

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 4, Tŷ Hywel

Meeting date: 6 March 2023

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 – 13.35)

Affirmative Resolution Instruments

2.1 SL(6)328 – The Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023

(Pages 1 – 2)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-08-23 – Paper 1 – Draft report

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

(13.35 – 13.40)



3.1 SL(6)322 – The Countryside and Rights of Way Act 2000 (Review of Maps) (Amendment) (Wales) Regulations 2023

(Pages 3 – 5)

Attached Documents:

LJC(6)–08–23 – Paper 2 – Report

LJC(6)–08–23 – Paper 3 – Welsh Government Response

4 Common frameworks

(13.40 – 13.45)

4.1 Correspondence from the Minister for Climate Change: UK Emissions Trading Scheme Common Framework

(Pages 6 – 7)

Attached Documents:

LJC(6)–08–23 – Paper 4 – Letter from the Minister for Climate Change, 28 February 2023

5 Papers to note

(13.45 – 13.50)

5.1 Written Statement by the Minister for Finance and Local Government: Amendments to UK Government legislation to support Corporate Joint Committees

(Pages 8 – 9)

Attached Documents:

LJC(6)–08–23 – Paper 5 – Written Statement by the Minister for Finance and Local Government, 27 February 2023

5.2 Correspondence from the Counsel General and Minister for the Constitution: Follow-up to 16 January 2023 meeting

(Pages 10 – 18)

Attached Documents:

LJC(6)-08-23 – Paper 6 – Letter from the Counsel General and Minister for the Constitution, 1 March 2023

LJC(6)-08-23 – Paper 7 – Letter to the Counsel General and Minister for the Constitution, 3 February 2023

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

(Pages 19 – 21)

Attached Documents:

LJC(6)-08-23 – Paper 8 – Letter from the Counsel General and Minister for the Constitution, 01 March 2023

LJC(6)-08-23 – Paper 9 – Letter to the Counsel General and Minister for the Constitution, 15 February 2023

5.4 Correspondence from the Deputy Minister for Social Partnership: Social Partnership and Public Procurement (Wales) Bill

(Pages 22 – 24)

Attached Documents:

LJC(6)-08-23 – Paper 10 – Letter from the Deputy Minister for Social Partnership, 28 February 2023

5.5 Correspondence from the Minister for Social Justice and the Counsel General and Minister for the Constitution to the Llywydd: Bill of Rights Bill

(Pages 25 – 26)

Attached Documents:

LJC(6)-08-23 – Paper 11 – Letter from the Minister for Social Justice and the Counsel General and Minister for the Constitution to the Llywydd, 1 March 2023

5.6 Correspondence from the Counsel General and Minister for the Constitution: Welsh Government Draft Budget 2023–24

(Pages 27 – 29)

Attached Documents:

LJC(6)-08-23 – Paper 12 – Letter from the Counsel General and Minister for the Constitution, 2 March 2023

Break

(13.50 – 14.00)

6 Health Service Procurement (Wales) Bill: Evidence session

(14.00 – 15.00)

(Pages 30 – 45)

Eluned Morgan MS, Minister for Health and Social Services

Dafydd Evans, Deputy Director, Life Sciences and Innovation, Welsh Government

Mari Williams, Senior Government Lawyer, Welsh Government

Lowri Lewis, Government Lawyer, Welsh Government

[Health Service Procurement \(Wales\) Bill](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent for Subordinate Legislation](#)

Attached Documents:

LJC(6)-08-23 – Paper 13 – Briefing

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

(15.00)

8 Health Service Procurement (Wales) Bill: Consideration of evidence

(15.00 – 15.15)

9 Historic Environment (Wales) Bill: outcome of Detailed Committee Consideration

(15.15 – 15.40)

(Pages 46 – 59)

Attached Documents:

LJC(6)-08-23 – Paper 14 – Briefing

LJC(6)-08-23 – Paper 15 – Draft report

10 Supplementary Legislative Consent Memoranda (Memoranda No. 3, No. 4 and No. 5) on the Procurement Bill

(15.40 – 16.00)

(Pages 60 – 84)

Attached Documents:

LJC(6)-08-23 – Paper 16 – Draft report

11 Legislative Consent Memorandum on the Strikes (Minimum Service Levels) Bill: Legal Advice Note

(16.00 – 16.15)

(Pages 85 – 103)

Attached Documents:

LJC(6)-08-23 – Paper 17 – Legal Advice Note

LJC(6)-08-23 – Paper 18 – Legislative Consent Memorandum

12 Forward Work Programme

(16.15 – 16.25)

(Pages 104 – 106)

Attached Documents:

LJC(6)-08-23 – Paper 19 – Forward Work Programme

SL(6)328 – The Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023

Background and Purpose

These Regulations are intended to reform the Non-Domestic Rating (NDR) appeals system in Wales. The system is administered by two independent organisations, each responsible for different stages of the process. The Valuation Office Agency (VOA) is responsible for the valuation and listing of hereditaments for NDR, including the consideration of proposals from ratepayers who believe their valuation should be changed. The Valuation Tribunal for Wales (VTW) is responsible for appeals, when agreement is not reached between a ratepayer and the VOA in relation to a proposed change to a valuation.

These Regulations implement a new process for ratepayers to engage with the VOA, underpinned by its digital platform, and a small number of additional changes to the arrangements for appeals to the VTW. The changes aim to improve the efficiency of the system for ratepayers and public bodies by reducing speculative and unsuccessful appeals. They also act as an enabler for the broader policy aim of delivering more frequent NDR revaluations, ensuring ratepayers' bills more accurately reflect the prevailing economic conditions and, in turn, reducing the likelihood of an appeal being submitted.

Procedure

Draft affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

One point is 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.

We note that, under regulation 17(1), any sum received by the Valuation Officer by way of a 'Part 2 penalty' must be paid into the Welsh Consolidated Fund.



A 'Part 2 penalty' is a financial penalty (£200) imposed on a person under regulation 16 for providing a Valuation Officer with false information.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

28 February 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Pack Page 2

Legislation, Justice and Constitution Committee

SL(6)322 – The Countryside and Rights of Way Act 2000 (Review of Maps) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations amend section 10(2) of the Countryside and Rights of Way Act 2000 (“the Act”) in relation to Wales.

Section 10(2) of the Act prescribes the time periods within which the Natural Resources Body for Wales (as the appropriate countryside body in relation to Wales) must conduct initial and subsequent reviews of maps issued by it in conclusive form under section 9 of the Act.

These Regulations amend section 10(2)(b)(ii) of the Act in order to extend the maximum interval between subsequent reviews following a first review, from 10 years after the previous review, to 15 years.

Procedure

Negative

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

Technical Scrutiny

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

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

We do not believe it is necessary to cite section 45(1) of the Countryside and Rights of Way Act 2000 in the preamble, as it provides the definition of “regulations” rather than any enabling power.

Could the Welsh Government provide an explanation?

Merits Scrutiny

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



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

We note the reasons provided by the Welsh Government for extending the subsequent review period. In particular, we note the following paragraphs in the Explanatory Memorandum:

“As part of its Access Reform Programme, the Welsh Government is considering proposals to move from a decadal review to a continuous review process. This SI changes the period for subsequent mapping reviews from 10 years to 15 years, which means the next review will be due in 2029. This avoids NRW expending unnecessary time and resources on a review process that is currently being considered for further reform, to introduce a continual review process.”

“NRW has advised that it does not have the resources and expertise to undertake these two tasks simultaneously (reviewing the current open access map under current statutory deadlines and moving to a continuous review process). Consequently, NRW requested that Welsh Government use the powers provided by CRow section 10(3) to set a new date of 2029 for completion of the next review of the open access mapping.”

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

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

“As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a major change in the Welsh Government’s policy, a formal public consultation did not take place. There was, however, engagement with NRW who is directly affected by the amendment.”

Welsh Government response

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

Committee Consideration

The Committee considered the instrument at its meeting on 27 February 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Countryside and Rights of Way Act 2000 (Review of Maps) (Amendment) (Wales) Regulations 2023

Technical Scrutiny point 1:

Paragraph 3.11.11 of Statutory Instrument Practice (5th Editions) provides that a preamble should recite every enabling provision that an SI derives its validity from or through. Paragraph 3.11.14, states, “The enabling provisions include all of those that make clear: what may, or must, be done; by what means something is to be done; and who is empowered to do it.”

Section 10(3) of the Countryside and Rights of Way Act 2000 states what Regulations can do. It is the definition of “regulations” in section 45(1) that empowers the Welsh Ministers to make regulations under section 10(3). It is the Welsh Government’s view that in this instance, section 45(1) of the Countryside and Rights of Way Act 2000 is properly cited as an enabling provision.

Agenda Item 4.1

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/3009/22

Llyr Gruffydd MS

Chair

Climate Change, Environment, and Infrastructure Committee

SeneddClimate@senedd.wales

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitutional Committee

SeneddLJC@senedd.wales

28 February 2023

Dear both,

I am pleased to share with you and your Committees the finalised Framework Outline Agreement for the UK Emissions Trading Scheme (the FOA) and the related Concordat, to coincide with their publication.

The FOA establishes common expectations around key areas of cooperation in the implementation of the UK Emissions Trading Scheme (UK ETS), in the context of the UK's departure from the EU. All four UK administrations agreed to work together to establish common approaches, known as Common Frameworks, in policy areas previously governed by EU law, and which intersect with areas of devolved competence. The Concordat establishes a governance framework in which decisions relating to the UK ETS will be made.

Officials in the Welsh Government, together with their counterparts across the UK, have been working jointly to develop this FOA and the Concordat.

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

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

The set of documents can be found at: <https://www.gov.uk/government/publications/uk-emissions-trading-scheme-common-framework>

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive style with a large initial 'J'.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Amendments to UK Government legislation to support Corporate Joint Committees
DATE	27 February 2023
BY	Rebecca Evans MS, Minister for Finance and Local Government

The Local Government and Elections (Wales) Act 2021 provides for the establishment of Corporate Joint Committees (CJCs). These enable and support the delivery of important, specific local government functions at a regional scale where it makes sense to do so.

A small number of outstanding technical issues emerged during implementation of these CJCs, including their taxation status.

When issues arising from Senedd legislation require amendments to UK wide legislation beyond the Senedd's legislative competence, an Order under section 150 'Power to make consequential provision' of the Government of Wales Act 2006 can be developed in partnership with the Westminster Government.

The Secretary State for Wales has laid the Local Government and Elections (Wales) Act 2021 (Corporate Joint Committees) (Consequential Amendments) Order 2023 before the UK Parliament. This Order, if approved, will provide for technical amendments to the following UK legislation to add CJCs to their definitions of local authorities or to the list of bodies encompassed by provision:

- Corporation Tax Act 2010 and Income Tax Act 2007 - which means a CJC will not be liable to pay corporation tax, tax in respect of its income, or chargeable gains tax, in the same way as any local authority in the United Kingdom is not liable to pay these taxes.
- National Loans Act 1968 – which extends HM Treasury's power to provide loans to CJCs out of the National Loans Fund in the same way that it can provide loans to local authorities.

- Local Government Act 1972 – which means that a CJC is able to pay money owed to a deceased member of staff without requiring a grant of probate or letters of administration, in the same way as a local authority can.
- Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 – which will support the smooth transition and continuity of employment between CJsCs and principal councils.
- Local Government Pension Scheme Regulations 2013 – which ensures the four CJsCs become scheme members and their employees are automatically admitted to the Local Government Pension Schemes.

Subject to Parliamentary approval of this Order, these changes will be made by the end of the current financial year.

An Order to admit the four Corporate Joint Committees into the VAT refund scheme came into force on 9th February. CJsCs can now receive a refund of the eligible VAT they incur in the same way as local authorities can.

These changes resolve key remaining operational issues for CJsCs and will enable regional colleagues to plan with confidence for the next financial year. This will support partners to deliver their regional ambitions, develop successful regional economies, and encourage local growth via the CJsCs.

Agenda Item 5.2

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



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: PO/2023/69

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
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1 March 2023

Dear Huw

Thank you for your letter of 3 February seeking further information following my recent attendance at the Legislation, Justice and Constitution Committee in relation to Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny.

My response to the questions raised in your letter can be found in Annex A.

Yours sincerely,

Mick Antoniw AS/MS

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

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

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

Annex A

Justice

Q1. In your correspondence to the Committee, you reiterated the Welsh Government's commitment to bring forward legislation to create a modernised tribunal system for Wales. Please can you provide any updates on work that is underway to prepare for that legislation and when we might expect it to come before the Senedd?

We have made clear in "Delivering Justice for Wales" that the Government intends to legislate to create a modernised tribunal system for Wales. I cannot at this time offer a definitive timescale for the timetabling of legislation as this is, of course, subject to separate processes for the development of the Government's Legislative Programme. In the meantime, we are working through the Law Commission's recommendations to develop detailed proposals for reform, drawing on the evidence base for change and conversations with those affected by the reform agenda. As a next step we propose to progress to consult on our approach via a White Paper to inform the legislation we intend to bring forward.

UK Internal Market Act 2020

Q2. Does the Welsh Government still intend to use the Environmental Protection (Single-use Plastics) (Wales) Bill as a practical example in a legal challenge against the UK Internal Market Act (on matters that do not relate to legislative competence), and if so what route will you use?

There are no current plans to use the Environmental Protection (Single-use Plastics) (Wales) Bill in this way. The Welsh Government has been very clear in its position on, and opposition to, the UK Internal Market Act and we will continue to monitor and consider opportunities to challenge.

Q3. We questioned you at some length on the impact of the UK Internal Market Act (RoP 94-115). Please can you explain what the potential issues are with the Act and when you might expect them to arise?

The Welsh Government has raised many issues with the UK Internal Market Act since its inception. These include the cross-border impact of English legislation passed in the UK Parliament as well as the wide-ranging financial assistance powers.

I have also been very clear that when the Senedd passes primary legislation to create new regulatory requirements in Wales, it does so free from the UK Internal Market Act.

I understand that others may not share this view, and this is where issues in the future may arise.

Q4. During the Plenary debate on a consent motion for the Genetic Technology (Precision Breeding) Bill on 17 January, the Minister for Rural Affairs stated: "When the Senedd legislates they do so free of the UK Internal Market Act, so primary legislation in a devolved area can be made free from requirements of UKIMA" [Plenary RoP para 439]. It is clear that UKIMA does not affect the Senedd's competence to make legislation, but our concern remains that UKIMA can have a practical impact on the operation of such legislation once enacted. Can you set out on what grounds the Welsh Government has concluded that provisions in an Act of the Senedd are not;

- ***‘relevant requirements’ for the purposes of the mutual recognition principle for goods in section 2 of UKIMA;***
- ***a ‘legislative requirement’ in relation to services, in accordance with section 17 of UKIMA?***

The Welsh Government’s position is that the UK Internal Market Act cannot have had the impact it purports to have on the Senedd’s legislative competence, i.e. to prevent the Senedd from banning the sale of a variety of items in Wales, unless those same items are also banned across the UK, or because the UK Government has agreed to a specific exclusion on an issue. If this were the case, this could amount to a reservation of large areas of competence, which, given the status of the Government of Wales Act 2006 as a constitutional statute, and because the devolution arrangements are a permanent part of the UK’s constitutional structures, could only be achieved by express amendment. To do otherwise – to impliedly amend competence – is contrary to the principle of legality.

The manner in which the UK Internal Market Act seeks to achieve the purported impact outlined above (and establish the overall architecture of the Act) is through the introduction of ‘relevant requirements’ and ‘legislative requirements’ as outlined in your question. Given the Welsh Government’s position above – that the UK Internal Market Act has not had this purported impact – it follows that provisions in Senedd legislation will not be ‘relevant requirements’ or ‘legislative requirements’ for the purposes of section 2 or section 17 of the Act.

Q5. Given the Welsh Government’s views on the Genetic Technology (Precision Breeding) Bill, will you be seeking an exclusion for genetic technologies from the market access principles in the UK Internal Market Act if the Bill becomes law?

Ministers recently agreed to a careful review of our precautionary approach to these technologies, where we will consider if there is evidence to support a policy change in Wales. As part of that we will consider whether a UKIMA exclusion is necessary in relation to these technologies and will update the committee in due course.

Intergovernmental Relations

Q6. There are a large number of ongoing disagreements on legislation between the Welsh and UK governments, not least around the Retained EU Law Bill. Has the Welsh Government considered using the intergovernmental dispute resolution mechanisms to address these issues? If not, why not? Are the mechanisms fully operational?

We want to work with the UK Government pragmatically – on legislation and indeed any other issues – as part of what should be routine intergovernmental engagement. The machinery set up by the intergovernmental relation review can provide escalation routes – through, for example, the Interministerial Groups (‘IMGs’) set up across portfolios. We would hope that these forums should be sufficient to allow us to raise concerns and resolve disagreements without needing to invoke the formal dispute resolution process. However, if we cannot reach agreement through these arrangements, the dispute resolution processes are operational and remain open to us.

Retained EU Law (Revocation and Reform) Bill

A response to questions 7 to 10 were set out in my letter of [10 February](#).

Accessibility of the Law

Q11. What plans do you have for 2023-24 to improve the accessibility of Welsh law?

The Government's five-year programme, *The Future of Welsh Law*, sets out the details of the projects that we currently anticipate undertaking during this Senedd term. This is subject to ongoing evaluation and review, including assessing the impact of other legislative pressures on the Welsh Government. We do not intend to set out a year-by-year schedule of activity to supplement the programme, not least because many of the projects span several years. We will continue to use the annual report to update the Senedd on progress made under the programme and if changes to the programme are required these will be made in accordance with section 2(7) of the Legislation (Wales) Act 2019.

However you will be aware that in late 2021 we began the work with The National Archives on the technical changes needed to the functionality of legislation.gov.uk to support annotation of legislation. That work continued right up until it went live in October 2022, and alongside that our staff were receiving the initial and supplementary training they needed to begin annotation. Work on annotation is now well underway, including for example almost all of the legislation relating to Renting Homes now being available in up-to-date form in both languages.

I can also update the Committee that we are now considering the consultation responses on the draft Statute Law (Repeals) (Wales) Bill and expect to introduce a Bill into the Senedd before summer recess.

Q12. Please can you provide an update on when the Welsh Government will be introducing legislation to consolidate planning law?

Significant work has been achieved on the preparation of Bill to consolidate planning law, but there is quite some way yet to go. We are looking at a Bill that will consolidate significant swathes of the statute book and that will take time to get right. The planned introduction of that Bill will be announced in the usual way during a future legislative programme statement by the First Minister.

Q13. What progress has the Welsh Government made on the consolidation and remaking of the National Assembly for Wales (Representation of the People) Order 2007?

The position remains as I set out in the annual report to the Senedd of October 2022: work is underway, and a consultation will be held on a draft of the proposed Order in due course.

Q14. How is the accessibility of the law considered when the Welsh Government decides whether to agree to UK Bills making provisions in devolved areas? Is any kind of risk assessment or similar undertaken?

We always start from the position that legislation in devolved areas should be made in the Senedd, with accessibility of the law being one of the principles underpinning that. Any decision to agree to provision being made in a UK Bill, in line with our principles, will therefore involve an analysis of the various factors involved including accessibility but also the potential benefits of bringing forward provision, as set out in our principles.

Legislation

Q15. Are there any policy areas that you foresee a significant amount of secondary legislation being required for over the next 12 months?

Q16. What, if any, significant secondary legislation must be brought forward in this calendar year, perhaps to implement Acts passed by the Senedd in recent years or because new and updated regulations must be made?

Q17. Does the Welsh Government as a whole have a priority list of secondary legislation that must, or is to, be made in 2023? If the Welsh Government does have a priority list, how will it deprioritise, or what contingencies are being put in place, if government resources need to be diverted to drafting secondary legislation needed to save or reform REUL?

As the First Minister set out in his July Legislative Statement, the Government's programme of legislation includes substantial subordinate legislation, much of which contributes to the implementation of Acts of Senedd Cymru. This includes subordinate legislation to implement the Tertiary Education and Research (Wales) Act, additional learning needs reform and The Environmental Protection (Single-use Plastic Products) (Wales) Bill which is at Post-Stage 4. The programme also includes subordinate legislation necessary to implement UK Government Acts.

The programme is kept under continuous review and while it is not possible to fully assess the scale of the impact of REUL until we know the detail of the UK Government's plans, we are considering the potential implications it could have on the Welsh Government's planned work.

Mick Antoniw MS
Counsel General and Minister for Constitution

3 February 2023

Dear Mick

Legislation, Justice and Constitution Committee, 16 January 2023 - Welsh Government's Draft Budget for 2023-24 (spending in relation to justice) and general scrutiny

Thank you for appearing before the Committee on 16 January and giving evidence on matters relating to the Welsh Government's Draft Budget for 2023-24, specifically as regards spending in relation to justice, and to answer more general questions regarding your portfolio responsibilities.

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

I would be grateful to receive your response to the majority of the questions listed in the Annex by 23 February 2023 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Given our reporting deadline for the legislative consent memoranda on the Retained EU Law (Revocation and Reform) Bill, I would be grateful to receive a response to the questions 7 to 10 by noon on 10 February 2023.

Yours sincerely,



Huw Irranca-Davies
Chair

Annex

Justice

1. In your correspondence to the Committee, you reiterated the Welsh Government's commitment to bring forward legislation to create a modernised tribunal system for Wales. Please can you provide any updates on work that is underway to prepare for that legislation and when we might expect it to come before the Senedd?

UK Internal Market Act 2020

2. Does the Welsh Government still intend to use the Environmental Protection (Single-use Plastics) (Wales) Bill as a practical example in a legal challenge against the UK Internal Market Act (on matters that do not relate to legislative competence), and if so what route will you use?
3. We questioned you at some length on the impact of the UK Internal Market Act (RoP 94-115). You told us that:

"I think the fact that the single-use plastics Bill has now been passed, will be going for Royal Assent now—. I think there is a period of time before implementation, because of the World Trade Organization requirements, et cetera, but the Attorney-General has clearly taken the decision that it's not a matter to be referred to the Supreme Court, and I'm content to accept that. It doesn't mean that there aren't issues with the internal market Act, but they may arise at a later stage." [Our emphasis].

As regards the last sentence, please can you explain what the potential issues are with the Act and when you might expect them to arise?

4. During the Plenary debate on a consent motion for the Genetic Technology (Precision Breeding) Bill on 17 January, the Minister for Rural Affairs stated: "When the Senedd legislates they do so free of the UK Internal Market Act, so primary legislation in a devolved area can be made free from requirements of UKIMA" [Plenary RoP para 439]. It is clear that UKIMA does not affect the Senedd's competence to make legislation, but our concern remains that UKIMA can have a practical impact on the operation of such legislation once enacted. Can you set out on what grounds the Welsh Government has concluded that provisions in an Act of the Senedd are not;
 - 'relevant requirements' for the purposes of the mutual recognition principle for goods in section 2 of UKIMA;
 - a 'legislative requirement' in relation to services, in accordance with section 17 of UKIMA?

5. Given the Welsh Government's views on the Genetic Technology (Precision Breeding) Bill, will you be seeking an exclusion for genetic technologies from the market access principles in the UK Internal Market Act if the Bill becomes law?

Intergovernmental Relations

6. There are a large number of ongoing disagreements on legislation between the Welsh and UK governments, not least around the Retained EU Law Bill. Has the Welsh Government considered using the intergovernmental dispute resolution mechanisms to address these issues? If not, why not? Are the mechanisms fully operational?

Retained EU Law (Revocation and Reform) Bill

7. Please could you provide an update on intergovernmental joint working and advise of any joint plans agreed to date?
8. What action will you take if the Senedd refuses consent to the Bill and how will you draw any concerns you have to the attention of the UK Parliament?
9. What action will you take if the Bill subsequently becomes law, without the amendments you would like to see made?
10. Does the Welsh Government consider that the Senedd has the legislative competence to bring forward a Welsh Bill that would amend the Retained EU Law (Revocation and Reform) Bill (if and when enacted) so as to amend the sunset date as it currently applies to retained EU law in devolved areas? Is the Welsh Government considering bringing forward such a Bill if the sunset date of 31 December 2023 remains in the Bill?

Accessibility of the Law

11. What plans do you have for 2023-24 to improve the accessibility of Welsh law?
12. Please can you provide an update on when the Welsh Government will be introducing legislation to consolidate planning law?
13. What progress has the Welsh Government made on the consolidation and remaking of the National Assembly for Wales (Representation of the People) Order 2007?
14. How is the accessibility of the law considered when the Welsh Government decides whether to agree to UK Bills making provisions in devolved areas? Is any kind of risk assessment or similar undertaken?

Legislation

15. Are there any policy areas that you foresee a significant amount of secondary legislation being required for over the next 12 months?

- 16.**What, if any, significant secondary legislation must be brought forward in this calendar year, perhaps to implement Acts passed by the Senedd in recent years or because new and updated regulations must be made?
- 17.**Does the Welsh Government as a whole have a priority list of secondary legislation that must, or is to, be made in 2023? If the Welsh Government does have a priority list, how will it deprioritise, or what contingencies are being put in place, if government resources need to be diverted to drafting secondary legislation needed to save or reform REUL?

Ein cyf/Our ref:PO/2023/68

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

1 March 2023

Dear Huw,

HISTORIC ENVIRONMENT (WALES) BILL

Further to my appearance before the Committee and your subsequent letter of 15 February, I am pleased to be able to set out further details about our plans to review the legislation for the marine historic environment.

As the Committee has heard from our evidence, that of the Law Commission and of Dr Roberts of Bangor University, the marine historic environment is complex and encompasses much more than wrecks. A complex web of legislation affords protection to the marine historic environment which ranges from submerged prehistoric landscapes to modern military remains. The directly relevant current legislation includes the:

- Protection of Wrecks Act 1973
- Ancient Monuments and Archaeological Areas Act 1979
- Protection of Military Remains Act 1986
- Merchant Shipping Act 1995, and
- Marine and Coastal Access Act 2009

The Government agrees with recommendation 6 of the Committee's report on its Initial Consideration of the Bill that a review of the legislative protection afforded to the marine historic environment is needed. Such a review will be a substantial undertaking because of the diverse nature of the historic assets involved, the increasing demands on the marine historic environment and the complex character of the protective frameworks in place. In addition, the management of activities in Welsh waters is split between devolved functions and functions retained by UK Government.

To undertake the review effectively the Welsh Government will need to gather evidence, engage with stakeholders and thoroughly evaluate the existing legislation. Cadw will look to work with the Royal Commission on the Ancient and Historical Monuments of Wales and other public bodies to develop the evidence base to inform the review. Our aim is to assess the effectiveness of the existing legislation by the end of 2024.

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

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

The next steps following that review, whether non-legislative or legislative, will need to be considered along with other Welsh Government priorities at that time. In the meantime, I can reassure the Committee that the existing legislative frameworks, including the Protection of Wrecks Act 1973, will continue to provide protection to the marine historic environment.

Yours sincerely,

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

Mick Antoniw AS/MS

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

Mick Antoniw MS
Counsel General and Minister for Constitution

15 February 2023

Dear Mick

Historic Environment (Wales) Bill: Detailed Committee Consideration

Thank you for appearing before the Committee on 13 February, for Detailed Committee Consideration proceedings on the Historic Environment (Wales) Bill.

During the discussion on group 1 and the amendments relating to the protection of sites of historic wrecks you agreed to provide details to us on how the Welsh Government will take forward plans to review all the legislation in this area and the anticipated timeframes for undertaking such work.

Given our reporting deadline set by the Business Committee, I would be grateful to receive a response by Tuesday 28 February 2023.

Yours sincerely,



Huw Irranca-Davies
Chair

Agenda Item 5.4

Hannah Blythyn MS / MS
Y Dirprwy Weinidog Partneriaeth Gymdeithasol
Deputy Minister for Social Partnership



Llywodraeth Cymru
Welsh Government

Jenny Rathbone MS
Chair of the Equality & Social Justice Committee

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

Peredur Owen Griffiths MS
Chair of the Finance Committee

Welsh Parliament
Cardiff Bay
Cardiff
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28 February 2023

Dear Jenny, Huw & Peredur,

I am writing to you ahead of the Stage 3 debate on the Social Partnership and Public Procurement (Wales) Bill on 07 March to inform you that I have today tabled an updated version of the Explanatory Memorandum ('EM') for the Bill.

Revisions have been made throughout the EM reflecting the commitments I gave in response to a number of Stage 1 Committee Recommendations. The main changes are listed at page 45 of the document, and it will be clear to Committee Chairs and Members which Recommendations these relate to. However, I thought it would be helpful to provide additional detail in relation to the following Committee Recommendations, so that you are assured these have been appropriately dealt with:

- a) In response to ESJ Committee Recommendation 2: revisions have been made to the narrative text of chapters 3 and 11 to make clearer the outcomes that the Bill is seeking to achieve and how these will be monitored and measured over time. Key stakeholders have also been involved in the revision of the EM (see c) & e) below).
- b) In response to ESJ Committee Recommendation 11, and the related Finance Committee Recommendation 10: the changes made in relation to the Future Generations Commissioner's office and Audit Wales are at paragraph 282 & Table 3.4, and also paragraphs 289 – 293. You will recall that I provided details regarding the Commissioner's budget in my letter to you of 17 January - this information has not been included in the revised EM as it is not directly related to the Bill.

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

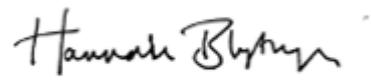
- c) In response to ESJ Committee Recommendation 17 and Finance Committee Recommendation 3: following further consultation with external public procurement stakeholders the amount of training and support that will be required to ensure contracting authorities are able to fulfil their socially responsible procurement duties, and the associated costs, have been increased in response to concerns that the original EM had underestimated these. The changes are as follows:
- the amount of guidance and support required (which now includes supplier support sessions, and an increase in staff training days per person per year from 8 to 20 per person) and the cost of producing and delivering this, has been increased from £360,400 to £641,100 (see Table 5.1, Table 5.4, Table 5.7, Table 6 and paragraph 390); and,
 - the amount of time required for objective setting and planning has been increased from 7 days per year per person to 11 days per year per person, and the costs uplifted accordingly from £98,400 to £215,900 (see Table 5.6).
- d) In response to ESJ Committee Recommendation 22: additional text has been added to the EM providing examples of the types of circumstances that might trigger an investigation under Section 41 (see paragraphs 109 – 112).
- e) In response to ESJ Committee Recommendation 25: in addition to the work undertaken with procurement stakeholders referred to at c) above, the Welsh Government has also engaged with the Social Partnership Forum to explain the changes being made to the EM, including in relation to costs. These changes include:
- replacing the costs relating to the Shadow Social Partnership Council ('SSPC') which were included in the original EM with the costs of the Social Partnership Forum ('SPF') which succeeded it. Because the SPF has a smaller membership and meets less frequently than the SSPC costs have reduced from £73,300 to £49,900 (see paragraphs 198 – 204 and Tables 2 and 2.1);
 - responding to concerns that the familiarisation costs in relation to the social partnership duty had been underestimated by including a wider range of stakeholders, resulting in an increase in costs from £2,200 to £22,319 (see paragraphs 280 – 283 and table 3.4; and
 - correcting an error in Table 3.5 which had costed for three Social Partnership Council meetings per year rather than four.

Feedback was invited from SPF members on these changes, which has been taken into account in producing the final revised version of the EM.

- f) In relation to Finance Committee Recommendation 1: because all of the costs included in the RIA are staffing costs (which have been uplifted to take account of the most recent pay data available), there are no costs which could be recalculated to take account of general price inflation. On the wider issue raised in Recommendation 2 - as I confirmed in my letter of 15 December 2022 the Committee Chair will receive a formal response from the Minister for Finance and Local Government on this matter in due course.

The result of these revisions to the EM is that the total costs of this legislation to the public and private sector over the five-year appraisal period has increased from £30,399,200 to £31,552, 219.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hannah Blythyn'.

Hannah Blythyn AS/MS

Y Dirprwy Weinidog Partneriaeth Gymdeithasol
Deputy Minister for Social Partnership

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

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

Elin Jones MS
Llywydd, Senedd Cymru
Cardiff Bay, Cardiff CF99 1SN
Llywydd@senedd.wales

1 March 2023

Dear Elin,

[Bill of Rights Bill](#) (“the Bill”) and laying of a Legislative Consent Memorandum

We sincerely apologise for the delay in correspondence in what have proved to be a set of unusual and exceptional circumstances. We had previously written to you in 2022 on several occasions, the last correspondence dated 22 September, when it first became apparent that the Bill had been paused, by the UK Government.

In December, we met with Lord Bellamy who is the Parliamentary Under-Secretary of State for Justice. At the time, he suggested that the UK Government would be proceeding with the Bill in its current form as soon as Parliamentary time allows. However, you will know that the Bill has still not had any of its parliamentary stages. In February, a letter was issued seeking clarification about any progress on the Bill, and we still await a reply.

It may be the case that the Bill has been indefinitely paused for a variety of reasons. If the Bill does progress to second reading at what is likely to be short notice – we will lay a Legislative Consent Memorandum at the earliest opportunity. However, given the uncertainty and unusual circumstances surrounding this Bill it does not seem sensible to proceed with the LC Memorandum for the foreseeable future.

As with previous correspondence, we are copying this letter to the First Minister, the Minister for Rural Affairs and North Wales, and Trefnydd, the Chair of the Equality and Social Justice Committee, the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Cross-Party Group on Human Rights.

Yours sincerely

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Jane Hutt

Mick Antoniw

Jane Hutt AS/MS

Y Gweinidog Cyfiawnder
Cymdeithasol
Minister for Social Justice

Mick Antoniw AS/MS

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

Ein cyf/Our ref: CG/PO/70/2023

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

seneddLJC@senedd.wales

02 March 2023

Dear Huw

Thank you for the Committee's recent report on the Welsh Government's draft budget for 2023-24. At the outset, I would like to reiterate comments I have previously made and thank the Committee for its interest in our resourcing of justice related activity. It is important that we appreciate the extent of our commitment to, and expenditure on, justice activity under the current devolution settlement and as we take forward our Programme for Government commitment to pursue the case for the devolution of policing and justice.

I note the Committee's commentary as outlined in the report. Turning to the specific recommendations I have set out my reply as follows:

Recommendation 1. The Counsel General should provide us with timely updates of any increase in demand for cases to be heard by the Welsh tribunals, and any resulting in-year increase to the allocation to the Tribunals BEL.

As the recommendation acknowledges, the Welsh tribunals are a demand led service. In each of his annual reports, the incumbent President of Welsh Tribunals has reported on the number of applications made to the Welsh tribunals and on budget outturn for each financial year. In recent years, the President has reported an underspend against budget, primarily a result of the move to remote rather than face-to-face hearings in response to the impact of the Covid-19 pandemic. In the latest annual report, laid before the Senedd on 31 January, the President has highlighted the potential transition to a budget overspend position as some face-to-face hearings resume, a matter I discussed with the President when we met on 1 February.

I am conscious of the principle of judicial independence, as I am sure we all are, and I recognise the need for the tribunals service to be adequately resourced to deliver its functions. We as a Government consider and review budgetary pressures and this applies equally to the budget allocation for the tribunals service as it does to other budget

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

expenditure lines in our draft budget. I will, of course, provide you with any appropriate updates if the position develops further.

Recommendation 2. The Counsel General should provide us with detail on the anticipated resources required to develop proposals for reform of the Welsh tribunals.

The “Justice Transformation” budget expenditure line supports our justice transformation programme and resources the preparatory work currently in hand to progress the tribunal reform project. As I set out in my letter of 1 March, in response to your letter of 3 February, the timetabling of the legislation required to effect reform and the resourcing of that work is subject to separate processes for the development of our Legislative Programme. As is usual, our proposals for legislation will be accompanied by impact assessments which set out anticipated resource implications.

Recommendation 3. Should the Retained EU Law (Revocation and Reform) Bill become law, the Counsel General should report to us on the Welsh Government’s assessment of the impact of the Bill on its resources within a month of its passing, and at monthly intervals thereafter.

Should the Retained EU Law (Revocation and Reform) Bill (“the Bill”) be passed, and receive Royal Assent, I will provide an initial assessment of the impact of the legislation on Welsh Government resources, as soon as it is possible to do so after the Bill becomes law whilst noting that the Bill is only one part of the story. The priority will be to ensure that we minimise risks of important legal protections falling off the statute book at the end of this year. However, the impact will be very heavily dependent upon understanding the approaches being taken elsewhere in the UK and in particular, decisions by UK Government Ministers to retain or reform individual instruments. Where changes to the status quo are being considered outside Wales, it will be important to understand as far as possible the implications of either aligning with, or diverging from, positions being taken elsewhere. I will update the Senedd on this matter when there is more information to report.

Recommendation 4. The Counsel General should, by the end for March, provide an analysis of whether the anticipated additional staffing costs to the Welsh Government set out in the Explanatory Memorandum to the Legislation (Wales) Bill are proving to be accurate.

The Government has previously committed to set out details of the resourcing and financial implications of delivering the first programme aimed at improving accessibility of Welsh law, and other costs arising from implementing the Legislation (Wales) Act 2019 (“the 2019 Act”). This commitment was given in response to recommendations made by the Fifth Senedd Constitutional and Legislative Affairs Committee and Finance Committee, following their Stage 1 scrutiny of the Legislation (Wales) Bill. The Government agreed to include these details in the annual report under section 2(7) of the 2019 Act that would be made in 2023. I will therefore provide this information in the report due later this year.

Yours sincerely,



Mick Antoniw AS/MS

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

Agenda Item 6

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

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Agenda Item 9

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Agenda Item 10

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

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LEGISLATIVE CONSENT MEMORANDUM
THE STRIKES (MINIMUM SERVICE LEVELS) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO 29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Strikes (Minimum Service Levels) Bill (“the Bill”) was introduced in the House of Commons on 10 January 2023. The Bill can be found here: <https://bills.parliament.uk/publications/49592/documents/2846>
3. This legislative consent memorandum has been laid outside of the normal two-week deadline due to a lack of meaningful consultation by the UK Government prior to the Bill’s introduction, the absence of a published Impact Assessment and to enable completion of our legislative competence analysis of the Bill as introduced.

Policy objectives

4. The UK Government’s stated policy objectives are to:
 - a. Ensure the safety of the public and protect their access to vital public services.
 - b. Balance the right to strike with the ability of the public to access important services during periods of industrial action.
 - c. Expand upon a commitment made in the Conservative Party’s manifesto for the 2019 general election to require that a minimum service operates during transport strikes, by enabling the UK Government to regulate for minimum service levels in a range of sectors (which include devolved public services such as health and education).
 - d. Set minimum service levels via regulations in specific services.
 - e. Enable employers to require enough workers to work so as to ensure minimum service levels are delivered during strikes within relevant services.

Bill introduction and handling

5. The UK Government introduced the Strikes (Minimum Service Levels) Bill in the House of Commons on 10 January 2023. The Bill passed 2nd reading on 16 January 2023 and subsequently passed the committee

stage and 3rd reading on 30 January 2023. The Bill entered 1st reading in the House of Lords on 31 January 2023. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy (“BEIS”).

6. The Welsh Government was not consulted on the development of the Bill. Despite repeated approaches from Welsh Government officials to BEIS officials, the first communication to Welsh Government officials on the Bill was on 5 January 2023. This followed a UK Government press release earlier that day which announced the intention to introduce a Bill. BEIS officials declined to share substantive information concerning the Bill beyond that contained in the press release.
7. Following the introduction of the Bill in the House of Commons on 10 January 2023 by the Secretary of State for Business, Energy and Industrial Strategy, the Minister for Enterprise, Markets and Small Business wrote to the First Minister later that day concerning the legislation.

Summary of the Bill

8. The Bill confers a regulation making power on the Secretary of State to set minimum levels of service in respect of “relevant services” during periods of strike action. The Bill amends the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) to:
 - a. restrict the protection of trade unions under the 1992 Act from legal action in respect of strikes relating to “relevant services” and the automatic protection of employees from unfair dismissal where provision has been made for minimum levels of service and a work notice issued. The “relevant services” will be prescribed by regulations, following consultation.
 - b. enable employers to issue work notices to require the minimum service levels to be delivered during particular strikes in specified services.
9. The Bill provides that regulations prescribing the minimum service levels may specify only “relevant services” that fall within any of the following categories:
 - a. health services
 - b. fire and rescue services
 - c. education services
 - d. transport services
 - e. decommissioning of nuclear installations and management of radioactive waste and spent fuel
 - f. border security.
10. The Bill applies to Wales and enables the Secretary of State to set minimum service levels through regulations in devolved public sectors

including health, education, fire and rescue services, and some transport services.

11. The Bill has the potential to impact on a number of devolved public services that fall into these categories. The Bill also adopts a policy position which stands in sharp contrast to the social partnership way of working in Wales.

Provisions in the Bill for which consent is required

12. I consider that Senedd Cymru consent is required in relation to the clauses identified below in so far as they make provision with regard to devolved matters.

Clauses 1 and 2:

Clause 1 introduces the Schedule, which amends Part 5 and other provisions of the 1992 Act. Part 5 of the 1992 Act makes provision relating to industrial action, including the conditions that must be met in order for strike action to be protected from tort proceedings. Clause 2 defines the 1992 Act as meaning the Trade Union and Labour Relations (Consolidation) Act 1992. Consent is required to the extent that clause 1 introduces the Schedule which enables regulations to be made in the categories of health services, education services, fire and rescue services, and some transport services, which are devolved matters. Clause 2 is an interpretation provision for the purposes of clause 1 and therefore consent is also required for this clause.

Clause 3:

This clause allows the Secretary of State to make consequential amendments by affirmative regulations to primary legislation, and to make consequential amendments to any other legislation by regulations subject to annulment by a resolution of either House of Parliament in accordance with the negative procedure. Consent is required to the extent that this clause allows consequential amendment to be made to legislation that concerns the devolved matters of health, education, fire and rescue services and limited transport matters. It is also noted the power to make regulations enables amendment, repeal or revocation to an Act or Measure of Senedd Cymru. Consent is required for clause 3 in so far as it makes provision with regard to devolved matters.

Part 1 of the Schedule

Paragraphs 1 and 2 of the Schedule amend the 1992 Act to add the following new sections:

New section 234B: This section provides a power for the Secretary of State to make regulations providing for levels of service where there are strikes in relevant services. Subsection (4) lists the categories within which the Secretary of State can make provision

by regulation for levels of service in relation to strikes. These categories include health services; fire and rescue services; education services; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; border security. Consent is required to extent of which this section makes provision with regard to the devolved matters of health, education, fire and rescue services and some transport matters.

New section 234C: This section establishes how work notices relating to minimum service levels are to operate. It is considered that the purpose of a work notice is to 'operationalise' and attempt to ensure minimum levels of service are met, including in devolved sectors. Consent is required to the extent this section makes provision with regard to the devolved matters of health, education, fire and rescue services, and some transport matters.

New section 234D: This section provides that, where it is necessary to name individuals in work notices, this will not be a breach of confidence owed by the employer or of any other restrictions on disclosing information. However, the employer must adhere to data protection legislation and the giving of work notices are to be taken into account when assessing obligations under that legislation. This section makes provision with regard to health, education, fire and rescue services and some transport matters, which are devolved matters and therefore consent is required.

Section 234F: This section requires the Secretary of State to carry out a consultation prior to regulations being made under section 234B. This section further enables different types of provision to be made such as consequential and supplementary. Regulations are to follow the affirmative procedure and required approval of both Houses of Parliament. Consent is required to the extent that regulations under section 234B can be made in relation to the service categories of health, education and fire, rescue services and some transport matters. This section makes provision with regard to the devolved matters of health, education, fire and rescue services and some transport matters and therefore consent is required.

Section 234G: This section sets out the meaning of various defined terms used in the Bill. Consent is required to the extent that this section makes provision with regard to the devolved matters of health, education, fire and rescue services and some transport matters

Provisions in the Bill for which consent is not required

13. I consider that Senedd Cymru consent is not required for the following clauses as set out below:

Part 2 of the Schedule

Paragraphs 3 to 10:

These paragraphs make amendments to the 1992 Act in relation to (a) whether certain strikes are protected against tortious liability for the union or not and (b) ensuring there is no automatic protection from unfair dismissal for an employee who is identified in a valid work notice but participates in the strike contrary to that work notice, provided the employer has complied with the relevant provisions in the Bill. These provisions are considered to be reserved due to reservation 141 – employment rights and duties and industrial relations, including the subject matter of the 1992 Act, as prescribed in the Government of Wales Act 2006.

Clauses 4 to 6

Clauses 4 to 6 concern the extent, commencement, and short title of the Bill. These provisions have no legal effect and therefore consent is not required for these clauses.

UK Government view on the need for consent

14. The UK Government have not sought Senedd consent and consider the provisions in the Bill as being reserved. The UK Government’s position is set out in a letter from the Minister for Enterprise, Markets and Small Business to the First Minister dated 10 January 2023. The content of which is set out below:
 - a. *“The Bill will extend and apply to England and Wales and Scotland. Employment rights and duties and industrial relations, including the subject matter of the Trade Union and Labour Relations (Consolidation) Act 1992, are reserved to Westminster for Scotland and Wales.”*
 - b. *“Whilst the services to which minimum service levels may apply include areas that could generally be regarded as “devolved areas” (for example, healthcare, education, fire services, parts of transport, environment), the main purpose and substance of the Bill is in respect of regulating employment rights and duties and industrial relations in those areas and not the area itself. Specifying which services minimum service levels will apply to and making regulations that set out these minimum service levels, only applies where there are strikes. This is a reserved matter, and the operational effects on any devolved services are incidental to this. Further, whilst the Bill may affect the delivery of public services by the Welsh Government, this is only in respect of the Welsh Government’s capacity as an employer, so does not alter executive competence.”*
 - c. *“Therefore, the UK Government does not consider that the legislative consent process is engaged as the Bill only legislates on reserved matters.”*

Financial implications

15. The financial implications of the Bill are unclear as the Impact Assessment for the Bill has not been published.

Conclusion

16. In my view, the LCM process is engaged, and I lay this LCM on the relevant clauses contained within the Strikes (Minimum Service Levels) Bill which make provision with regard to the devolved matters of health, education, fire and rescue services, and some transport services. The Bill enables the Secretary of State to make regulations to set minimum service levels for devolved public services for which Welsh Ministers are accountable and responsible. Further, the Bill contains broad powers that could affect legislation passed by the Senedd in the future. The Bill has been introduced to the House of Commons without any meaningful engagement with the Welsh Government and is being rushed through the Houses of Parliament without due regard for its very clear link to devolved Welsh public services. Therefore, I recommend that the Senedd does not support the proposals and withholds its consent to the Bill.

Mick Antoniw AS/MS

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

9 February 2023

Agenda Item 12

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

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