bill to us for scrutiny.

You will also likely be aware of comments made by the Counsel General, Mick Antoniw MS, in Plenary in recent months about the likelihood of the Bill leading to the Welsh Government's legislative programme being almost completely overwhelmed, the enormous financial and resource implications for the Welsh Government, and the creation of an enormous amount of work for my Committee.

On 5 December we took evidence from the Counsel General on the Bill and the Welsh Government's corresponding legislative consent memorandum.

The Counsel General again spoke of his concerns that the implementation of the Bill, should it be passed and enacted, has the potential to overwhelm the Welsh Government. Concerns about the implications for Senedd Business and for the Welsh Government's own legislative programme were also discussed during our meeting.

The Counsel General shared his view with us that detailed scrutiny, and the timescale for that scrutiny, was looking incredibly difficult. He indicated that he would be committed to detailed discussions with the Senedd about the scale of work which may be required once the full implications of the Bill are known. These concerns were echoed by the First Minister on 9 December in evidence to the Scrutiny of the First Minister Committee.

My Committee has also received evidence from stakeholders who have cited specific concerns regarding the delivery of the Bill's requirements given its challenging timetable.

We have written to the Counsel General asking further questions about the Bill and the Welsh Government's approach, and also the impact on and the role of the Senedd. We will keep you updated with relevant information.

While we are still considering the legislative consent memorandum for the Bill, and will likely report to the Senedd in February, we believe the Welsh Government's concerns about the potential implications for Senedd Business in 2023 – both for my Committee who will be responsible for the scrutiny of any required regulations and for other Committees who first wish to influence the Welsh Government's decision-making processes – need to be drawn to your attention at the earliest opportunity.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Rt Hon Grant Shapps MP
Secretary of State for Business, Energy and Industrial Strategy
Nusrat Ghani MP
Minister for Industry and Investment Security

21 December 2022

Dear both

Retained EU Law (Revocation and Reform) Bill

My Committee has, for some time, been keeping a watching eye on the UK Government's plan for retained EU law, and we began asking questions of the Welsh Government some months ago.

You will appreciate that of concern to us, as legislators, is the fact that the Bill would enable Ministers, rather than parliaments, to significantly alter the UK's regulatory and legal landscape.

With the laying of the Bill before the UK Parliament, and in anticipation of the Welsh Government bringing forward the likely necessary consent memorandum, my Committee agreed to seek the views of stakeholders both in Wales and across the UK on a number of matters including to what extent the Bill might impact Wales' regulatory landscape; the Welsh Government's decision not to carry out its own assessment of REUL; and whether the Bill might introduce new limitations for the Welsh Government, which wants to improve pre-Brexit standards, where possible.

Stakeholders have expressed to us deep concerns about the extent of the task at hand and the significant pressure caused by, what is seen by many as, a completely unnecessary sunset date of 31 December 2023. The evidence we received is available on our website.

In recent months the Welsh Government's Counsel General, Mick Antoniw MS, has commented on the likelihood of the Bill leading to the Welsh Government's own legislative programme being almost completely overwhelmed, and the financial and resource implications for the Welsh Government being enormous.

The Welsh Government has now laid before the Senedd the required legislative consent memorandum for the Bill and my Committee is leading on its consideration.

On 5 December we took evidence from the Counsel General on the Bill and the Welsh Government's corresponding legislative consent memorandum. The Counsel General again spoke of his concerns that the implementation of the Bill, should it be passed and enacted, has the potential to overwhelm all governments in the UK. These concerns were echoed by the First Minister on 9 December in evidence to the Scrutiny of the First Minister Committee.

While we reserve the right to hold-back our full comments on the Bill, and the Welsh Government's corresponding legislative consent memorandum, until we are able to issue a comprehensive report in the new year, for reasons of pragmatism we would urge you to listen to stakeholders and reconsider the 31 December 2023 sunset date contained in the Bill. Furthermore, and again while we have yet to fully consider all the implications of the Bill on Welsh devolution and the Senedd, at this time we can see no reason why the power to extend the sunset date, contained in clause 2, should not also be granted to the Welsh Ministers for devolved matters.

We are aware of correspondence exchanged between Ms Ghani and the Scottish Parliament's Constitution, Europe, External Affairs and Culture (CEEAC) Committee. In a letter dated 13 December 2022, Ms Ghani states that written evidence on the Bill will be provided to the CEEAC Committee by the Department for Business, Energy & Industrial Strategy. We would welcome receipt of similar written evidence, particularly as regards the intergovernmental working with the Welsh Government and the effect of the Bill on Welsh devolved areas. We would be grateful if this could be received as soon as possible in order to inform our report on the Welsh Government's Legislative Consent Memorandum by 9 February 2023.

Once published, I will share with you a copy of my Committee's report on the Bill.

I am copying this letter to Mick Antoniw MS, the Welsh Government's Counsel General and Minister for the Constitution, and to the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies
Chair

Document is Restricted



Llywodraeth Cymru
Welsh Government

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

16 December 2022

Dear Huw,

In order to assist the Committee in the ongoing process of Stage 1 scrutiny of the Agriculture (Wales) Bill, I want to provide points of clarification on a number of other matters relating to the 21 November evidence session to assist the Committee in considering their report.

Consultations

I stated “we've done several consultations, and we've had those three consultation exercises and also the White Paper”. To clarify my meaning, there have been three formal consultation exercises; Brexit and our Land (2018), Sustainable Farming and our Land (2019) and the White Paper which focused on future Welsh agricultural policy. In addition, we have recently concluded the survey, workshops and interviews which formed the second round of co-design for the Sustainable Farming Scheme (SFS) and intend to publish a full report in 2023.

Sustainable Land Management

We discussed the objectives which are on the face of the Bill (section 1) and the meaning of Sustainable Land Management (“SLM”) at the Committee, if I provide a fuller response and expand on those objectives and the duty placed on Welsh Ministers below for information.

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Correspondence.Lesley.Griffiths@gov.wales

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

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

The SLM objectives are as follows:

- (1) The first objective is to produce food and other goods in a sustainable manner.
- (2) The second objective is to mitigate and adapt to climate change.
- (3) The third objective is to maintain and enhance the resilience of ecosystems and the benefits they provide.
- (4) The fourth objective is to conserve and enhance the countryside and cultural resources and promote public access to and engagement with them, and to sustain the Welsh language and promote and facilitate its use.

In each case, in doing so is to (a) to meet the needs of the present without compromising the ability of future generations to meet their own needs, and (b) to contribute to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015.

The SLM duty (sections 2 and 3) requires certain functions¹ to be exercised in a particular way - i.e. in the way the Welsh Ministers' consider best contributes to achieving the SLM objectives. This serves to focus action to contribute to achieving particular outcomes. It is a high threshold, and in so doing, this requires the exercise of discretion in the way the Welsh Ministers' consider best contributes to achieving the SLM objectives (in the round), so far as consistent with the proper exercise of the function.

The SLM duty and objectives are supplemented by detailed monitoring and reporting provisions, which include provision for indicators and targets to be prepared, published and laid before the Senedd. The indicators and targets will enable progress to be measured, which in turn will be used to assess and report on the progress made towards achieving the SLM objectives. In preparing or revising indicators and targets, the Welsh Ministers must consult the Future Generations Commissioner for Wales and any other persons they consider appropriate. The first report must be published and laid before the Senedd no later than 31 December 2026, and subsequent reports must be published and laid before the Senedd at least every 5 years. Together, these monitoring and reporting provisions are intended to provide important evidence for policy development, and effective participation and scrutiny by the Senedd, stakeholders and the wider public.

I would also re-iterate the “made in Wales” legislation which has informed the development of SLM (in particular, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016), and the policy response to the climate and nature emergencies declared by the Senedd.

Further, to clarify for the committee, the SLM provisions provide a framework for the exercise of certain functions, and those functions, including the power to provide support, must be exercised in a way that is consistent with the SLM duty, but the SLM provisions are not the basis on which support would be provided.

¹ The functions referred to are, (a) functions under the Act, (b) functions under any other enactment that require or allow the Welsh Ministers to provide support for (i) agriculture, or other activities carried out on land used for agriculture, or (ii) ancillary activities; (c) functions under any other enactment that require or allow the Welsh Ministers to regulate (i) agriculture, or other activities carried out on land used for agriculture, or (ii) ancillary activities (section 2). This is subject to certain exceptions relating to the basic payment scheme as set out at section 3.

Section 32 and 33 Enforcement provisions

I highlighted the different enforcement provisions for different matters and I thought it may be worthwhile providing some examples to highlight why all the individual provisions are not on the face of the bill.

Some examples of current enforcement regulations which have been made using powers previously contained within European legislation include:

- Eggs and Chicks Marketing (Wales) Regulations 2010
- The Poultrymeat (Wales) Regulations 2011
- The Beef and Veal Labelling (Wales) Regulations 2011

These are all very different product types and represent only a few of those product types for which the provisions within the bill will provide the powers to marketing standards for. It is my view the provisions would be overly long on the face of the Bill to provide regulation for all of the products for which specific marketing standards apply.

The Schedule to the Bill provides a list of products for which marketing standards can be made, and although this list of products can be amended, this would be by way of regulations made under the affirmative procedure allowing for full Senedd scrutiny, as will the making of regulations setting out the enforcement regime for the specific subject matters.

Therefore, we have arrived at a framework which does contain a significant amount of detail, and a list of products for which enforcement regimes can be made as well as the flexibility to tailor that regime to the product type, with the scrutiny of the Senedd through the use of the affirmative procedure.

Likewise, carcass classification considers pigs, bovine and sheep. But these carcasses comply to different standards and so could potentially have different enforcement regimes around them.

Section 43 Glue Traps

I would also like to bring one other point of clarity to the committee's attention regarding the questions raised on Local Authorities (LA) consultation on Glue Traps. We did contact all 22 LA's but not all replied. Responses covered seven of the 22 Local Authorities in Wales were received to the targeted stakeholder consultation. Of these, five responded to state they rarely use glue traps and only in extremely limited circumstances.

Regards,



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

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



Llywodraeth Cymru
Welsh Government

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

7 December 2022

Dear Huw,

Thank you for your letter of 25 November regarding the committee evidence session on Monday 21 November for the Agriculture (Wales) Bill.

I have carefully considered the committee's further questions and in order to assist considerations of the Bill I have provided the information in the annex attached to this letter.

Regards,

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

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

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

Annex: Response to Legislation, Justice and Constitution Committee’s further evidence questions on the Agriculture (Wales) Bill – Dec 22

1. Please could you identify, for every regulation-making power in the Bill, when you first intend to use that power to make the relevant regulations?

Due to some of the complexities of the provisions, policy decisions were taken during the drafting of the Bill that some provisions would be automatically commenced and some were to be commenced by Order.

We intend to commence them by Order two months after Royal Assent (along with most of the automatic provisions), so there will be no difference to timing, only the vehicle in which commencement occurs.

The provisions in respect of Sustainable Land Management ("SLM"), Welsh Ministers’ Power to Provide Support, Powers to Modify Legislation Relating to Financial and Other Support, Agricultural Tenancies and Wildlife come into force two months after the day on which the Bill receives Royal Assent.

All other provisions set out in the Bill (such as collection and sharing of data) will come into force by way of separate commencement Order.

Certain provisions in Part 4 relating to Forestry come into force the day after the date on which the Bill receives Royal Assent for the purposes of making regulations under section 32 of the 1967 Act. The other forestry provisions will come into force by way of separate commencement Order.

There are a number of regulation-making powers within the Bill which are outlined below:

Part 1 Sustainable Land Management:

Section 6(10) – power to amend section 6(9), which defines the “reporting period” for SLM reports. The reporting period for the first report ends on 31 December 2025 and for subsequent reports are successive periods of five years. There are no plans in place to amend the SLM reporting period. The power may be used, for example, to align with the power to provide support Impact Report (section 13) should the respective reporting periods fall out of synchronisation.

Part 2 Chapter 1: Power to Provide Support provisions

Section 8(4) – power to amending the list of purposes. There are no plans currently to make any amendments to the list of purposes. However, following the evaluation of the support provided, it may be identified that some, or all of the purposes are no longer fit for purpose. If so, then, if required, the regulation-making power to add a purpose, remove a purpose or alter the description of a purpose from the list, could be used.

Section 10(1) – Publication of information about support. No date has been set for when this power will be first used.

Section 11(1) – power to make provision about checking eligibility for support (and other matters). No date has been set for when this power will be first used.

Section 13(7) – Power to amend the reporting period for the Impact Report at section 13(6). There are no plans in place to utilise this power. The Impact Report provisions already provide for an extended first reporting period which ends on 31 December 2029 and thereafter every five years to align with the SLM reporting period. They would be expected to be used, for example, should the alignment with the SLM report fall out of synchronisation.

Part 2 Chapter 2: powers to modify legislation relating to financial and other support

As I have set out in question 2, we do not intend to make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

For the power to modify legislation relating to support for an apiculture scheme which is part of retained EU law. There are no plans currently to modify this legislation.

Part 2 Chapter 3: Intervention in Agricultural Markets

Sections 20 and 21 – provisions to declare exceptional market conditions and provide financial support to agricultural producers in such conditions. No date has been set for when these powers will first be used.

Section 22 – provision to modify retained EU legislation relating to public market intervention and private storage aid.

The Welsh Ministers are planning to amend these provisions, due to the circumstances explained in the answer to Question 18. The changes planned to retained EU legislation governing public market intervention and private storage aid are due to use powers in the Agriculture Act 2020, as the provisions in the Agriculture (Wales) Bill will not be in force for when they are due to be made. No date has been set for when the powers in the Agriculture (Wales) Bill will first be used.

Part 3 Chapter 1: Collection and Sharing of Data:

Section 24(2) – Provision of information relating to Agri-food Supply. No date has been set for when this power will be used.

Section 26(2) – Provision of information relating to relevant activities. No date has been set for when this power will first be used.

Section 31(1) – Provision for enforcement of information requirements. Again no date has been set for the first time this power will be used, however it is expected that its use will align with the regulation-making powers at sections 24(2) and 26(2).

Part 3 Chapter 2: Marketing Standards

Sections 32(1) and 32(6) – provision about the standards with which the agricultural products listed in Schedule 1 must conform and provision to amend Schedule 1. No date has been set for when these powers will first be used.

Part 3 Chapter 3: Carcass Classification

Section 33(1) - provision about the classification, identification and presentation of bovine, pig and sheep carcasses. No date has been set for when these powers will first be used. We are planning to create sheep carcass classification regulations, but using powers in the Agriculture Act 2020, as powers under this Bill will not be in force when these regulations are expected to be laid.

Part 6: General

Section 50 – Provides the power to amend the meaning of “agriculture” (section 48) and “ancillary activity” (section 49). There are no plans to amend these definitions at present. The power to amend has been developed alongside an exhaustive definition of Agriculture and Ancillary Activities, and is there to ensure that the Bill, and the powers and functions within, are able to adapt to reflect any changes to agricultural practices as a result of land management or technological changes in the future and remain in pace with the sector.

2. Please can you provide further information about why you do not have any plans to sunset either the BPS or the CAP continuation powers, particularly when it is intended that the Sustainable Farming Scheme will be the main source of funding for farmers in future and the BPS will be phased out over the transition period.

I have announced my intention to continue with the Basic Payment Scheme to 2023 to provide support for farmers as we work together to transition to the Sustainable Farming Scheme.

We will not make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

Evidence being gathered through Co-design will feed into a wider evidence base (alongside other evidence workstreams) and help shape future scheme design. I will consult on the final scheme and how we transition in 2023.

A final decision on the proposals and, therefore, regulations which form the scheme will be made after the consultation in 2023.

3. Please can you identify what assessment you have made of the potential impact of UKIMA on the effectiveness of the provisions of the Bill should they be passed by the Senedd and become law?

Wales will be able to make its own standards with which the agricultural products listed in schedule 1 to the UK Internal Market Act must conform when they are marketed in Wales and the classification, identification and presentation of bovine, pig and sheep carcasses.

Likewise, England, Scotland and Northern Ireland will have the power to make their own provisions in these subject matters.

As is the case in respect of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, we are clear that the Senedd can legislate free from the requirements of UKIMA.

Therefore, the standards set in respect of agricultural products marketed in Wales will apply regardless of where in the UK those products come from.

The Welsh Government has made its position on UKIMA very clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill. This remains our position – In devolved areas, the Senedd continues to be able to legislate free from the requirements of UKIMA.

4. Section 23 of the Bill provides Agricultural Holdings Act tenants with a route to dispute resolution. Is this sufficient to ensure that tenants can access agricultural support provided under the Bill? Have you considered any alternative, or additional, provision to promote access?

Tenanted land makes up a significant portion of farmland in Wales and making sure tenants have fair access to the Sustainable Farming Scheme (SFS) and future support is important for us to deliver our outcomes.

The provision, in combination with careful scheme design, aims to ensure fair access for tenant farmers to agricultural support under the Bill.

The universal actions are being designed with the aim that they can be delivered by farmers on tenancy agreements. These actions will help farms become more sustainable. They should be within reach of most farmers and can be integrated into current farming practice. The intention being to provide the building blocks to enable the farmer to go on and do more by choosing optional actions and receiving additional payments.

We want to offer as much flexibility as practicable for farmers to carry out the universal actions in a way which works best for their farm, while seeking to achieve the purposes for which support may be given, and which contributes towards the SLM objectives. We recognise some farms may not be able to deliver the full range of universal actions from the outset (for example, because of their farm type, topography, or contracts). Exemptions may therefore be in place, but our starting position is that farms in the SFS should undertake all universal actions.

We understand some tenants may find their ability to take up optional actions constrained by the terms of their tenancy agreement. We are exploring how landlords and tenants could collaborate to enter mutually beneficial agreements, similar to the examples included in the Rock Review.

We have established a tenancy working group to work with us to explore barriers tenant farmers may face to participation in the SFS.

The provision in the Bill introduces a route to dispute resolution for 1986 Act tenancies. We did consider whether similar provisions should be inserted into the 1995 Act, however it already includes a general dispute resolution procedure, making additional procedures unnecessary.

5. Accessibility Section 29 of the Bill requires the Welsh Ministers to “publish” a draft requirement under sections 24(1) or 26(1). Where will this be published? Will the lack of precision in relation to the publication of this information impair accessibility?

In line with all consultations, the requirements and privacy notices for data collection and sharing will be published on the Welsh Government website and will be available bilingually.

6. In addition to a range of subordinate legislation making powers, the Bill amends a number of older pieces of (English language) legislation, such as the Forestry Act 1967. Did you consider making provision on the face of the Bill, rather than amending other legislation, so as to enable the provisions to be fully bilingual and to improve the accessibility of the law for the people of Wales?

The Bill amends some well-established statutory regimes, such as those set out in the Forestry Act 1967 and the Wildlife and Countryside Act 1981.

Achieving the policy by way of freestanding provisions in a Senedd Bill would have resulted in inaccessibility issues and undesirable complexity.

If what is being suggested is that the Bill could have been used to remove all Welsh provision from the 1967 Act, and re-state it subject to any necessary revisions, then this would have been a significant piece of work and faced with that and refocussing the Bill at the expense of agricultural reforms, or making the amendments that I consider necessary to implement my important policies in this area, I chose the route set out in the Bill.

7. How are the powers to allow the Natural Resources Body for Wales (NRW) to amend, suspend or revoke a tree felling licence it has issued, appropriate and proportionate? How will Welsh Government ensure that NRW are using these powers appropriately?

Officials have issued non-statutory guidance to NRW on how these powers are to be implemented to ensure appropriate and proportionate use.

NRW have developed a high level approaches paper reflecting this guidance. These documents have been published on the Welsh Government website as part of the Statement of Policy Intent which supports the Bill.

NRW are now developing full internal and external guidance to ensure a consistent and proportionate approach to implementing these powers. These will be published to align with commencement of the provisions.

My officials will conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967.

We will work with NRW and stakeholders to agree a collection of relevant data following commencement in order to monitor the impact of the forestry provision within the Bill.

8. Do the Welsh Ministers have sufficient powers to intervene in the event that NRW were found not to be using their powers appropriately?

Welsh Government has powers to give a direction to NRW in respect of the implementation of these powers if necessary.

9. Section 40 amends section 17 of the Forestry Act 1967 (penalty for felling without licence) to increase the maximum fine for illegal felling from a level 4 fine (£2,500) to a level 5 fine (unlimited). In your view, is this increase in monetary penalty proportionate and justified?

As the Forestry Act 1967 currently stands, a person can be fined less for illegal felling than for being in breach of a felling licence condition.

This anomaly is addressed by increasing the monetary penalty for illegal felling in line with the existing enforcement penalty for non-compliance with felling conditions. Leaving this anomaly unresolved would potentially undermine the new powers set out in the forestry provision.

It also gives the Courts flexibility to impose a higher fine in the event of a major incident and should also serve as a better deterrent for illegal felling.

This is in line with England, where the limit on these fines was removed by the 2021 Environment Act Schedule 16 para 2. (not yet commenced).

10. What safeguards are provided in the Bill to protect individuals' personal data?

The Bill's data collection provisions are compliant with the UK GDPR and overarching data protection legislation.

The Bill's data sharing provisions are very detailed and include several limitations and safeguards, such as the purposes for which data can be collected and how the data is to be processed.

Data can only be collected in furtherance of one or more of a specific and limited list of purposes which are set out in the Bill, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

Furthermore, any regulations under the Bill made by the Welsh Ministers introducing obligations to provide information can only be made using the affirmative Senedd procedure, which provides significant scrutiny powers to Senedd members in relation to the information being collected.

There are further safeguards in place. As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4) of the General Data Protection Regulation) when drafting legislation which impacts upon the processing of personal data, my officials have consulted with the ICO on the data provisions within the Bill.

This is an area of ongoing engagement on all aspects of data collection and data protection regarding the Bill. The ICO ensures the provisions are compliant with the data protection principles enshrined in the UK GDPR and the Data Protection Act 2018. Consequently, the Welsh Government cannot put in place legislation which overrides these principles and which does not respect UK GDPR.

11. Could you explain the measures that the Welsh Government will put in place to ensure that individuals clearly understand how their information will be used and processed?

In advance of any data being collected, we will publish our intent on the type of data to be collected, the purpose for the collection, how the data will be collected and used, as well as the frequency for collecting data under the requirement.

The Bill requires the Welsh Ministers to have published their proposed draft requirements for at least four weeks, for comment, prior to information requirements being introduced. These requirements must set out the purposes for which the information will be processed and the processing of the information cannot breach the set requirements.

Individuals will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

12. In line with UK GDPR and other data protection legislation, will individuals, including farmers, be required to consent to the processing of their data?

Where data is collected from farmers on a voluntary basis, for example, the Annual Farm Business Survey, their consent is required to the processing of the data.

The Bill also contains statutory mechanisms which can require specific types of data to be provided by farmers for limited and particular purposes and whilst farmers' consent will not be required where these mechanisms are used, farmers will be able to influence those requirements by making representations themselves, via stakeholder representatives or Senedd members about the nature, effect and practical impact of the proposed requirements.

As previously stated, individuals including farmers will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

13. We note that it is not the Welsh Government's policy nor wider intent to sell any data collected in accordance with Chapter 1 of Part 3 of the Bill to third parties. As such, would you consider amending the Bill to expressly prohibit the sale of such data?

Whilst there is no provision within the Bill which specifically prevents the sale of collected information to third parties, it is not the policy nor wider intent of the Welsh Government to sell data onto third parties, therefore I do not think it is necessary to expressly prohibit the selling of data.

Under **UK GDPR it is only necessary to state what will be done with any data**, and, therefore, it is not a requirement to state what will not be done. We only state what can be done with the data within the Bill and accompanying regulations.

Including a provision to expressly prohibit the selling of data, would result in also needing to consider implementing further provisions to address **all** areas for which data will not be used.

14. The Bill would grant powers to the Welsh Ministers to modify retained EU law. Does the Welsh Government intend to preserve retained EU law in the fields covered by this Bill using powers under the Retained EU Law Bill?

The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds.

15. Could the Welsh Government preserve retained EU law in the fields covered by this Bill, or is it reliant on the UK Government to also preserve relevant retained EU law, in whole or in part, to replicate the situation as it currently stands?

As currently drafted the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence. The Welsh Government is considering how it will respond to this Bill and will work with the UK Government to identify all devolved REUL including those instruments made by the UK Government and Parliament.

16. What discussions have taken place with other UK governments in relation to retained EU law in the fields covered by this Bill, for example, is the Welsh Government aware of any UK Government plans for this retained EU law?

Some UK Government departments (including DEFRA) have started to share their initial interpretation of the reserved/ devolved split of REUL with Welsh Government officials and they are considering how to respond and what further information is required. This work is dynamic as new REUL instruments are being identified as work progresses.

17. How might such plans affect powers granted to Welsh Ministers by this Bill?

We will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood.

18. Under the Retained EU Law Bill, the retained EU law in the fields covered by this Bill could automatically expire at the end of 2023. How might that impact the ability of the Welsh Government to deliver the objectives of

this Bill (specifically in relation to public market intervention or aid for private storage)?

As I have said previously, we will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood. Once we have more clarity, we will then be in a better position to assess how the REUL Bill will impact on public intervention and private storage aid.

We are planning to end Public Intervention and reform Private Storage Aid schemes in Welsh legislation next year.

Public Intervention schemes are an inefficient form of market support and have high associated costs, so we are planning to end their use because they represent poor value for money.

We are also planning to remove the requirements for operators to lodge a security for Private Storage Aid contracts and for the Rural Payments Agency to conduct interim inspections of products in such schemes.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and

Trefnydd

25 November 2022

Dear Lesley

Agriculture (Wales) Bill

Thank you for attending our committee meeting on Monday 21 November to give evidence on your Agriculture (Wales) Bill.

As I indicated at the end of our session, we have some further questions which we were unable to cover, as well as three follow-up questions in relation to comments you made during the meeting, which I set out first below.

Timing of the use of regulation-making powers in the Bill

In your evidence you said:

"This legislation is going to be here for several decades..." (RoP, paragraph 38)

1. Please could you identify, for every regulation-making power in the Bill, when you first intend to use that power to make the relevant regulations?

Sunset provision in relation to the continuation of CAP

We asked if you have considered including a sunset provision to prevent the CAP continuation powers being used indefinitely to ensure transition to the sustainable farming scheme. In response

you said:

"So, we did consider it, I think it's fair to say, but we decided on balance the Bill already contains the relevant powers to modify legislation that relates to CAP. And, obviously, as James has just set out very clearly, we'll exercise those powers when the sustainable farming scheme is ready, which we hope will be by 2025. So, we don't have any plans to sunset either the BPS or the CAP continuation powers at this stage." (RoP, paragraph 122).

2. We note that the Bill contains powers to modify legislation that relates to CAP, but that seems to us to be different from transitioning to the sustainable farming scheme. Please can you provide further information about why you do not have any plans to sunset either the BPS or the CAP continuation powers, particularly when it is intended that the Sustainable Farming Scheme will be the main source of funding for farmers in future and the BPS will be phased out over the transition period?

Potential impact of the *United Kingdom Internal Market Act 2020* (UKIMA) on the Bill, if enacted

In the evidence session you said that:

"The Counsel General has made it very clear that the UK Internal Market Act cannot and does not cut across Senedd competence to legislate in relation to non-reserved matters, which obviously this is, so I don't think it will have any impact." (RoP, paragraph 159).

We agree that the Bill's provisions are within legislative competence, but this does not directly address the key issue of concern to us, which we believe to be a separate matter. For example, we accept that UKIMA would not prevent the Welsh Ministers from making regulations to amend the marketing standards for agricultural products in Wales under section 32 of the Bill. However, the fundamental point is that if there is future divergence in such marketing standards as between Wales and the rest of the UK, the mutual recognition principle in UKIMA will be engaged and could impact upon the effectiveness of the law once it is made.

3. Please can you identify what assessment you have made of the potential impact of UKIMA on the *effectiveness* of the provisions of the Bill should they be passed by the Senedd and become law?

Agricultural tenancies

4. Section 23 of the Bill provides Agricultural Holdings Act tenants with a route to dispute resolution. Is this sufficient to ensure that tenants can access agricultural support provided under the Bill? Have you considered any alternative, or additional, provision to promote access?

Accessibility

5. Section 29 of the Bill requires the Welsh Ministers to “publish” a draft requirement under sections 24(1) or 26(1). Where will this be published? Will the lack of precision in relation to the publication of this information impair accessibility?
6. In addition to a range of subordinate legislation making powers, the Bill amends a number of older pieces of (English language) legislation, such as the *Forestry Act 1967*. Did you consider making provision on the face of the Bill, rather than amending other legislation, so as to enable the provisions to be fully bilingual and to improve the accessibility of the law for the people of Wales?

Forestry and tree felling

7. How are the powers to allow the Natural Resources Body for Wales (NRW) to amend, suspend or revoke a tree felling licence it has issued, appropriate and proportionate? How will Welsh Government ensure that NRW are using these powers appropriately?
8. Do the Welsh Ministers have sufficient powers to intervene in the event that NRW were found not to be using their powers appropriately?
9. Section 40 amends section 17 of the *Forestry Act 1967* (penalty for felling without licence) to increase the maximum fine for illegal felling from a level 4 fine (£2,500) to a level 5 fine (unlimited). In your view, is this increase in monetary penalty proportionate and justified?

Data protection

10. What safeguards are provided in the Bill to protect individuals’ personal data?
11. Could you explain the measures that the Welsh Government will put in place to ensure that individuals clearly understand how their information will be used and processed?
12. In line with UK GDPR and other data protection legislation, will individuals, including farmers, be required to consent to the processing of their data?
13. We note that it is not the Welsh Government’s policy nor wider intent to sell any data collected in accordance with Chapter 1 of Part 3 of the Bill to third parties. As such, would you consider amending the Bill to expressly prohibit the sale of such data?

Retained EU Law (Revocation and Reform) Bill

14. The Bill would grant powers to the Welsh Ministers to modify retained EU law. Does the Welsh Government intend to preserve retained EU law in the fields covered by this Bill using powers under the Retained EU Law Bill?
15. Could the Welsh Government preserve retained EU law in the fields covered by this Bill, or is it reliant on the UK Government to also preserve relevant retained EU law, in whole or in part, to replicate the situation as it currently stands?
16. What discussions have taken place with other UK governments in relation to retained EU law in the fields covered by this Bill, for example, is the Welsh Government aware of any UK Government plans for this retained EU law?
17. How might such plans affect powers granted to Welsh Ministers by this Bill?
18. Under the Retained EU Law Bill, the retained EU law in the fields covered by this Bill could automatically expire at the end of 2023. How might that impact the ability of the Welsh Government to deliver the objectives of this Bill (specifically in relation to public market intervention or aid for private storage)?

I would be grateful to receive a response by 8 December 2022.

I am copying this letter to Paul Davies MS, Chair of the Economy, Trade, and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies

Chair



Document is Restricted

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

11 January 2023

Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill

Dear Lesley,

Following the Business Committee meeting on 13 December, we agreed to write to you to express concern over the late laying of the Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill.

As you'll be aware, despite the Bill being laid in the House of Commons in May 2022, the LCM was only laid by the Welsh Government on 8 December. As the Government intends to schedule the Plenary debate on this LCM on 17 January 2023, this has resulted in the Business Committee being asked to agree a reporting deadline of 16 January. Given the Christmas Recess, the result is an extremely limited period of time of approximately two sitting weeks being available to the relevant committees for scrutiny of the relevant provisions in the Bill.

Whilst this may be an extreme example of a delay in the laying of an LCM in the Senedd, we note that it is not an isolated one and that there have been multiple recent examples of LCMs being laid later than the Senedd's Standing Orders require, on occasions significantly so.

We also note the lack of engagement from the UK Government on this specific LCM and appreciate the difficulty that this can cause to the Welsh Government. However, it is incumbent on us to raise the impact that the limited time often available for

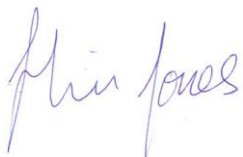


committees to scrutinise Legislative Consent Memoranda has, including on their ability to gather evidence and views from stakeholders, where appropriate, and their wider work programmes. You will be aware that this issue has been raised on a number of occasions by Members in the Siambr and by a number of committees.

We would urge that you, in your role as Trefnydd, and the Welsh Government as a whole could give a commitment to ensuring that LCMs are laid in a timely fashion and that the time available to Senedd committees to scrutinise them is sufficient to enable them to undertake the work required in a sufficient level of detail.

I am enclosing a copy of this letter to the committees impacted by this LCM, namely the Economy, Trade, and Rural Affairs Committee and the Legislation, Justice and Constitution Committee.

Kind regards,

A handwritten signature in blue ink that reads "Elin Jones".

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 17

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

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Agenda Item 19

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

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Agenda Item 20

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