

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 4, Tŷ Hywel

Meeting date: 13 February 2023

Meeting time: 12.00

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(12.00)

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

(12.00 – 12.05)

Made Negative Resolution Instruments

2.1 SL(6)316 – The Judicial Offices (Sitting in Retirement – Prescribed Offices and Descriptions) (Wales) Regulations 2023

(Pages 1 – 4)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–06–23 – Paper 1 – Draft report

2.2 SL(6)317 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2023

(Pages 5 – 7)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)-06-23 – Paper 2 – Draft report

**2.3 SL(6)320 – The National Health Service (Charges to Overseas Visitors)
(Amendment) (Wales) Regulations 2023**

(Pages 8 – 12)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-06-23 – Paper 3 – Draft report

LJC(6)-06-23 – Paper 4 – Letter from the Minister for Health and Social
Services to the Llywydd, 31 January 2023

Made Affirmative Resolution Instruments

2.4 SL(6)319 – The Non-Domestic Rating (Multiplier) (Wales) Regulations 2023

(Pages 13 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-06-23 – Paper 5 – Draft report

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

(12.05 – 12.10)

(Pages 16 – 17)

Attached Documents:

LJC(6)-06-23 – Paper 6 – Draft report

**3.1 SL(6)318 – Code of practice on the exercise of social services functions in
relation to Part 4 (direct payments and choice of accommodation) and Part 5
(charging and financial assessment) of the Social Services and Well-being
(Wales) Act 2014**

4 Inter-Institutional Relations Agreement

(12.10 – 12.15)

4.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Inter-Ministerial Group for Environment, Food and Rural Affairs

(Pages 18 – 19)

Attached Documents:

LJC(6)-06-23 – Paper 7 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 February 2023

4.2 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Standing Committee

(Pages 20 – 22)

Attached Documents:

LJC(6)-06-23 – Paper 8 – Letter from the Counsel General and Minister for the Constitution, 7 February 2023

LJC(6)-06-23 – Paper 9 – Written Statement by the Counsel General and Minister for the Constitution, 7 February 2023

4.3 Correspondence from the Minister for Health and Social Services: UK Health Ministers Inter-Ministerial Group

(Page 23)

Attached Documents:

LJC(6)-06-23 – Paper 10 – Letter from the Minister for Health and Social Services, 7 February 2023

4.4 Written Statement and correspondence from the Deputy Minister for Mental Health and Wellbeing: The Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023

(Pages 24 – 27)

Attached Documents:

LJC(6)-06-23 – Paper 11 – Letter from the Deputy Minister for Mental Health and Wellbeing, 9 February 2023

LJC(6)-06-23 – Paper 12 – Written Statement by the Deputy Minister for Mental Health and Wellbeing, 9 February 2023

5 Papers to note

(12.15 – 12.20)

5.1 Correspondence from the Minister for Climate Change: Legislative Consent Memoranda on the UK Government's Social Housing (Regulation) Bill

(Pages 28 – 29)

Attached Documents:

LJC(6)-06-23 – Paper 13 – Letter from the Minister for Climate Change, 6 February 2023

5.2 Correspondence from the Minister for Finance and Local Government: Supplementary Legislative Consent Memoranda on the Procurement Bill

(Pages 30 – 39)

Attached Documents:

LJC(6)-06-23 – Paper 14 – Letter from the Minister for Finance and Local Government, 8 February 2023

LJC(6)-06-23 – Paper 15 – Letter to the Minister for Finance and Local Government, 26 January 2023

5.3 Correspondence from the Economy, Trade and Rural Affairs Committee to the Minister for Rural Affairs and North Wales, and Trefnydd, and the Minister for Economy: Retained EU Law (Revocation and Reform) Bill

(Pages 40 – 42)

Attached Documents:

LJC(6)-06-23 – Paper 16 – Letter from the Economy, Trade and Rural Affairs Committee to the Minister for Rural Affairs and North Wales, and Trefnydd, and the Minister for Economy, 8 February 2023

5.4 Equality and Human Rights Commission briefing for House of Lords Second Reading on the Retained EU Law (Revocation and Reform) Bill

(Pages 43 – 50)

Attached Documents:

LJC(6)-06-23 – Paper 17 – Equality and Human Rights Commission briefing

5.5 Correspondence from the Local Government and Housing Committee: The Welsh Government's capacity to legislate

(Pages 51 – 52)

Attached Documents:

LJC(6)-06-23 – Paper 18 – Letter from the Local Government and Housing Committee, 9 February 2023

Break

(12.20 – 12.30)

6 Historic Environment (Wales) Bill: Detailed Committee Consideration

(12.30 – 15.30)

Agreed Order of Consideration:

The Legislation, Justice and Constitution Committee agreed on 16 January 2023, under Standing Order 26C.27, that the order of consideration for Detailed Committee Consideration proceedings would be: sections 2 to 75; Schedules 1 and 3 to 6; sections 76 to 157; Schedules 2 and 7 to 10; sections 158 to 166; Schedule 11; sections 167 to 191; Schedule 12; sections 192 to 213; Schedules 13 and 14; section 1; and the Long title.

[Marshalled List of Amendments – 13 February 2023](#)

[Grouping of Amendments – 13 February 2023](#)

[Historic Environment \(Wales\) Bill](#)

[Explanatory Memorandum](#)

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

(15.30)

Break

(15.30 – 15.40)

8 Historic Environment (Wales) Bill: Detailed Committee

Consideration next steps

(15.40 – 15.45)

9 Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) Bill: Draft report

(15.45 – 16.30)

(Pages 53 – 55)

Attached Documents:

LJC(6)-06-23 – Paper 19 – Draft report (to follow)

LJC(6)-06-23 – Paper 20 – Legal Advice Note

LJC(6)-06-23 – Paper 21 – Letter to the Business Committee, 27 January
2023

10 Legislative Consent Memoranda on the Levelling-up and Regeneration Bill: Draft report

(16.30 – 17.15)

(To Follow)

Attached Documents:

LJC(6)-06-23 – Paper 22 – Draft report

11 International agreements

(17.15 – 17.25)

(Pages 56 – 58)

Attached Documents:

LJC(6)-06-23 – Paper 23 – Briefing

SL(6)316 – The Judicial Offices (Sitting in Retirement – Prescribed Offices and Descriptions) (Wales) Regulations 2023

Background and Purpose

The Public Service Pensions and Judicial Offices Act 2022 (“the Act”) introduced changes that extend UK-wide to the mandatory retirement age for judicial office holders from 70 to 75 years of age. It also implemented a single legislative regime governing judicial office holders sitting in retirement, such appointments not extending beyond the mandatory retirement age of 75. A suite of new sitting in retirement judicial offices that correspond to original judicial offices is created by the Act. The Senedd agreed a Legislative Consent Motion in respect of the Act on 8 February 2022.

The President of Welsh Tribunals is the appointing authority for the new sitting in retirement offices that correspond to the original judicial offices in the Welsh Tribunals. An “eligible person” for appointment to a sitting in retirement office is a person who holds or has held a prescribed office and is a person of such further description as may be prescribed. “Prescribed” means prescribed in regulations made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

These Regulations therefore prescribe the judicial offices that a person must hold or have held prior to their retirement to be eligible for appointment to a particular sitting in retirement office. The Regulations must be in place before the President of Welsh Tribunals can exercise powers conferred by section 124 of the Act to appoint eligible persons to sitting in retirement offices by reason of such a person holding or having held a corresponding original judicial office.

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



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

The Schedule is headed “Judicial Offices Listed in Part 5 of Schedule 3 to the Act and Corresponding Prescribed Offices”. The term “the Act” is not defined in the Regulations and therefore it is not clear which Act is being referred to.

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

In regulation 2, there are several errors and differences—

- (a) in the English text, the definition has been spelt with a capital first letter “Legally...” but the defined term in the Welsh text has been spelt with a lower case first letter;
- (b) in both language texts, the corresponding language definitions that are put in brackets and italics afterwards differ slightly from the actual definitions as follows—
 - i. in the English text, the corresponding Welsh definition should include the words “wedi ymgymhwyso yn y gyfraith” to be consistent with the actual definition, but the definite article “y” is missing and instead it says “wedi ymgymhwyso yn gyfraith”;
 - ii. in the Welsh text, the corresponding English definition should be spelt with a capital first letter “Legally qualified...” to be consistent with the actual definition, but instead it is spelt with a lower case first letter;
- (c) in the Welsh text, in paragraph (b), the translation doesn’t include anything to convey the meaning of “at least” in the phrase “at least five years’ standing”. As a result, the translation has the meaning “with five years’ standing”.

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

Certain offices are referred to in the Schedule and include references to “chairman” and “deputy chairman”. The Explanatory Memorandum notes:

Because the statutory framework for each Welsh Tribunal defines the original judicial offices in respect of which the Act creates corresponding sitting in retirement offices, the extant terminology defining those original offices has been carried through into the Regulations. This approach has been followed including where the terminology of older legislation is considered outdated. The rationale for doing so is to maintain clarity in terms of the prescribed original judicial office a person must hold or have held to be eligible for appointment to the corresponding sitting in retirement office.

Merits Scrutiny

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



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

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

The Regulations are made with the concurrence of the President of Welsh Tribunals and the President was consulted during their preparation. No further public consultation has been undertaken in relation to these Regulations which are administrative and technical in nature.

Welsh Government response

Technical Scrutiny point 1:

The Government acknowledges that it would have been clearer to the reader if the term “the Act” in the heading to the Schedule had been defined. The Government accepts this is an omission but on analysis, considers it would not be appropriate to make an amendment or correction to rectify the error.

Our reason for this view is that it is clear enough that the Act referred to is the Public Service Pensions and Judicial Offices Act 2022. The 2022 Act is the only enabling legislation for the Regulations and there are no references in the Regulations to other legislation. The Government thanks the Committee for drawing the omission to its attention. However, due to the reasons set out above, the Government has made the decision to leave the instrument in its existing form.

Technical Scrutiny point 2(a):

The Government acknowledges the inconsistency in the use of a first capital letter and a first lower case letter in the defined term in the English and Welsh texts. However, this does not affect the meaning of the Regulations or consistency between the two texts.

Technical Scrutiny point 2(b)(i):

The Government acknowledges that the definite article “y” is missing from the Welsh definition in the English text. However, this does not affect the meaning of the Regulations or consistency between the texts.

Technical Scrutiny point 2(b)(ii):

The Government acknowledges the inconsistency in the use of a capital letter and a lower-case letter. However, this does not affect the meaning of the Regulations or consistency between the two texts.

Technical Scrutiny point 2(c):

The Government acknowledges that the Welsh text should have conveyed the meaning of “at least” in Regulation 2(b). The Government accepts this is an omission but on analysis, considers it would not be appropriate to make an amendment or correction to rectify the error.



Our reason for this view is that it is clear enough that if P has more than five years' standing, they will still satisfy the description. There is no possibility that a court or user of the legislation would interpret the reference to exclude an advocate or solicitor in Scotland who has more than five years' standing. The Government thanks the Committee for drawing the omission to its attention. However, due to the reasons set out above, the Government has made the decision to leave the instrument in its existing form.

Legal Advisers

Legislation, Justice and Constitution Committee

6 February 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

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Legislation, Justice and Constitution Committee

SL(6)317 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2023

Background and Purpose

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2023 (“the Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 64(1) and (2)(b), 66 and 196(2) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Financial Assessment Regulations”).

The Charging Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging in the course of carrying out their functions under Part 4 of the 2014 Act. The Charging Regulations also contain parallel provisions setting out requirements which apply when a local authority makes direct payments to meet a person’s need for care and support. The Financial Assessment Regulations make provision under the 2014 Act about the way in which a local authority must carry out a financial assessment of a person’s (“A”) financial resources in the following cases:

- where the authority thinks that if it were to meet A’s needs for care and support (or a carer’s needs for support) it would impose a charge under section 59 of the 2014 Act, or
- where the authority thinks that if it were to make payments towards meeting the cost of A’s needs for care and support (or a carer’s need for support) by making direct payments by virtue of section 50 or 52 of the 2014 Act, it would require A to pay, by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments), towards the cost of securing the provision of that care and support.

Regulation 2 of these Regulations amends regulation 13 of the Charging Regulations (minimum income amount where a person is provided with accommodation in a care home) to increase the net weekly income amount from £35 to £39.50. Regulation 28 is also amended to make corresponding change for a recipient of direct payments.

Regulation 3(a)(i) of this instrument amends the descriptive wording of paragraph 20(1) of Schedule 2 to the Financial Assessment Regulations to include the following:

- Grenfell Tower payment,
- child abuse payment,



- Windrush payment, and
- Payments made by the Child Migrants Trust.

These schemes are already disregarded through the effect of paragraph 20 of Schedule 2 through their inclusion in the Income Support (General) Regulations 1987 and they are added in the descriptive words for clarity.

Regulation 3(a)(ii) of this instrument amends Schedule 2 to the Financial Assessment Regulations as follows:

- payments made under the Energy Bill Support Scheme,
- payments made under the Social Security (Additional Payments) Act 2022,

are to be disregarded in the calculation of an adult's capital.

Procedure

Negative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

In Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, we note that the Minimum Income Amount, which is reviewed annually, is being uplifted from £35 to £39.50. This takes account of annual uplifts to UK state pensions and welfare benefit payments; which from the basis of care home residents' weekly income.

The Regulatory Impact Assessment states that the uplift in basic state pension alone is £14.35 per week.

In making these Regulations local authority supported residents will retain '*around a third*' of the uplift they receive to spend on personal items as they wish. It is stated that this will result in local authorities receiving an increase in charge income of '*around an estimated £8.3 million per annum through contributions from the 16,144 residents over state pension age alone.*'



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 2.3

SL(6)320 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 to overseas visitors.

Regulation 2 amends regulation 4D of the Principal Regulations, which is concerned with charges for the provision of healthcare services to individuals who have made a late application for leave to enter or remain in the United Kingdom under the European Union Settlement Scheme (“EUSS”). The amendments provide that individuals who have made such an application, but have not been granted EUSS pre-settled or settled status, must not be charged for relevant healthcare services provided to them whilst their application is under consideration, and that any charges for such services:

- If already made, must not be recovered;
- If already paid, must be repaid.

Procedure

Negative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the



instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services, in a [letter](#) to the Llywydd dated 31 January 2023.

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

“Regulation 4D(1) of the Principal Regulations provides that a person who makes a late application to the EU Settled Scheme (“EUSS”) will not be charged for relevant services which are provided while their application is being determined. However, regulation 4D(4) of the Principal Regulations further provides that if the application is unsuccessful then they will be charged for the provision of those relevant services that were received during the period that their application was made and the date on which the application was finally determined.

Having reviewed the policy on charging of late EUSS applicants, I am of the view that the charging for treatment under Regulation 4D(4) of the Principal Regulations, of late EUSS applicants whose application is subsequently rejected, does not reflect the provisions of Article 18 of the Withdrawal Agreement (“WA”) and Article 17 of the EEA EFTA Separation Agreement (“SA”).

The 2023 Regulations remove the requirement to charge unsuccessful late applicants to the EUSS for NHS treatment received during the period that their application was under consideration and require that any charges for such services: if made, must not be recovered; or if paid, must be repaid.

Though discussions with the Local Health Boards indicate that no individuals in Wales have been charged or are due to be charged for treatment in this regard, the 2023 Regulations have been made urgently in order to ensure that no unnecessary charges are made (in the event that it transpires that charges are payable), and also to ensure that the Principal Regulations reflect the WA and SA.”

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.

Even though the Regulations apply prospectively, in practice they contain an element of retrospectivity.

This is because any charges which were made for NHS treatment provided to late applicants before these Regulations came into force, whose application for EUSS pre-settled or settled status is subsequently unsuccessful, cannot now be recovered as a result of the amendments made to the Principal Regulations by these Regulations. Likewise, any charges recovered for NHS treatment from applicants before these Regulations came into force must be repaid.

The following in the Explanatory Memorandum is specified as the policy justification for this retrospectivity:

“The Regulations will ensure that the Principal Regulations reflect the provisions of Article 18 of the WA [Withdrawal Agreement] and Article 17 of the SA [EEA EFTA Separation



Agreement] with regard to charging for treatment of late EUSS applicants, and to ensure that unsuccessful late applicants are afforded equal treatment to those applicants who submitted their application to the EUSS within time.”

Regardless, the following line is noted in a [letter](#) from Eluned Morgan MS, Minister for Health and Social Services, to the Llywydd dated 31 January 2023:

“...discussions with the Local Health Boards indicate that no individuals in Wales have been charged or are due to be charged for treatment in this regard...”

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.

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

“There is no statutory duty to consult [...]. It is considered that the proposed amendments do not require consultation as they are implementing UK international agreements which apply to the UK as a whole and thereby Wales is obliged to implement and observe them.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 February 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee



Ein cyf/Our ref : MA-EM-0021-23

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

31 January 2023

Dear Llywydd,

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023 (“the 2023 Regulations”)

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 1 February 2023, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The 2023 Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”). The Principal Regulations set the framework for charging persons who are not ordinarily resident in the UK for hospital treatment which is provided in Wales.

Regulation 4D(1) of the Principal Regulations provides that a person who makes a late application to the EU Settled Scheme (“EUSS”) will not be charged for relevant services which are provided while their application is being determined. However, regulation 4D(4) of the Principal Regulations further provides that if the application is unsuccessful then they will be charged for the provision of those relevant services that were received during the period that their application was made and the date on which the application was finally determined.

Having reviewed the policy on charging of late EUSS applicants, I am of the view that the charging for treatment under Regulation 4D(4) of the Principal Regulations, of late EUSS applicants whose application is subsequently rejected, does not reflect the provisions of Article 18 of the Withdrawal Agreement (“WA”) and Article 17 of the EEA EFTA Separation Agreement (“SA”).

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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

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

The 2023 Regulations remove the requirement to charge unsuccessful late applicants to the EUSS for NHS treatment received during the period that their application was under consideration and require that any charges for such services: if made, must not be recovered; or if paid, must be repaid.

Though discussions with the Local Health Boards indicate that no individuals in Wales have been charged or are due to be charged for treatment in this regard, the 2023 Regulations have been made urgently in order to ensure that no unnecessary charges are made (in the event that it transpires that charges are payable), and also to ensure that the Principal Regulations reflect the WA and SA.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Russell George MS Chair of the Health and Social Care Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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

Eluned Morgan AS/MS

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

SL(6)319 – The Non-Domestic Rating (Multiplier) (Wales) Regulations 2023

Background and Purpose

The Regulations amend, in Wales, the basis on which the non-domestic rating (NDR) multiplier is calculated, which uses the formula contained in paragraph 4B of Schedule 7 to the Local Government Finance Act 1988 (“the 1988 Act”).

The Regulations apply to the financial year beginning on 1 April 2023. The Regulations disapply the use of the Consumer Prices Index (CPI) for September 2022 when calculating the NDR multiplier, and state that the calculation is undertaken using 113.9 in place of the CPI. The effect of this is to freeze the NDR multiplier for 2023-24.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. In accordance with paragraph 5(13C) of Schedule 7 to the 1988 Act, the Senedd must approve the Regulations before the Senedd approves the local government finance report for the financial year beginning on 1 April 2023, or before 1 March 2023 (whichever is earlier) for them 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 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment**

The Explanatory Memorandum states that:

“All the NDR revenue collected in Wales is pooled centrally and distributed to local authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated



national total of rateable value, taking account of any surplus or deficit carried forward from previous years.

The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Senedd as part of the annual Local Government Finance Reports. The multiplier, therefore, needs to be determined before the annual settlements can be finalised."

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 the importance of these Regulations and their effect on the annual local government revenue settlements. We note the decision by the Welsh Government to freeze the multiplier for the financial year beginning on 1 April 2023 rather than increasing the multiplier by reference to the CPI. This approach means the multiplier remains the same figure as that calculated for the 2020-21 and 2021-22 financial years.

We note, in particular, the following helpful paragraphs in the Explanatory Memorandum:

"All owners or occupiers of non-domestic properties in Wales who pay rates will benefit from the change and will receive lower rates bills for 2023-24 than they would have if CPI were used. Even properties which receive significant amounts of rates relief will benefit, as the residual liability will be calculated using a lower multiplier.

...

Freezing the multiplier in Wales, rather than increasing it to maintain real-terms NDR revenue in line with CPI, will reduce the income into the NDR pool in 2023 24. The reduction will be fully funded by the Welsh Government and will be reflected in the calculations for the local government settlements, so that there is no financial impact on local authorities or police budgets."

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

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

"No consultation has been undertaken on the policy behind the 2023 Regulations. The proposals benefit all ratepayers in Wales and there is no impact on the resources available to local authorities and police services."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 February 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

Agenda Item 3

Statutory Instruments with Clear Reports

13 February 2023

SL(6)318 – Code of practice on the exercise of social services functions in relation to Part 4 (direct Code of payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

Procedure: Draft Negative

This Code of Practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014. Local authorities, when exercising their social services functions, must act in accordance with the requirements contained in this Code.

This revised Code has been amended to reflect a number of new financial support schemes by making an addition to the list of forms of capital that should be fully disregarded in the financial assessment for charging for all forms of care and support.

These schemes are new pieces of legislation in non-devolved areas introduced by the UK Government that make payments to individuals and households to support them in the context of current cost of living pressures arising from Energy price increases.

The new financial support schemes to be added to the Code include:

- Payments made under the Energy Bill Support Scheme (EBSS)
- Low Income or Disability cost of living payments made under the Social Security (Additional Payments) Act 2022

Producing a revised Code also presents an opportunity to add a reference to amending charging and financial assessment regulations that have come into effect since the previous revision. To this effect the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2023 have been referenced in the revised Code as appropriate. This is for completeness as the regulations amend principle regulations referred to in the Code.

The following existing compensation schemes have been previously disregarded in regulations under paragraph 20(1) of Schedule 2 to the Financial Assessment Regulations, but have now been listed separately in the Code of Practice to provide clarity to the end user:



- Grenfell Tower Payment,
- Child abuse payment,
- Windrush payment made under the Windrush Compensation Scheme (expenditure) Act 2020, or
- payments made by the Child Migrants Trust under the scheme for former British child migrants.

Parent Act: The Social Services and Well-being (Wales) Act 2014

Date Made: Not Stated

Date Laid: Not Stated

Coming into force date: Not Stated



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Agenda Item 4.1

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

Huw.Irranca-Davies@senedd.wales

6th February 2023

Dear Huw,

In accordance with the inter-institutional relations agreement, I wish to notify you a meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 23 January 2023.

The meeting was chaired by Mark Spencer MP, Minister of State for Food UK Government on behalf of Northern Ireland. The meeting was also attended by Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and the Islands, Scottish Government; Lorna Slater MSP, Minister for Green Skills, Circular Economy, and Biodiversity from Scottish Government UK Government; John Lamont MP, Parliamentary Under Secretary of State at Office of the Secretary of State for Scotland, UK Government; James Davies MP, Parliamentary Under Secretary of State at the Office of the Secretary of State for Wales, UK Government; and Katrina Godfrey, Permanent Secretary, DAERA in the absence of Northern Ireland ministers.

At the meeting we discussed the Retained EU Law (Reform and Revocation) Bill, including the status of the Bill, and in particular Defra's plans for managing the extensive amount of legislation in the portfolio.

We then discussed the positive outcomes of the CBD COP15. We will be discussing next steps in March.

Following this, the UK Agricultural Market Monitoring Group provided an update on the supply issues impacting on the sector.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
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.

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

There were several items of AOB. I requested an update on the Animal Welfare (Kept Animal) Bill and noted I will be responding to Lord Beynon's letter on the Animal (Low-Welfare Activities Abroad) Bill. I also asked for an update on the call for evidence on caged birds I agreed to last year.

Scottish Government ministers reiterated their concerns over the Offshore Wind Environment Improvement Package.

I then requested an update on the GB Invasive Non-Native Species Strategy, which I consented to publication of in October 2022.

Scottish Government finally raised end-of-life fishing equipment and asked to work together to reduce plastic waste from the industry.

The next meeting will be held on Monday 6 March.

A communique regarding this meeting will be published on the UK Government website at <https://www.gov.uk/government/publications/communique-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs>.

I am copying this letter to the Climate Change, Environment, and Infrastructure Committee and to the Economy, Trade and Rural Affairs Committee.

Regards,

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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Agenda Item 4.2

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



Llywodraeth Cymru
Welsh Government

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

07 February 2023

Dear Huw,

Inter-Institutional Relations Agreement: Inter-Ministerial Standing Committee

Further to my letter of 19 January, I have issued a [Written Ministerial Statement](#) summarising discussions at the most recent meeting of the Inter-Ministerial Standing Committee ('IMSC').

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

I have also copied this letter to the Finance Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

Mick Antoniw AS/MS

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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.

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Inter-Ministerial Standing Committee
DATE 07 February 2023
BY Mick Antoniw MS, Counsel General and Minister for the Constitution

I chaired and represented the Welsh Government at the third meeting of the Inter-Ministerial Standing Committee (IMSC) on 1 February.

A joint [communiqué](#) was published following the meeting and contains full details of other attendees. Among the items on the agenda were: the cost of living crisis, the Sewel Convention; the Retained EU Law Bill; the wider UK Parliament legislative programme; Common Frameworks; and the progress on establishing Inter-ministerial Groups (IMGs).

As referred to in the communiqué, the Committee has commissioned a Cost of Living working group of officials to coordinate work and to agree next steps and ministerial engagement.

Concerning the Sewel Convention, I again raised deep concern that since 2019 we have seen the Senedd's refusal to consent to UK Legislation increasingly ignored by the UK Government. We discussed the importance of the Sewel convention and the need for strengthened inter-governmental working and transparency on UK Government Bills.

On the Retained EU Law Bill, I reiterated our concerns around the UK Government's approach, including the concurrent powers currently contained in the Bill – which would allow UK Government to legislate in devolved areas without the consent of Welsh Ministers or the Senedd – and the sunset date.

I raised serious concerns over the suggestion that the UK Government might bring back the Bill of Rights, as well as concerns relating to the Northern Ireland Protocol Bill and the Strikes (Minimum Service Levels) Bill.

Ministers agreed the importance of reporting to both the IMSC and legislatures on the operation of Common Frameworks once they are fully implemented, and that officials

should carry out an assessment, including on the impact of emerging issues on the programme.

Ministers noted the progress on establishing IMGs to date. The next IMSC is scheduled to be held in March and will be chaired by the UK Government, in line with rotating chair arrangements.

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

Agenda Item 4.3


Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

7 February 2023

Dear Chair,

I am writing in accordance with the inter-institutional relations agreement to notify you of a meeting on 28 February 2023 of the UK Government's Health Minister and Health Ministers of the devolved governments.

In this virtual meeting we will discuss common pressures across the UK national health services and post winter planning and recovery. A communique will be issued after the meeting.

I am copying this to the Chair of the Health and Social Care Committee.

Yours sincerely,



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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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

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

Agenda Item 4.4

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



Llywodraeth Cymru
Welsh Government

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

9 February 2023

Dear Huw

I am writing to notify you of an amending SI entitled the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023 (“the correcting SI”), which was laid before UK Parliament on 8 February and comes into force in stages. I apologise that I was not in a position to provide you with early notification, but UK Government did not provide us with the final Statutory instruments until late on Monday 6 February.

The correcting SI amends the existing commencement provision (regulation 1(2)) in the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023 (“the Miscellaneous Amendments Regulations”) to provide that it comes into force on 10 February 2023, as intended. This addresses an error in the commencement provision which rendered the legislation inoperable.

The correcting SI also inserts transitional provisions into the Food Supplements (England) Regulations 2003, the Food Supplements (Scotland) Regulations 2003 and the Food Supplements (Wales) Regulations 2003 (“2003 GB Food Supplements Regulations”). The provisions provide a defence in any relevant enforcement proceedings in respect of the sale of food supplements which used copper and zinc in the manufacturing process and were marked or labelled prior to the coming into force of the respective amendments in regulation 6(2) of the Miscellaneous Amendments Regulations. This corrects an omission in which a provision ensuring a transition period for food supplements containing copper was not included as per the policy intention for the Miscellaneous Amendments Regulations. It also makes provision for a similar transition period for zinc food supplements.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Lynne.Neagle@llyw.cymru
Correspondence.Lynne.Neagle@gov.wales

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

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

I gave consent to these amendments being undertaken by the Secretary of State as they are required due to oversights in relation to the Miscellaneous Amendment Regulations and they form part of the same policy objectives which those Regulations were made to achieve, to which I previously provided consent. It would seem undesirable in terms of accessibility of the law to split transitional provisions on a territorial basis when the main provision was made on a UK wide basis.

The correcting SI also makes the transitional amendments to the Welsh language text of the Food Supplements (Wales) Regulations 2003, which retains their language accessibility for Welsh readers.

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

Yours sincerely,



Lynne Neagle AS/MS

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE: The Food Supplements and Food for Specific Groups
(Miscellaneous Amendments) (No. 2) Regulations 2023

DATE 09 February 2023

BY Lynne Neagle, Deputy Minister for Mental Health and Wellbeing

Members of the Senedd will wish to be aware that I gave consent to the Secretary of State for Health and Social Care exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by the Parliamentary Under Secretary of State on 6 February to make an SI titled The Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023 (“the correcting SI”) which makes provision which applies in relation to Great Britain. The correcting SI was made by the Secretary of State in exercise of powers conferred by sections 16(1)(a) and 48(1) of the Food Safety Act 1990, Articles 11(1)(b) and (g), 16(1)(a) and 16A(2) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and regulation 2(2) and 5(3) of the Nutrition (Amendment etc.) (EU Exit) Regulations 2019.

The correcting SI amends the existing commencement provision (regulation 1(2)) in the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023 (“the Miscellaneous Amendments Regulations”) to provide that it comes into force on 10 February 2023, as intended. This addresses an error in the commencement provision which rendered the legislation inoperable.

The [correcting SI](#) also inserts transitional provisions into the Food Supplements (England) Regulations 2003, the Food Supplements (Scotland) Regulations 2003 and the Food Supplements (Wales) Regulations 2003 (“2003 GB Food Supplements Regulations”). The provisions provide a defence in any relevant enforcement proceedings in respect of the sale of food supplements which used copper and zinc in the manufacturing process and were marked or labelled prior to the coming into force of the respective amendments in regulation 6(2) of the Miscellaneous Amendments Regulations. This corrects an omission in which a

provision ensuring a transition period for food supplements containing copper was not included as per the policy intention for the Miscellaneous Amendments Regulations. It also makes provision for a similar transition period for zinc food supplements.

The correcting SI was laid before UK Parliament on 8 February will come into force in stages.

Agenda Item 5.1

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

seneddjlc@senedd.wales

6 February 2022

Dear Huw,

I would like to thank you and the Committee members for your consideration of the third and fourth Legislative Consent Memoranda on the UK Government's Social Housing (Regulation) Bill.

I welcome the report published by the Committee on 13 January, and its conclusion that the Committee agrees with my assessment that the clauses and schedules listed in the memoranda fall within a purpose within the legislative competence of the Senedd.

I would like to take this opportunity to correct an inaccuracy in the Committee's report. Paragraphs 30 and 40 note that I disagree with the UK Governments' view that clauses 13 and 14 and Part 1 of Schedule 1 and Schedule 2 do not require the consent of the Senedd. This is only partly correct. In the supplementary LCM (Memorandum no 4), I referred to the Parliamentary Under Secretary for Communities' letter which notes that clauses 13 and 14 and Part 1 of Schedule 1 and Schedule 2 do not require a legislative consent motion. I then acknowledged the Under Secretary's view (in paragraph 27 of memorandum no 4) but maintained my original recommendation which is that legislative consent is required for clause 13 and Part 1 of Schedule 1. I therefore agree that clause 14 and Schedule 2 do not require a legislative consent motion but disagree with the UK Government's view in relation to clause 13 and Part 1 of Schedule 1.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

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.

In the interest of being as open as possible with the Committee, I understand that UK Ministers are due to table further amendments to the Bill at House of Commons Report stage. We continue to highlight to the UK Government the importance of early engagement and of accommodating Senedd processes in their Bill timetabling considerations.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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

Agenda Item 5.2

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



Llywodraeth Cymru
Welsh Government

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

cc. Mark Isherwood
Chair, Public Accounts and Public Administration Committee

08 February 2023

Dear Huw,

Thank you for your letter and the questions put forward by your Committee relating to the Procurement Bill Supplementary Legislative Consent Memoranda (Memorandum No. 3 and Memorandum No. 4). I am pleased to provide my response, which is attached at Annex 1.

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee, who has also written to me and requested that they receive a copy of my response to you.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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Annex 1

1. You state in the memoranda that you continue to have concerns with the Bill which need to be resolved before you could consider recommending consent. These matters are in respect of the power to add international agreements, the definition of Welsh Contracting Authorities, commencement powers, and powers to make consequential provision. Please could you:

- a. provide an update on the degree to which each of these matters have been resolved, if at all;**
- b. indicate whether, since Memorandum No. 3 and No. 4 have been laid, discussions on each of these matters have been held at Ministerial level, or at official level;**
- c. indicate whether you have escalated any of these disagreements to a dispute under the Dispute Avoidance and Resolution Process established by the review of intergovernmental relations, and if not, why not.**

The majority of the outstanding matters of concern you mention have now been satisfactorily resolved. An amendment to the definition of a Welsh Contracting Authority has been agreed and has been tabled for consideration at Commons Committee. This will make it clear that the Welsh rules apply to such authorities if they operate or exercise functions wholly or mainly in relation to Wales. The Cabinet Office has also agreed to our request to amend the powers to make consequential provision to concurrent plus powers, which means UK Government (UKG) Ministers will require the consent of the Welsh Ministers (WMs) when exercising this power in relation to devolved areas. An amendment has been tabled for consideration at Commons Committee. Both these matters were discussed and resolved at official level and were subject to Ministerial approval. Lastly, following both official and Ministerial level discussions, the Cabinet Office has tabled an amendment to the Bill to ensure a Minister of the Crown seeks the consent of the WMs before commencing the Bill's provisions in relation to the devolved Welsh aspects of the Bill.

The matters which are still outstanding relate to international trade. The first matter is that the power to add international agreements to the list in Schedule 9 to the Bill has been included as a concurrent power, with no requirement to obtain the consent of WMs when UK Government (UKG) Ministers are exercising this power in relation to devolved areas. We have been clear with UK Government that this arrangement is not acceptable.

The second matter of concern relates to trade disputes and has arisen because of an amendment tabled by the UKG on 25 January 2023. The effect of the amendment is that it creates a concurrent power for a Minister of Crown to make regulations to deal with the procurement consequences of a trade dispute under a treaty implemented by way of Schedule 9 (other than the Trade and Cooperation Agreement with the EU, which is dealt with under existing legislation) with no requirement to obtain the consent of WMs when UKG Ministers are exercising this power in relation to devolved areas. We have been clear with UK Government that this arrangement is also not acceptable.

With regards to the international trade issues, detailed discussions have been held at Ministerial level and remain ongoing at official level.

We have maintained a good working relationship with UKG on the Procurement Bill and, so far, we have been able to reach agreed solutions without needing to rely on the Dispute Avoidance and Resolution Process set out in the inter-governmental agreement. It is not anticipated that it will be necessary to resolve the outstanding matters using the Process, however, should relationships breakdown in the future, we would look to escalate through the Inter-Ministerial Standing Committee in the first instance.

2. In Memorandum No. 3 you state that the concern you had with regard to a disapplication power for healthcare services, which you referred to in previous legislative consent memoranda, had been resolved. You stated in the first memorandum that the UK Government had committed to bring forward the required amendment. However, in Memorandum No. 2 you stated that the Welsh Ministers had decided not to pursue the inclusion of the power, but were considering various options, which may include taking forward the powers required via Senedd legislation. The Minister for Health and Social Services has recently informed the Health and Social Care Committee that the Welsh Government will introduce a Health Service Procurement (Wales) Bill to make provision for a “disapplication power” for Welsh health services procurement and a “creation power” to enable the Welsh Ministers to introduce a new separate procurement regime for NHS health services in Wales. The Minister states that the Welsh Government will propose an expedited timetable for the Bill. Please could you:

a. explain why the Welsh Government has changed its position on the inclusion of the disapplication power for healthcare within the Procurement Bill, considering a commitment to bring forward the relevant amendment was secured from the UK Government;

UK Government only committed to the disapplication power within the Procurement Bill. Ministers recognised that both powers were required to effect change and therefore there remained a need to legislate in Wales. Given this need to legislate, Welsh Ministers decided bringing forward a Bill that included both the disapplication and creation powers together provided the necessary legislation and gave greater coherence and accessibility to the legislation.

b. confirm whether the Welsh Government has assessed the impact of its decision on the accessibility of Welsh procurement law, and if an assessment has been undertaken, please set out the outcome of that assessment. For these purposes, it would appear to us that a Welsh contracting authority may have to consider the Procurement Bill and subordinate legislation to be made under it, the Health Service Procurement (Wales) Bill, the Social Partnership and Public Procurement (Wales) Bill and the Well-being of Future Generations (Wales) Act 2015;

The Welsh Government regularly assesses the accessibility implications of legislative proposals. This is a normal part of the Office of the Legislative Counsel’s remit and it is also taken into account when deciding whether the UK Parliament or Government should legislate on Wales’s behalf.

We do not consider it would be more accessible to use a single Act for the various provisions that relate to procurement.

The Social Partnership and Public Procurement (SPPP) Bill's provisions on procurement are essentially about social partnership and are a more accessible fit in an Act about social partnership (rather than in a Bill that is about public procurement procedures). This is designed to dovetail with the Well-being of Future Generation Act 2015, which sets out the wider organisational principles for public bodies in Wales. The social partnership principles involved are connected to the provisions about sustainable development, hence the need to refer to the 2015 Act.

The Health Services Procurement (Wales) (HSPW) Bill is a temporary legislative vehicle as its provisions are designed to amend existing legislation, specifically:

- the UK Procurement Act (by inserting a Welsh “disapplication power” immediately after a corresponding English disapplication power), and
- the NHS (Wales) Act 2006 (by inserting a “creation power”).

This is the most accessible approach because:

- once the HSPW Act has amended the UK Procurement Act and NHS (Wales) Act 2006, users will just read the two amended Acts - there will be no need to refer to the HSPW Act, its “work having been done”;
- the UK Procurement Act is the logical home for the disapplication power because it makes clear that health services are treated differently (and it will sit next to the corresponding English disapplication power);
- the NHS (Wales) Act 2006 is the logical home for the creation power, as the principal Act in Wales on health services (and similarly the corresponding English creation power is to be inserted into the equivalent piece of legislation applying in England, the National Health Service Act 2006).

c. confirm whether the Welsh Government had considered broadening the scope of the Health Service Procurement (Wales) Bill to include wider provisions relating to the processes underpinning procurement law in Wales, which would largely mirror those in the UK Government’s Procurement Bill, and seek provisions within the legislative competence of the Senedd to be removed from the Procurement Bill;

The Health Services Procurement (Wales) Bill (HSPWB) was conceived in response to the Department of Health and Social Care’s Health and Care Act 2022, which provides a legislative basis for establishing the Provider Selection Regime (PSR) that will govern the arrangement of healthcare services in England. The PSR will remove a limited range of healthcare services from the requirement to undertake a full procurement process. The HSPWB will establish a bespoke procurement regime for healthcare services in Wales which mirrors that provided for under the Health and Care Act, thereby creating an appropriate and effective framework for the procurement of healthcare services on a level playing field in England and Wales.

The aim of the PSR is to encourage flexibility and move away from the expectation of competition in some circumstances. The HSPWB will only apply to certain healthcare

services and means that contracts for those services would not need to be procured in accordance with the Procurement Act.

There are benefits of joining UKG's Procurement Bill including ensuring that there will be continuity for suppliers and cross-border businesses. It's unlikely Ministers would be able to completely replicate the cross-border provisions in a Senedd Bill as taking forward our own Bill would likely affect our ability to use the central platform and could lead to different procurement processes to England. The joint approach also means that these reforms can be enacted in Wales sooner than would otherwise have been possible.

d. indicate whether you believe legislating on procurement law via three bills introduced in different legislatures in close succession to each other follows a logical approach to legislating; and whether you will undertake an internal review of the approach taken to inform future practice.

The Social Partnership and Public Procurement Bill is currently being considered by the Senedd. This Bill provides a policy and outcome framework to improve public services in Wales, through social partnership working, promoting fair work and socially responsible public procurement. The UK Government is proposing to introduce a new procurement regime through its Procurement Bill that will make provision for the process of procuring generic 'goods, services and works'. The provisions in the Health Services Procurement (Wales) Bill are different in that they relate to the operational process of procuring health services in Wales and the Bill has been brought forward in response to procurement reforms being progressed for health services in England by the Department of Health and Social Services under their proposed Provider Selection Regime. Careful consideration will be given to ensure implementation plans understand the wider context.

I do not consider an internal review would be appropriate or beneficial, as my officials have worked with colleagues across the organisation to ensure there is maximum alignment as each of these three Bills has developed. I am confident that the approach taken provides certainty and clarity for buyers and suppliers across Wales and will establish an effective and efficient regime for procurement that maximises opportunities to deliver social, environmental, economic and cultural outcomes for Wales.

3. Clause 50 of the Bill (Contract details notices and publication of contracts), as referenced in both memoranda, includes a regulation-making power for the Welsh Ministers subject to the negative procedure. However, by virtue of an amendment, the corresponding power to Ministers of the Crown is subject to the affirmative procedure. Please could you provide an overview of any discussions you are having to seek to amend the power for the Welsh Ministers to also be subject to the affirmative procedure.

This clause is now clause 53 in the version of the Bill as brought from the Lords.

There is no regulation making power for the Welsh Ministers under this clause and therefore no question arises as to the applicable procedure.

- 4. Clause 88 of the Bill (Notices, documents and information: regulations and online system), as referenced in Memorandum No. 3, provides that a Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under the Bill. There are Welsh online systems which may have some of the same functionality. Please could you clarify how these systems may interact, or whether the new system to be established by a Minister of the Crown will replace any existing systems, and could you indicate if you are seeking amendments to provide the Welsh Ministers with an equivalent power.**

Sell2Wales will be used to publish procurement lifecycle notices produced by Welsh Contracting Authorities under the secondary legislation that will come into effect in Wales as a result of the Bill. Sell2Wales will then 'push' the relevant procurement lifecycle notices into the new UK online system established by the Minister of the Crown. This is the same way as Sell2Wales notice data is currently pushed into the UKGs existing Find a Tender Service. This will enable Wales to meet transparency requirements set out in the Bill and ensure compliance with obligations under international trade agreements which require all UK's procurements above certain thresholds to be advertised in a single place. The new UK online system will not replace the need for existing Welsh platforms which will be updated to support the new procurement lifecycle notices. Officials are working to ensure that the systems integrate as seamlessly as possible.

The Bill provides Welsh Ministers with an equivalent power to determine the "form and content of notices, documents or other information to be published". The approach that has been outlined enables Wales to collect additional procurement lifecycle notice information within Sell2Wales. We will not therefore be seeking an amendment to provide Welsh Ministers with an equivalent power to make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under the Bill.

- 5. You consider clause 12 and 80 of the Bill to be within the legislative competence of the Senedd. However, these provisions do not apply to devolved Welsh procurement arrangements. Additionally, devolved Welsh authorities (within the meaning of section 157A of the Government of Wales Act 2006) are not required to have regard to the national procurement policy statement under clause 12 and are not subject to clause 80, except in relation to procurement under a reserved procurement arrangement. Please could you clarify why you believe these clauses require consent.**

There will be instances where the duty to have regard to the National Procurement Policy Statement (now clause 13(10) in the version of the Bill brought from the Lords) and clause 80 which relates to regulated below threshold contracts (now clause 84 in the version of the Bill as brought from the Lords) will apply to Welsh contracting authorities. For example, where a Welsh local authority collaborates with an English local authority on a procurement, and the English local authority is the lead authority.

For this reason, we believe these clauses are within the legislative competence of the Senedd.

Rebecca Evans MS

Minister for Finance and Local Government

26 January 2023

Dear Rebecca,

The UK Government's Procurement Bill – supplementary legislative consent memoranda

At our meeting on 24 January 2023, we considered the supplementary legislative consent memoranda (Memorandum No. 3 and Memorandum No. 4) you have laid in respect of the UK Government's Procurement Bill.

To inform our further consideration, we would be grateful to receive further clarity on some matters referred to in the memoranda; these are set out in the Annex.

Since the deadline for reporting on both memoranda is 2 March, we would be grateful to receive your responses to these questions by noon on 10 February.

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Annex

1. You state in the memoranda that you continue to have concerns with the Bill which need to be resolved before you could consider recommending consent. These matters are in respect of the power to add international agreements, the definition of Welsh Contracting Authorities, commencement powers, and powers to make consequential provision. Please could you:
 - a. provide an update on the degree to which each of these matters have been resolved, if at all;
 - b. indicate whether, since Memorandum No. 3 and No. 4 have been laid, discussions on each of these matters have been held at Ministerial level, or at official level;
 - c. indicate whether you have escalated any of these disagreements to a dispute under the Dispute Avoidance and Resolution Process established by the review of intergovernmental relations, and if not, why not.

2. In Memorandum No. 3 you state that the concern you had with regard to a disapplication power for healthcare services, which you referred to in previous legislative consent memoranda, had been resolved. You stated in the first memorandum that the UK Government had committed to bring forward the required amendment. However, in Memorandum No. 2 you stated that the Welsh Ministers had decided not to pursue the inclusion of the power, but were considering various options, which may include taking forward the powers required via Senedd legislation. The Minister for Health and Social Services has recently informed the Health and Social Care Committee that the Welsh Government will introduce a Health Service Procurement (Wales) Bill to make provision for a “disapplication power” for Welsh health services procurement and a “creation power” to enable the Welsh Ministers to introduce a new separate procurement regime for NHS health services in Wales. The Minister states that the Welsh Government will propose an expedited timetable for the Bill. Please could you:
 - a. explain why the Welsh Government has changed its position on the inclusion of the disapplication power for healthcare within the Procurement Bill, considering a commitment to bring forward the relevant amendment was secured from the UK Government;
 - b. confirm whether the Welsh Government has assessed the impact of its decision on the accessibility of Welsh procurement law, and if an assessment has been undertaken, please set out the outcome of that assessment. For these purposes, it would appear to us that a Welsh contracting authority may have to consider the Procurement Bill and subordinate legislation to be made under it, the Health Service Procurement (Wales) Bill, the Social Partnership and Public Procurement (Wales) Bill and the *Well-being of Future Generations (Wales) Act 2015*;
 - c. confirm whether the Welsh Government had considered broadening the scope of the Health Service Procurement (Wales) Bill to include wider provisions relating to the processes underpinning procurement law in Wales, which would largely mirror those



in the UK Government's Procurement Bill, and seek provisions within the legislative competence of the Senedd to be removed from the Procurement Bill;

- d. indicate whether you believe legislating on procurement law via three bills introduced in different legislatures in close succession to each other follows a logical approach to legislating; and whether you will undertake an internal review of the approach taken to inform future practice.
3. Clause 50 of the Bill (Contract details notices and publication of contracts), as referenced in both memoranda, includes a regulation-making power for the Welsh Ministers subject to the negative procedure. However, by virtue of an amendment, the corresponding power to Ministers of the Crown is subject to the affirmative procedure. Please could you provide an overview of any discussions you are having to seek to amend the power for the Welsh Ministers to also be subject to the affirmative procedure.
 4. Clause 88 of the Bill (Notices, documents and information: regulations and online system), as referenced in Memorandum No. 3, provides that a Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under the Bill. There are Welsh online systems which may have some of the same functionality. Please could you clarify how these systems may interact, or whether the new system to be established by a Minister of the Crown will replace any existing systems, and could you indicate if you are seeking amendments to provide the Welsh Ministers with an equivalent power.
 5. You consider clause 12 and 80 of the Bill to be within the legislative competence of the Senedd. However, these provisions do not apply to devolved Welsh procurement arrangements. Additionally, devolved Welsh authorities (within the meaning of section 157A of the *Government of Wales Act 2006*) are not required to have regard to the national procurement policy statement under clause 12 and are not subject to clause 80, except in relation to procurement under a reserved procurement arrangement. Please could you clarify why you believe these clauses require consent.

Agenda Item 5.3

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

**Economy, Trade and
Rural Affairs Committee**

Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN
SeneddEconomi@senedd.cymru
senedd.cymru/SeneddEconomi
0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
SeneddEconomy@senedd.wales
senedd.wales/SeneddEconomy
0300 200 6565

Lesley Griffiths

Minister for Rural Affairs and North Wales, and Trefnydd

Vaughan Gething

Minister for Economy

8 February 2023

Dear Lesley and Vaughan,

Retained EU Law (Revocation and Reform) Bill

On 25 January the Committee discussed the Retained EU Law (Revocation and Reform) Bill and its associated legislative consent motions. Members are very concerned about the potential impact of the Bill on Wales in the areas covered by our remit. As such we resolved to write to you and find out more information about the Welsh Government's assessment of the Bill's impact on the following sectors: Wales' economy, trade, skills, the agriculture, fisheries and food and drink sectors and animal welfare standards. We'd also be very grateful if you could confirm what work is being done to prepare for the Bill.

Therefore, please can you provide the Committee with:

- Your views on the impact of the Bill on the sectors above and any other areas you think the Committee may be interested in;
- A list of relevant Retained EU Law (REUL) made by Welsh Ministers within your remits;
- Your plans to use the Bill's powers in relation to standards within this Committee's remit, such as animal welfare;
- Information on what discussions you have had with other governments in the UK about the impact of the Bill on matters within the Committee's remit and whether/how any changes to relevant REUL might be coordinated, if the Bill is passed;



- Details of any impact on the Welsh Government’s legislative plans where related to the Committee’s remit;
- Your views on how the Bill might interact with post-Brexit international trade agreements;
- Your views on the Bill’s potential impact on intra-UK trade, including its operation alongside the Internal Market Act 2020; and
- Your views on how the Bill might interact with common frameworks within the remit of this Committee.

Legislation, Justice and Constitution Committee undertook a [call for evidence](#) following the Bill’s introduction. Members discussed the evidence provided to this consultation that was relevant to our remit. As well as providing the detail requested above please will you respond to the points outlined below which have been raised by stakeholders in their submissions to the LJC consultation.

Food and drink:

- Food safety – The Food Standards Agency (FSA) state they are responsible for over 150 pieces of REUL on food safety in England and Wales, plus 39 additional pieces in Wales, where it has wider responsibilities. The FSA states “we are clear that we cannot simply sunset the laws on food safety and authenticity without a decline in UK food standards and a significant risk to public health.”
- Divergence – the Food and Drink Federation state “this has the potential to drive through significant divergence if changes are not aligned on a UK basis and this would then put additional burdens on Welsh businesses, particularly smaller enterprises”.

Farming:

- Farming standards - NFU Cymru have said that governments “may find themselves fighting hasty rear-guard actions to close legislative gaps which have opened up. Such scenarios will be damaging for business and consumer confidence and certainty”. They warn high standards must be properly rewarded from the marketplace, otherwise Welsh producers will simply be placed at a competitive disadvantage. They urge the Welsh Government to work with other governments to advocate high standards and resist a race to the bottom.

Animal Welfare:

- The RSPCA say that RUELE contains “some of the most totemic and important changes in animal welfare” and are worried that standards could be at risk. They are also concerned about changes or the removal of reserved laws on Wales, such as bans on the veterinary use of hormones and prohibitions on imports of wild animals and seal products, and the use of animals in research.

I have copied this letter to Huw Irranca-Davies MS in his capacity as Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

A handwritten signature in black ink that reads "Paul Davies". The signature is written in a cursive style with a large initial 'P' and 'D'.

Paul Davies MS

Chair: Economy, Trade and Rural Affairs Committee

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



Retained EU Law (Revocation and Reform) Bill

Equality and Human Rights Commission briefing for House of Lords Second Reading

Summary

1. The Equality and Human Rights Commission (the Commission) is a statutory body established by the Equality Act 2006. We are an independent UN-accredited National Human Rights Institution, and Britain's equality regulator. Parliament gave us powers to advise on the equality and human rights implications of laws and proposed laws, and to publish information and advice, including to Parliament, on any matter related to equality and human rights.
2. The Retained European Union Law (Revocation and Reform) Bill ('the Bill') would overhaul a body of UK domestic law, known as 'retained EU law' (REUL), created by the EU (Withdrawal) Act 2018 (EUWA 2018) as amended by the EU (Withdrawal Agreement) Act 2020, and which came into existence at the end of 2020. The Bill allows for the revocation of certain REUL and gives ministers the power to replace, restate or update certain REUL. An estimated 3,800 pieces of legislation have been identified as being within scope of the Bill, of which the UK Government has so far added around 2,400 to its [Retained EU Law Dashboard](#).
3. The Commission's concerns about the Bill fall into five categories:
 - a) Uncertainty about the Government's policy intentions and potential effects on equality and human rights protections
 - b) The lack of parliamentary scrutiny of potential changes
 - c) The limited time available before the proposed 'sunset' date
 - d) Legal uncertainty resulting from the Bill

- e) The implications for devolution and the Union
4. Overall, the breadth of law within the scope of the Bill has considerable implications for equality and human rights. These include, but are not limited to, legislation on parental leave, paid annual leave, rights for part-time workers, maximum hours for HGV drivers, and other employment rights. The Bill could also impact on laws on minimum rights for refugees, and disabled people's access to rail and air transport.
 5. The Bill gives the Government broad powers in relation to REUL with little opportunity for parliamentary oversight. It is unclear how the Government intends to exercise the powers contained in the Bill.
 6. The proposed REUL 'sunset' date of December 2023 provides insufficient parliamentary time to scrutinise the statutory instruments which could have a significant impact on equality and human rights law. There is also likely to be insufficient time for the UK Government to comply with its legal obligations in respect of each item of REUL under the Public Sector Equality Duty of the Equality Act.
 7. The Bill risks creating legal uncertainty by altering the way in which the courts can consider retained EU and domestic case law.
 8. The Bill also has implications for devolution, including by giving UK Government ministers powers to make decisions on devolved matters.

Policy uncertainty and potential equality and human rights impacts

9. The Bill covers at least 3,800 pieces of legislation, which broadly fall into 300 separate policy areas.
10. Clause 15 of the Bill creates a power to revoke REUL without replacing it, or to replace it with alternative provision. Replacement regulations may achieve similar policy objectives, but there is no requirement for them to do so. Clause 15 states that the overall effect of replacement provisions must not increase the regulatory burden, suggesting that the Government's intention is to reduce rather than strengthen or update UK regulation. The Government has given

little indication of the policy objectives that will guide its decisions on revoking or replacing REUL, nor how decisions will be made consistent across Government departments. This will limit Parliament's ability to safeguard important business and civil society interests, including on equality and human rights laws.

11. The Bill does not apply to financial issues, which are instead covered by the Financial Services and Markets Bill. This follows a positive proposal process, rather than through 'sunsetting', thereby offering opportunities for strengthened parliamentary scrutiny. This approach would be preferable to REUL too.
12. The Bill covers legislation on limits on working time, the right to paid holiday, rights for temporary and agency workers, and parental leave. These are important legal protections for all UK workers which have specific impacts for people with certain protected characteristics under the Equality Act, such as sex and pregnancy and maternity. Any negative impacts on people sharing protected characteristics must be identified and mitigated by Government.
13. We are concerned at the potential impact of the Bill on workers with the protected characteristics of sex and pregnancy and maternity. This is because the workers' rights at risk, such as maternity and equal pay, and parental leave, disproportionately affect women. There may also be negative economic impacts if the ability of women to participate in the labour market is eroded.
14. Other REUL with implications for equality and human rights include protections for child witnesses in sexual offence cases, standards for the treatment of refugees, asylum seekers and displaced persons, and measures to support disabled people's access to rail and air travel. We urge the Government to provide assurances that these protections will be retained.
15. We also urge the Government to assess REUL policy by policy, or sector by sector, including by setting out its policy objectives, to allow for full parliamentary scrutiny and ensure compliance with the PSED. This should include engagement with those with protected characteristics, employees, employers and service providers, and their representatives.

Scrutiny

16. The Bill grants powers to UK Ministers, at departmental level, to revoke, amend or preserve REUL. Unless preserved or amended, all REUL will be revoked ('sunsetting') at the end of 2023. We are concerned at the lack of parliamentary scrutiny provided by this process.
17. Clause 11 revokes the parliamentary scrutiny safeguards in Schedule 8 to EUWA 2018, which apply to the amendment or revocation via secondary legislation of 'subordinate legislation made under section 2(2) of the European Communities Act 1972', which is a category of REUL. These safeguards include the provision of explanatory statements, a 28-day consultation period for parliamentary committees to comment on the proposed amendment or revocation of a statutory instrument, and the use of the affirmative rather than the negative scrutiny procedure to ensure that a vote takes place in Parliament prior to the modification or revocation of a REUL statutory instrument.
18. Such scrutiny does not apply to any statutory instruments that revoke, restate or replace REUL or assimilated law (any REUL in existence after the end of 2023), even if the statutory instruments implement substantive changes in the law or weaken parliamentary safeguards.
19. Clauses 12-14 give UK Ministers powers to restate or reproduce REUL or assimilated law. Ministers can thereby make changes to legislation to resolve ambiguities, doubts or anomalies or to improve clarity or accessibility. Any such restatement may re-apply EU interpretive principles, such as the supremacy of EU law, if considered appropriate. These powers are subject to the affirmative procedure if the regulations amend primary legislation. Ministers can otherwise choose to use the negative or affirmative procedure.
20. Clause 15 enables the revocation and replacement of REUL through secondary legislation. Ministers have broad powers under this Clause. They can choose to make alternative provision, with no requirement for the new regulations to pursue the same or similar objectives. Where such alternative provision is made, regulations will be subject to the affirmative procedure. The affirmative procedure must also be used if the regulations confer a power to make subordinate legislation or create a criminal offence. Otherwise, ministers

can choose the negative or affirmative procedure. Further, Clause 16 outlines that ministers can change secondary REUL as they consider appropriate 'to take account of changes in technology or developments in scientific understanding', which is within to individual ministers' power to determine. Clause 16 also applies indefinitely to REUL and to the new regulations that replace REUL, so ministers could change this legislation in perpetuity. We are concerned that Clause 16 is only subject to negative scrutiny procedure, which offers little opportunity for parliamentary scrutiny.

21. Schedule 4 applies a sifting system for Statutory Instruments in relation to Clauses 12 (power to restate REUL), 13 (power to restate assimilated law or sunsetted EU rights) and 15(2) and (3) (power to replace secondary REUL). The sifting procedure allows a parliamentary committee to recommend that a piece of secondary legislation be upgraded from the negative procedure to the affirmative procedure. However, the Government is not obliged to accept such a recommendation if it publishes a statement explaining why it does not.
22. Although parliamentary committees will be able to sift negative procedure Statutory Instruments made under the Bill, their ability to do so in practice may be limited by the large number of policy areas within the Bill's scope, again restricting adequate debate and scrutiny. Furthermore, if legislation is sunsetted, which is the default position if no action is taken, then there will be no opportunity for parliamentary scrutiny at all.
23. Given the potential impacts of the Bill on equality and human rights, we consider the scrutiny provisions in the Bill to be inadequate. The Bill should be amended to ensure the effective scrutiny of any regulations which could result in changes to equality and human rights protections. This could include reinstating the provisions in the EUWA 2018 that act as scrutiny safeguards, such as the provision of explanatory statements, a 28-day consultation period for parliamentary committees to comment on the proposed amendment or revocation of a statutory instrument, and the use of the affirmative rather than the negative scrutiny procedure.

24. We also ask that the Bill be amended to require ministers to lay before Parliament a list of legislation to be revoked, in advance of the sunset deadline, to enable Parliament to consider and, if necessary, amend the list.

Sunset provisions

25. The Bill contains a provision that will revoke or ‘sunset’ any REUL by default by 31 December 2023, unless ministers actively decide to save it (Clause 1) or extend the date of revocation (Clause 2).
26. Clause 3 provides that any retained rights, powers and liabilities that are part of REUL because of section 4 of the EUWA 2018 will also be revoked by 31 December 2023. This includes treaty rights including Article 157 of the Treaty on the Functioning of the European Union, which covers equal pay for equal work. There is no extension of time available for the sunsetting of these rights.
27. Given the volume of REUL, with ongoing uncertainty about the exact legislation within scope and the range of policy areas affected, we consider that there is insufficient time for the Government or Parliament to consider each item adequately. Indeed, it is likely that some REUL will not appear on the ‘dashboard’ and may therefore fall away without any analysis or scrutiny.
28. Nor is there likely to be sufficient time for the Government fully to comply with its obligations under the Public Sector Equality Duty of the Equality Act. This requires departments, when considering changes to the law, to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a protected characteristic and those who do not, and to foster good relations between groups of people.
29. No section of the Bill allows for the reinstatement of revoked law. Thus, if significant legislation were sunsetting by accident or omission, it could not be reinstated without primary legislation.
30. The 2023 sunset deadline should be extended significantly. This could be done using powers set out in Clause 2 of the Bill, to June 2026. The power to extend the sunset under Clause 2 should also be extended so it applies to the sunset deadline in Clause 3. However, this may still not provide adequate

time for all policy areas to be considered and scrutinised so there should be sufficient flexibility to extend the deadline further until thorough analysis of all in-scope legislation has been carried out by Departments, and subject to the parliamentary scrutiny mentioned previously in this briefing.

Legal uncertainty

31. Clause 7 relaxes the current rules that apply to courts and tribunals when considering retained EU and domestic case law. It requires higher courts¹ to have regard to certain factors in considering whether to depart from retained EU case law or retained domestic case law, including that decisions of a foreign court are not (unless otherwise provided) binding, and whether the retained case law restricts the development of domestic law. First instance courts² will be able to refer points of retained case law to an appellate court, which can then issue a binding decision on whether the lower court should depart from the retained case law.
32. These provisions create uncertainty about how cases relating to retained case law will be decided. Cases in the lower courts may take longer while complex questions about the status of retained case law are considered and referred to higher courts. Retained case law is regularly considered by the courts and tribunals when interpreting provisions of the Equality Act 2010. We are concerned at how the Bill will affect the interpretation of the Equality Act, and therefore the rights of people with protected characteristics.
33. We therefore urge the Government to publish an assessment of the potential impact of this change on the courts and on litigants, with steps taken to mitigate any risk of increases in the time and cost of litigation, particularly in relation to equality law.

Devolution and the Union

34. The Bill creates new powers under which UK Government ministers will not be required to seek consent from the devolved governments of Scotland and

¹ Such as the Court of Appeal in England and Wales or the Inner House of the Court of Session in Scotland.

² Such as the High Court, Tribunals or the Outer House of the Court of Session in Scotland.

Wales when making decisions about REUL. Indeed, the Bill allows for anything previously regulated by REUL to be amended, changed, or replaced, across the entirety of the UK.

35. This means the UK Government may exercise new powers in areas of devolved competence. Many of these areas, such as transport, health, housing, and education, have implications for equality and human rights. The Commission is the statutory regulator of the Equality Act across Britain and has the role of the UN-accredited National Human Rights Institution for England and Wales, and for Scotland in respect of matters reserved to the UK.
36. It is important that the devolved administrations should be able to consider all REUL relevant to their jurisdictions. They should be allowed sufficient time to do so. Clause 2 of the Bill gives Crown ministers the ability to extend the sunset clause for REUL until 23 June 2026, but this power does not apply to ministers in the devolved governments. We noted that, at Commons Second Reading of the Bill, the UK Government refused a Welsh Government request for the REUL dashboard to be updated to identify which legislation is reserved and which is devolved, and how Welsh legislation might be affected.
37. Public authorities in Wales and Scotland have specific duties under the Equality Act to help them to comply with the Public Sector Equality Duty. We are concerned that the volume and speed of changes required by the Bill will make it hard for devolved governments and public bodies in Wales and Scotland to comply with the law such as by publishing equality impact assessments. This risks regression in equality and human rights standards.
38. We urge the UK Government to develop a more detailed dashboard indicating whether legislation is devolved or has devolved implications. This would help devolved governments to determine the implications for equality and human rights in Scotland and Wales of changes to UK legislation.
39. We also suggest that devolved governments are allowed sufficient time to consider equality and human rights implications of the revocation of REUL by also giving ministers in devolved governments the power to extend the sunset deadline in respect of REUL with devolved implications.

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

9 February 2023

Dear Huw

The Welsh Government's capacity to legislate

Following publication of our [report on the Welsh Government's draft budget 2023-24](#), I write to draw your Committee's attention to the chapter on implementing and developing legislation (see pages 48-50).

During a draft budget scrutiny session on 19 January 2023, the Minister for Climate Change told us that the legislation across her portfolio is "on track for the year that it's scheduled for" but is "reliant on legislation that is currently in train and coming to the Senedd passing, so that the Bill teams can be moved from there onto the next piece of legislation" (see [Record of Proceedings](#), paragraph 131). One of the Minister's officials added:

"I think the biggest issue is the skilled resource that is needed to do this as well. The Government's got a significant legislative programme, which they want us to get through, which is quite right, but it's getting the resources in the right place at the right time [...] And, also, the central services main expenditure group, which a lot of this is paid from, has had a reduction, like everywhere else within Government. We haven't been protected from that. So, again, it's getting the balance and the optimisation so that we can take some of this through, but, as the Minister said, everything is on track in her area at the moment." (Record of Proceedings, paragraph 139)

We were concerned to hear that the biggest challenge in delivering the legislative programme is the "skilled resource that is needed", and we agreed to draw this concern to the attention of your Committee.



We note that in your report on the draft budget you “acknowledge the Counsel General’s assertion that the Welsh Government has sufficient resources to deliver its legislative programme” but that it is “unclear” to you “if the Welsh Government does have sufficient resources to deliver all the legislation which it may decide at any time to be necessary.”

We hope that you will find this evidence useful as you continue to monitor the Welsh Government’s capacity to legislate.

Yours sincerely



John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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Rt Hon Elin Jones MS
Llywydd
Chair, Business Committee

27 January 2023

Annwyl Lywydd

Retained EU Law (Revocation and Reform) Bill

Further to my [letter](#) of 21 December 2022 in relation to the Retained EU Law (Revocation and Reform) Bill, at our meeting on [23 January 2022](#) we considered a [letter](#) from the Counsel General (dated 19 January) which responds to a series of questions we [asked](#) following the Counsel General's attendance at our meeting on [5 December](#). On 23 January, we also considered your [letter of 19 January](#), in which you asked if we could continue to draw relevant matters to the attention of Business Committee, in particular those aspects with potential implications for Senedd Business.

The Counsel General's letter of 19 January provides an update on the Welsh Government's approach to the Bill, as well as information on how it is reviewing retained EU law, matters related to capacity and resource, and the impact on and role of the Senedd.

We agreed that we would draw the correspondence to your attention, and to the attention of relevant Senedd Committees.

Yours sincerely,



Huw Irranca-Davies
Chair

Agenda Item 11

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

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