

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Videoconference via Zoom	P Gareth Williams
Meeting date: 27 March 2023	Committee Clerk
Meeting time: 13.00	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.00)

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

(13.00 – 13.05)

(Page 1)

Attached Documents:

LJC(6)-11-23 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)337 – The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2023

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

(13.05 – 13.10)

Made Negative Resolution Instruments



**Senedd Cymru
Welsh Parliament**

3.1 SL(6)332 – The Agricultural Wages (Wales) Order 2023

(Pages 2 – 6)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 2 – Draft report

LJC(6)-11-23 – Paper 3 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 7 March 2023

3.2 SL(6)335 – The Welfare of Animals (Transport) (Miscellaneous Amendments) (Wales) Regulations 2023

(Pages 7 – 8)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 4 – Draft report

3.3 SL(6)336 – The Duty of Candour Procedure (Wales) Regulations 2023

(Pages 9 – 10)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 5 – Draft report

3.4 SL(6)338 – The Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Consequential, Supplementary and Incidental Amendments and Revocations) (Secondary Legislation) Regulations 2023

(Pages 11 – 12)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 6 – Draft report

**3.5 SL(6)339 – The Care and Support (Population Assessments) (Wales)
(Amendment) Regulations 2023**

(Pages 13 – 14)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 7 – Draft report

Affirmative Resolution Instruments

3.6 SL(6)340 – The Construction Contracts (Exclusion) (Wales) Order 2023

(Pages 15 – 17)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-23 – Paper 8 – Draft report

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

(13.10 – 13.15)

**4.1 SL(6)330 – The Town and Country Planning (North Wales Border Control Post)
(EU Exit) Special Development Order 2023**

(Pages 18 – 20)

Attached Documents:

LJC(6)-11-23 – Paper 9 – Report

LJC(6)-11-23 – Paper 10 – Welsh Government response

5 Inter-Institutional Relations Agreement

(13.15 – 13.20)

5.1 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Inter-Ministerial Group for Environment, Food and Rural Affairs

(Pages 21 – 25)

Attached Documents:

LJC(6)-11-23 – Paper 11 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 23 March 2023

LJC(6)-11-23 – Paper 12 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 23 March 2023

6 Papers to note

(13.20 – 13.25)

6.1 Written Statement by the Minister for Climate Change: Levelling-up and Regeneration Bill

(Pages 26 – 27)

Attached Documents:

LJC(6)-11-23 – Paper 13 – Written Statement by the Minister for Climate Change, 21 March 2023

6.2 Correspondence from the First Minister to the Llywydd: Environmental Protection (Single-use Plastic Products) (Wales) Bill

(Pages 28 – 29)

Attached Documents:

LJC(6)-11-23 – Paper 14 – Letter from the First Minister to the Llywydd, 22 March 2023

6.3 Correspondence from the Business Committee: Retained EU Law (Revocation and Reform) Bill

(Pages 30 – 31)

Attached Documents:

LJC(6)-11-23 – Paper 15 – Letter from the Business Committee, 22 March 2023

6.4 Correspondence with the Minister for Climate Change: The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Pages 32 – 44)

Attached Documents:

LJC(6)-11-23 – Paper 16 – Letter from the Minister for Climate Change, 23 March 2023

LJC(6)-11-23 – Paper 17 – Letter to the Minister for Climate Change, 14 March 2023

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

(13.25)

8 Supplementary Legislative Consent Memorandum (Memorandum No. 6) on the Social Housing (Regulation) Bill: Draft report

(13.25 – 13.35)

(Pages 45 – 50)

Attached Documents:

LJC(6)-11-23 – Paper 18 – Draft report

9 Common frameworks: Key Issues

(13.35 – 13.50)

(Pages 51 – 61)

Attached Documents:

LJC(6)-11-23 – Paper 19 – Briefing

10 Legislative Consent Memorandum on the Strikes (Minimum Service Levels) Bill: Draft report

(13.50 – 13.55)

(Pages 62 – 70)

Attached Documents:

LJC(6)-11-23 – Paper 20 – Draft report

11 Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Economic Crime and Corporate Transparency Bill

(13.55 – 14.00)

(To Follow)

Attached Documents:

LJC(6)-11-23 – Paper 21 – Legal Advice Note

12 Justice in Wales: Correspondence on oral evidence provided by Lord Bellamy KC, Parliamentary Under-Secretary of State for Justice

(14.00 – 14.10)

(To Follow)

Attached Documents:

LJC(6)-11-23 – Paper 22 – Letter from Lord Bellamy KC, 14 March 2023

LJC(6)-11-23 – Paper 23 – Submission from Race Council Cymru, 14 March 2023

LJC(6)-11-23 – Paper 24 – Submission from Professor Emyr Lewis, Aberystwyth University, 17 February 2023

LJC(6)-11-23 – Paper 25 – Draft response to Lord Bellamy KC

13 Health Service Procurement (Wales) Bill: Draft report

(14.10 – 14.40)

(To Follow)

Attached Documents:

LJC(6)-11-23 – Paper 26 – Draft report

LJC(6)-11-23 – Paper 27 – Letter from the Minister for Health and Social Services to the Health and Social Care Committee, 17 March 2023

LJC(6)-11-23 – Paper 28 – Letter from the Health and Social Care Committee to the Minister for Health and Social Services, 9 February 2023

Statutory Instruments with Clear Reports 27 March 2023

SL(6)337 – The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2023

Procedure: Made Negative

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (“**the 2011 Regulations**”) made arrangements for the notification and consideration of, and response to, concerns notified by persons in respect of services provided by or under arrangements with the National Health Service in Wales.

These Regulations make a number of technical amendments to the 2011 Regulations, including:

1. extending the application of the 2011 Regulations to Special Health Authorities in Wales; and
2. in circumstances where the Public Services Ombudsman for Wales (“**the Ombudsman**”) has recommended that a relevant Welsh NHS body offers a form of redress under Part 6 of the 2011 Regulations, permitting that body to undertake a further investigation to determine whether a qualifying liability exists and to offer redress in accordance with those Regulations and the recommendations of the Ombudsman.

These Regulations come into force on 1 April 2023.

Parent Act: The NHS Redress (Wales) Measure 2008

Date Made: 07 March 2023

Date Laid: 09 March 2023

Coming into force date: 01 April 2023



Agenda Item 3.1

SL(6)332– The Agricultural Wages (Wales) Order 2023

Background and Purpose

The Agricultural Wages (Wales) Order 2023 (“the Order”) revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (No. 2) (Wales) Order 2022.

Part 2 of the Order provides that agricultural workers are to be employed subject to the terms and conditions set out in Parts 2 to 5 of the Order and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about the minimum rates of remuneration that must be paid to agricultural workers. Provision is made for accommodation offset allowance which may be deducted from an agricultural worker’s remuneration. Provision is also made for dog allowance, on-call allowance, night work allowance and birth and adoption grants which do not form part of an agricultural worker’s remuneration.

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified. Provision is made about calculating the amount of agricultural sick pay that an agricultural worker is entitled to. A payment of statutory sick pay is to count towards an agricultural worker’s entitlement to agricultural sick pay.

Part 5 makes provision about an agricultural worker’s entitlement to time off. Provision is made about an agricultural worker’s entitlement to rest breaks, daily rest and weekly rest period. Provision is also made specifying the agricultural worker’s annual leave year and about the agricultural worker’s entitlement to annual leave, holiday pay and about payment in lieu of annual leave. Provision about an agricultural worker’s entitlement to be paid bereavement leave is made in articles 41 to 43.

Part 6 contains a revocation and a transitional provision.

Procedure

Negative.

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

Technical Scrutiny

The following 2 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

Article 29(3) states:

The minimum rest period provided for in paragraph (8) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

However there is no paragraph (8) in article 29. Other paragraphs make reference to paragraph (3), therefore this erroneous cross reference creates further confusion.

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

Article 41(2) of the English language Order introduces the persons in Category A for the purposes of bereavement leave. Sub-paragraph (a) reads “a child”. The Welsh language Order includes “yw plentyn” (a child) in the body of paragraph (2) and as a result there is no sub-paragraph (a). Although this appears to be a formatting issue, the effect is that the English language Order has an article 41(2)(a) and the Welsh language Order does not.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument. These points relate to some of the changes proposed by the Agricultural Advisory Panel for Wales (“the Panel”) to the Agricultural Wages (No. 2) (Wales) Order 2022 that have been included in this Order.

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

Article 2 defines terms used within the Order. We note that at paragraph 23, on page 7 of the Explanatory Memorandum it is stated that:

the term ‘contract of service’ is amended to remove the words ‘of service.’ The rationale behind this amendment is to ensure inclusion of agency workers and workers employed by gang masters who may not be engaged under a contract of service directly with the employer, but under some other form of contract for services.

In accordance with this amendment, we note that the definition of “employment” has been amended, so that workers employed by gangmasters and employment agencies are expressly included.



4. 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

Article 14 sets out provisions to protect the pay of agricultural workers who were employed before 22 April 2022 who may have suffered a reduction in their hourly rate as a result of being assimilated into a lower grade due to changes in the grading structure.

The Panel proposed alternative drafting for the Order, as they were of the view that the pay protection provisions in the Agricultural Wages (No. 2) (Wales) Order 2022 could be interpreted as requiring employers to freeze an agricultural worker's pay at their rate of pay on 22 April 2022 until the minimum hourly rate reaches or exceeds that rate of pay.

The proposed wording in the Explanatory Memorandum, at the bottom of page 8, is different to the wording that appears in the Order. We ask that the Welsh Government clarify the reason for this difference.

5. 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

Article 15 makes provision for accommodation offset allowance which may be deducted from an agricultural worker's remuneration. The employer may deduct no more than £1.65 a week from the agricultural worker's minimum wage where a worker is provided with a house, and the employer may deduct no more than £5.29 per day from the agriculture worker's minimum wage where the worker is provided with other accommodation. We note that the Explanatory Memorandum at paragraph 23, on page 7, states the following:

The Panel has not proposed an increase to these rates since its establishment. Having considered the economic conditions within the sector at this time the Panel have proposed these are increased in line with the percentage increase of the National Living Wage (NLW) bringing the rates for accommodation offset closer to the permitted deduction under the National Minimum Wage legislation.

Welsh Government response

A Welsh Government response is required in respect of points 1, 2 and 4 above.

Legal Advisers

Legislation, Justice and Constitution Committee

22 March 2023





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Agricultural Wages (Wales) Order 2023**

DATE **07 March 2023**

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

I have signed the Agricultural Wages (Wales) Order 2023, which sets the minimum hourly wage for all agricultural, horticultural and agri-forestry workers in Wales, together with their minimum conditions of employment.

The rates are based on the advice of the independent Agricultural Advisory Panel for Wales. The new Order will come into force on 1 April 2023 and:

- increases the minimum wage rates and allowances;
- includes agency workers and workers employed by gang masters who may not have a contract of service directly with the employer;
- amends the wording regarding annual leave year periods; and
- amends the calculation of holiday pay for workers with variable hours.

Welsh Government remains committed to the objectives of the Agricultural Sector (Wales) Act 2014. This important piece of legislation has a direct link to combating poverty in rural Wales and supporting the objectives of the Wellbeing for Future Generations Act.

Ensuring agricultural workers receive fair pay, which recognises the important role they play in the Welsh agricultural sector whilst contributing to the rural economy, and environment, is of paramount importance and a key goal of this Government. This Order bolsters my commitment to support the viability of the agricultural sector in Wales.

More detailed [information and guidance](#) is available on the Welsh Government website.

I am grateful to the Panel and its Chair, Dr Nerys Llewelyn Jones, for their considerable efforts in bringing the new Wages Order forward.

SL(6)335 – The Welfare of Animals (Transport) (Miscellaneous Amendments) (Wales) Regulations 2023

Background and Purpose

These Regulations make provision for the purposes of retained EU legislation to bring the official controls relating to animal welfare in transport under the same regime as other official controls for animal health and welfare. Specific provisions relating to official controls for welfare in transport which were originally delayed are to be commenced by regulations on a date to be specified. These Regulations specify that commencement date for those remaining provisions as 6 April 2023.

These Regulations also amend retained EU legislation to clarify the obligations of animal transporters and keepers, place greater responsibility on journey organisers in relation to the preparation and completion of journey logs and clarify the process for the approval of journey logs.

Consequential amendments are made to the Welfare of Animals (Transport) (Wales) Order 2007.

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

The Explanatory Memorandum states that:



*“The deadline for submission of a journey log to the competent authority will be clarified. The organiser will be required to ensure that a copy of the correctly completed journey log is returned to APHA [Animal and Plant Health Agency] within **30 days** of the journey being completed...” [emphasis added].*

However, paragraph 13(b) of the new Annex 2 to Regulation (EC) No 1/2005, as substituted by regulation 2, and the Schedule to, these Regulations, states that the organiser must ensure that the completed journey log is submitted no later than **one month** of the journey being completed. Schedule 1 to the Legislation (Wales) Act 2019 defines “month” as a calendar month.

We would be grateful if the Welsh Government could clarify the timescale within which journey organisers must ensure a completed journey log is submitted to the competent authority following journey completion.

Welsh Government response

Merit Scrutiny point 1:

The Welsh Government thanks the Committee for highlighting the inaccuracy and have corrected the Explanatory Memorandum accordingly.

Legal Advisers

Legislation, Justice and Constitution Committee

16 March 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Pack Page 8

Legislation, Justice and Constitution Committee

SL(6)336 – The Duty of Candour Procedure (Wales) Regulations 2023

Background and Purpose

The Health and Social Care (Quality and Engagement) (Wales) Act 2020 introduces an organisational duty of candour on NHS bodies (including primary care) in Wales where:

- (i) a person to whom health care is being or has been provided has suffered an adverse outcome; and
- (ii) the provision of health care was or may have been a factor in the person suffering that outcome.

These Regulations are made under that Act and set out a procedure (“the candour procedure”) that must be followed by an NHS body when the duty of candour is triggered.

These Regulations also make consequential amendments to the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 to ensure that the candour procedure works in harmony with existing arrangements under those Regulations.

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 to be of interest to the Senedd**



Regulation 4(3)(b) makes reference to section 3(2) and (3) of the Health and Social Care (Quality and Engagement) (Wales) Act 2020. However, section 3 of that Act has not yet been commenced.

Article 2 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Commencement No. 3) Order 2023 brought section 4 of the Act into force from 7 March 2023 (to the extent necessary for the purpose of making regulations), but section 3 was not commenced at that time. Can the Welsh Government give an indication of when a commencement order can be expected in relation to section 3?

Welsh Government response

Merit Scrutiny point 1:

Section 3 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 will be brought into force on 1st April 2023 to coincide with the date on which the Duty of Candour Procedure (Wales) Regulations 2023 come into force.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee

SL(6)338 – Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Consequential, Supplementary and Incidental Amendments and Revocations) (Secondary Legislation) Regulations 2023

Background and Purpose

The Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Consequential, Supplementary and Incidental Amendments and Revocations) (Secondary Legislation) Regulations 2023 (“the Regulations”) are made under section 28 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (“the 2020 Act”).

The 2020 Act established the Citizen Voice Body for Health and Social Care, Wales (“the Body”). The Body’s general objective, in exercising its functions, is to represent the interests of the public in respect of health and social services. The 2020 Act also provides for the abolition of the Community Health Councils.

These Regulations make consequential, supplementary and incidental amendments to, and provide for the revocation of, secondary legislation to reflect the establishment of the Body and the commencement of its substantive functions, and the abolition of the Community Health Councils, provided for in the 2020 Act.

The majority of the provisions in the Regulations come into force on 1 April 2023 to coincide with the date upon which the Citizen Voice Body for Health and Social Care, Wales will become fully operational, and the Community Health Councils will be abolished. The remainder of the provisions in the Regulations will come into force on 1 July 2023, which is the date upon which relevant bodies must have regard to the code of practice on access to premises published by the Welsh Ministers under section 19 of the 2020 Act. The code of practice on access concerns (a) requests made by the Citizen Voice Body for access to premises for the purpose of seeking the views of individuals in respect of health services or social services, and (b) where access to those premises has been agreed, engagement with individuals at those premises for that purpose.

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 two 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 following explanation under heading 5 of the Explanatory Memorandum as to why there has been no formal consultation on the Regulations:

“No consultation has been undertaken specifically on these Regulations, which principally make technical provision so as to ensure that the objectives of the 2020 Act can be properly fulfilled and to further ensure that the 2020 Act works in harmony with existing legislation. Consultation has already been undertaken on policy embodied in the 2020 Act, and also on the proposed code of practice on access to premises (which specifically refers to primary care providers being subject to it) and therefore it was not considered necessary or proportionate to undertake further consultation.”

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 following explanation under heading 6 of the Explanatory Memorandum as to why there has been no regulatory impact assessment in respect of the Regulations:

“A regulatory impact assessment has not been prepared in respect of these Regulations, as they make consequential and technical amendments to existing legislation, and do not impose or reduce costs for business, charities or voluntary bodies or the public sector. This is in line with the policy set out in the Welsh Ministers’ Code of Practice for carrying out Regulatory Impact Assessments for subordinate legislation.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

21 March 2023



SL(6)339 – The Care and Support (Population Assessments) (Wales) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend the Care and Support (Population Assessments) (Wales) Regulations 2015 (“the principal Regulations”), which make provision for the carrying out of population assessments.

Regulation 4 of the principal Regulations provides that, in carrying out a population assessment, responsible bodies must engage with certain private sector or third sector organisations.

Regulation 2 of these Regulations amends regulation 4 of the principal Regulations so that responsible bodies must also engage with any public body which they believe is concerned with or has an interest in the provision of care and support or preventative services to the local population. Regulation 2 of these Regulations also inserts relevant definitions for these purposes.

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 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 to be of interest to the Senedd

We note that the Explanatory Memorandum refers to Part 4 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (“the 2020 Act”).



Section 12 of the 2020 Act established the Citizen Voice Body for Health and Social Care, Wales ("the Body"). Article 3 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Commencement No. 1) Order 2022 brought section 12 of the 2020 Act (and Schedule 1 (Citizen Voice Body for Health and Social Care, Wales), save for paragraphs 6, 7, 8 and 22 of that Schedule) into force on 1 April 2022.

The Explanatory Memorandum states that:

*"It is **expected** that the Body will be fully operational from 1 April 2023".*

However, some provisions in Part 4 of the 2020 Act are yet to come into force.

Can the Welsh Government give an indication of when a commencement order can be expected in relation to the remaining provisions in Part 4 of the 2020 Act?

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

"No consultation has been undertaken specifically on these Regulations, which principally make a minor amendment to the principal Regulations to ensure that the objectives in the 2020 Act can be properly fulfilled. Consultation has previously been undertaken on the relevant policy embodied in the 2020 Act."

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 March 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 14**

Legislation, Justice and Constitution Committee

SL(6)340 – The Construction Contracts (Exclusion) (Wales) Order 2023

Background and Purpose

Part 2 of the Housing Grants, Construction and Regeneration Act 1996 (**the Act**) makes provision as regards the terms of construction contracts. Section 106A(2) of the Act confers power on the Welsh Ministers to disapply any or all provisions of Part 2 in relation to any description of construction contracts concerning the carrying out of specified construction operations in Wales.

This Order disapplies Part 2 of the Act in relation to certain infrastructure project contracts in Wales where a party to the contract is a sewerage or water undertaker, subject to requirements including:

- the contract must relate to a project designated by the Water Services Regulation Authority as a 'direct procurement for customers' (**DPC**) project in accordance with the conditions of the relevant undertaker's appointment;
- the contract must involve the making of regular payments by reference to actual costs incurred and which become due after one or more parts of the construction operations are completed and can perform a sewerage or water service.

The Order also disapplies section 110(1A) of the Act in relation to the kind of contract referred to, above, where a party to that contract enters into a sub-contract. Section 110(1A) of the Act provides that the requirement that contracts provide an adequate mechanism for establishing what payments become due and when under the contract is not met if payment is conditional on obligations being performed under another contract.

Paragraph 4.4 of the Explanatory Memorandum states that there is currently only one project to which this Order could apply, being the Dŵr Cymru Welsh Water Cwm Taf water treatment works.

Procedure

Draft Affirmative

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

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

The Explanatory Memorandum says:

“4.9. Ofwat have stipulated that water companies should not pay the [Competitively Appointed Provider] for these projects until they have been completed and become operational so water companies (funded by customer bills) will not have to pay before the work is completed and delivered.”

“4.11. Parties entering into DPC procurements will have full knowledge of the terms including that payment will only commence after construction has been completed.”

However, article 3(1)(d) of the Order says that, in order for Part 2 of the Act to be disapplied, the contract must fulfil the condition that (emphasis added):

*“(d) the consideration due under the contract consists, **at least in part**, of regular payments that—*

(i) are determined in part by reference to the actual cost of the construction operations to which the contract relates, and

*(ii) become payable after **at least one part** of those construction operations is completed and is capable of performing a sewerage or water service.”*

We would be grateful if the Welsh Government could clarify the extent to which payments must be made only after projects have been completed.

Welsh Government response

Merit Scrutiny point 1:

The purpose of the draft Construction Contracts (Exclusion) (Wales) Order 2023 is to exclude from relevant construction contracts various protections (such as staged payments) which those contracts would otherwise have under Part 2 of the Housing Grants, Constructions and Regeneration Act 1996 (“the Act”).

Section 110(1A) of the Act prevents any term in a construction contract which makes payment conditional on the performance of an obligation under another contract.

Due to the financing arrangements of Direct Procurement for Customers (“DPC”) contracts, payment to the firm that has delivered the infrastructure by the commissioning water and sewerage firm only commences once at least one stage (or part) of the sewerage or water asset has been completed and is capable of operating.

The Competitively Appointed Provider (“CAP”) agreement and first tier sub-contracts fall under the definition of a construction contract and therefore may be subject to challenge for non-



compliance with the Act. If non-compliant, the relevant payment provisions of the Scheme for Construction Contracts would be implied in the contract and take precedence over contract provisions designed for DPC. This would adversely affect the structure and operation of these DPC agreements.

The Order excludes two types of construction contract from the Act:

- DPC CAP Contracts - excluded from all requirements of Part 2 of the Act; and
- DPC First Tier Sub-Contracts - excluded from section 110(1A) of the Act.

All remaining construction contracts through the supply chain remain subject to the provisions of the Act.

Legal Advisers

Legislation, Justice and Constitution Committee

16 March 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 17

Agenda Item 4.1

SL(6)330 – The Town and Country Planning (North Wales Border Control Post) (EU Exit) Special Development Order 2023

Background and Purpose

Sections 59 and 60 of the Town and Country Planning Act 1990 give the Welsh Ministers the power to make a special development order that grants planning permission for a development specified within the Order.

This special development Order grants planning permission (subject to conditions) for the construction and operation of an inland border control post for the Port of Holyhead and additional parking for up to 60 heavy goods vehicles (“HGVs”) at Plot 9, Parc Cybi, Holyhead.

The Order sets limits on the extent and physical form of border control facilities and HGV parking that can be provided by the Welsh Government and border departments on the site. It also requires the construction and operation of mitigation measures.

Procedure

Negative.

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

Technical Scrutiny

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

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

There is an inconsistent cross-reference between the English and Welsh texts in paragraph 31(3) of the Schedule. The English text refers to paragraph 17(2) but the Welsh text refers to paragraph 16(2). It appears that the English version is accurate based on the context of the relevant provisions (noise mitigation measures).

Merits Scrutiny

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



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

It is noted that this type of order – where the Welsh Ministers act as a planning authority and directly grant planning permission for a specific development, rather than leaving this to the local authority – is rare. This appears to be the first occasion on which the Welsh Ministers have exercised the power in section 59 of the Town and Country Planning Act 1990 in this way.

It is also noted that the usual consultation requirements around applications for planning permission are not engaged in respect of permission granted by such an order. According to paragraph 5.1 of the Explanatory Memorandum, *“Consultation was undertaken commensurate to what would have been undertaken for a planning application”*.

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 20 March 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Town and Country Planning (North Wales Border Control Post) (EU Exit) Special Development Order 2023

Technical Scrutiny point 1: The Welsh Government accepts the reporting point and will seek to make the change by correction slip.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Attendance at Inter-Governmental meeting on 6 March

DATE 23 March 2023

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

In accordance with the inter-institutional relations agreement, I am writing to notify you of my attendance at a meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs held on 6 March 2023.

I chaired the meeting, which 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; Rebecca Pow MP, Minister for Environmental Quality and Resilience, Mark Spencer MP, Minister for Food, Farming and Fisheries, James Davies MP, Parliamentary Under-Secretary of State for Wales, John Lamont MP, Parliamentary Under-Secretary of State to the Scotland Office, Steve Baker MP, Minister of State at the Northern Ireland Office from UK Government; and Katrina Godfrey, Permanent Secretary, DAERA in the absence of Northern Ireland ministers.

The meeting opened with a discussion on the Retained EU Law (REUL) Bill which is currently at committee stage in the House of Lords. Each government provided updates on their respective approaches to work to identify and categorise REUL, commending the positive engagement between the administrations in this area. They also discussed the parliamentary legislative programmes necessary to retain, repeal or reform individual items of legislation. Next, the Scottish Government gave an update on the progress of their Deposit Return Schemes and a discussion was held on Scottish Government's request for an exclusion from the UK Internal Market Act.

I then raised the current food shortages and food security going forward, highlighting the need for collaboration on this cross UK issue. We discussed the ongoing cumulative effects of issues such as war in Ukraine, labour shortages, and how climate change is having an impact on food supply. We agreed to discuss this item further at the April IMG.

Finally, the Scottish Government and I raised the lack of progress on various animal welfare legislation and asked for an update in writing.

The next meeting will be held on Monday 17 April.

A communique regarding this meeting will be published on the [UK Government website](#).



Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

Huw.Irranca-Davies@senedd.wales

23rd March 2023

Dear Huw,

In accordance with the inter-institutional relations agreement, I wish to inform you a meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 6 March 2023.

I chaired the meeting, which 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; Rebecca Pow MP, Minister for Environmental Quality and Resilience, Mark Spencer MP, Minister for Food, Farming and Fisheries, James Davies MP, Parliamentary Under-Secretary of State for Wales, John Lamont MP, Parliamentary Under-Secretary of State to the Scotland Office, Steve Baker MP, Minister of State at the Northern Ireland Office from UK Government; and Katrina Godfrey, Permanent Secretary, DAERA in the absence of Northern Ireland ministers.

The meeting opened with a discussion on the Retained EU Law (REUL) Bill which is currently at Committee Stage in the House of Lords. Each Government provided updates on their respective approaches to identify and categorise REUL, commending the positive engagement between the administrations in this area. They also discussed the Parliamentary legislative programmes necessary to retain, repeal or reform individual items of legislation.

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

The Scottish Government then gave an update on the progress of their Deposit Return Schemes and a discussion was held on Scottish Government's request for an exclusion from the UK Internal Market Act.

I then raised the current food shortages and food security, highlighting the need for collaboration on this cross-UK issue. We discussed the ongoing cumulative effects of issues such as the war in Ukraine, labour shortages and how climate change is having an impact on food supply. We agreed to discuss this item further at the April IMG.

Finally, the Scottish Government and I raised the lack of progress on various animal welfare legislation and requested an update in writing.

The next meeting will be held on Monday 17 April.

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:
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Gohebiaeth.Lesley.Griffiths@llyw.cymru
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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Levelling-up and Regeneration Bill – Virtual Proceedings Amendment
DATE	21 March 2023
BY	Julie James MS, Minister for Climate Change

This written statement is laid under Standing Order 30 – Notification in relation to UK Parliament Bills. It relates to a UK Government amendment provision¹, tabled on 23 February 2023 during Lords Committee Stage, in the Levelling-up and Regeneration Bill (“the Bill”) which will modify the Welsh Ministers’ functions but does not require a Legislative Consent Motion under Standing Order 29, as the Senedd does not have legislative competence in relation to the amendment provision. The Bill was introduced in the UK Parliament, the House of Commons, on 11 May 2022.

Other provisions in the Bill regarding land use planning; environmental outcome reports for certain consents; information and records relating to land, the environment or heritage; governance of the Royal Institution of Chartered Surveyors; and vagrancy and begging required the legislative consent of the Senedd. I laid a Legislative Consent Memorandum² and a Written Statement³ before Senedd Cymru on 28 September 2022 in accordance with Standing Order 29 and 30 respectively. A revised Legislative Consent Memorandum⁴ was laid on 25 November 2022. A Supplementary Legislative Consent Memorandum⁵ was laid on 30 November 2022 relating to several UK Government amendments that had been tabled during Commons Report stage.

The relevant amendment provision

The tabled amendment makes provision for the Secretary of State to require or permit a person who takes part in certain relevant proceedings relating to planning,

¹ [HL Bill 84—III \(parliament.uk\)](https://parliament.uk/bills/2022-23/hl/84-iii)

² <https://senedd.wales/media/5gdfx1u1/lcm-ld15356-e.pdf>

³ [gen-ld15357-e.pdf \(senedd.wales\)](https://senedd.wales/media/gen-ld15357-e.pdf)

⁴ <https://senedd.wales/media/rw0nf3iz/lcm-ld15495-e.pdf>

⁵ <https://senedd.wales/media/1fwfrofa/slcm-ld15508-e.pdf>

development, or the compulsory purchase of land to do so wholly or partly remotely (i.e., virtual proceedings). One of those relevant proceedings is any proceedings under section 13A of, or paragraph 4A of Schedule 1 to, the Acquisition of Land Act 1981 (“the 1981 Act”).

The amendment adds a new aspect to an existing function of the Secretary of State (or an inspector) under the 1981 Act which will allow them to require or permit a person who takes part in certain proceedings relating to the compulsory purchase of land to do so wholly or partly remotely. The effect of the provision, by virtue of the Transfer of Functions Order 1999, is that this function is exercisable by the Welsh Ministers in relation to Compulsory Purchase Orders that relate to non-reserved areas and are made in Wales, and which fall to be confirmed by the Welsh Ministers, as the confirming authority.

As I set out in my Written Statement⁶ dated 28 September 2022, related to the Bill, Senedd Cymru has limited competence in respect of compulsory purchase in devolved areas, including housing and land use planning. In practice, this means any proposed modifications to the law of compulsory purchase, via primary legislation, must clearly be in the context of specified changes to land use planning law or another non reserved matter. Senedd Cymru is therefore unable to modify the law of compulsory purchase generally, or for its own sake or to achieve reserved ends. This prevents Senedd Cymru from modifying the general rules on compulsory purchase in legislation such as the Acquisitions of Land Act 1981 in respect of all compulsory acquisitions in Wales.

Therefore, the provision falls under Standing Order 30 for provisions which will modify the Welsh Ministers functions, but do not require a Legislative Consent Motion under Standing Order 29.

Reasons for making the provision

The Welsh Government is committed to improving the compulsory purchase process to make it fairer, more efficient, and intelligible. Our priority is to remove barriers to, and encourage greater use of, compulsory purchase powers by local authorities through streamlining and modernising the compulsory purchase process.

As a government, we consider this to be a minor amendment to the existing function of the Welsh Ministers in their role as confirming authority. The amendment provision clarifies an existing implied power in legislation which already allows confirming authorities to require hearings or proceedings to be held virtually and it will assist the Welsh Ministers in exercising their functions as a confirming authority effectively and efficiently.

I consider that it is appropriate for the provision to apply in relation to Wales and for it to be included in this Bill.

⁶ [gen-ld15357-e.pdf \(senedd.wales\)](#)



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref FM /0880/23

Elin Jones MS/AS
Llywydd
Senedd Cymru

llywydd@senedd.cymru

22 March 2023

Dear Elin

You will be aware the Senedd passed the Environmental Protection (Single-use Plastic Products) (Wales) Bill on 6 December 2022. In the interests of transparency, I would like to describe the Government's intentions in relation to Royal Assent and coming into force of the Act.

The Minister for Climate Change gave evidence at three committees. I am copying this letter to the Chairs of those Committees.

The Bill engages the World Trade Organisation's (WTO) Technical Barriers to Trade Agreement, which includes a legal requirement to provide a reasonable interval (usually six months) between the passing and publication of legislation which impacts on trade and its coming into force. This requirement is to allow businesses in WTO member countries to adapt their products to meet the demands of the new requirements. The Bill includes a number of substantive provisions which will commence the day after Royal Assent. Consequently, I do not intend to apply the Welsh Seal to the Letters Patent until the six-month WTO notification period has concluded in early June.

This is the first time since the United Kingdom left the European Union that the Senedd has passed a Bill which engages this WTO process. As a development of good practice, I will ensure that in future you are notified in writing about any other legislation which we expect to engage this this WTO procedure.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@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 happy to discuss this approach further with you when we meet later today. I am copying this letter to the Chair of Climate Change, Environment and Infrastructure Committee, the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD

Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

22 March 2023

The Retained EU Law (Revocation and Reform) Bill and Senedd Recess Dates

Dear Huw,

Further to our letter of 10 March, the Business Committee gave further consideration to *Recommendation 14* of your report on the Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill when confirming recess dates for the autumn term, including the Christmas 2023 recess, at our meeting on 21 March.

We acknowledge that there is a need to keep the impact of the Bill on Senedd time, both for committees and Plenary, under close consideration. However, given the need to confirm the dates of the autumn term in a timely manner in order to provide clarity to Senedd committees and others, and the fact that the final shape of the Bill nor how the Welsh Government would respond to its provisions are yet known, we decided not to make changes to the arrangements for the Christmas 2023 recess at this time.

The Committee agreed that we would consider revisiting this matter, and other potential measures, later in the year if required, once the Bill's final provisions and the impact on the Senedd are better known.

Kind regards,

Elin Jones

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 6.4

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2983/22

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

SeneddLJC@senedd.wales

23 March 2023

Dear Huw,

Thank you for your letter dated 14 March in which you requested a government response to the Committee's draft report from Senedd lawyers as part of their review of the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 ("the Regulations").

As requested, the response to the points raised in the draft report of the Committee is set out in the Annex to this letter.

In relation to your point on whether any of the matters raised in the report may have implications for the corresponding regulations for England, Northern Ireland, and Scotland, it is important to note that the corresponding regulations are already in force in those nations. As stated in my letter dated 10 March, the UK Government are planning to introduce an amending instrument to address outstanding policy issues and my officials are liaising with their counterparts in the other administrations to discuss the matters raised in the draft report.

Yours sincerely,

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

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

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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.

ANNEX

Government Response: The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

Technical Scrutiny Point 1:

The English text in the definition of “pub operating agreement” in regulation 2(1) is correct in using the phrase “on or from the premises”, Therefore the Welsh text will be amended to state “yn y fangre neu o’r fangre”. The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Points 2-5:

The Welsh Government accepts technical scrutiny points 2 to 5. The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Point 6:

With regards to the equivalence point that the Committee raises on the translation of the “Packaging (Essential Requirements) Regulations 2015”, the alternative translation, “deunydd pacio” was used here for consistency with the way the title has been translated in the past. However, as it is a courtesy title for regulations that only exist in English, it was agreed that consistency within these Regulations would be preferable to consistency with a previously used translation. The Welsh Government therefore accepts technical scrutiny point 6 and the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

With regards to the point that the Committee raises with regards to the terminology of paragraphs (2) and (3) being inconsistent within regulation 6 of the Regulations, the Welsh Government accepts this technical scrutiny point and the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Point 7:

The Welsh Government consider that the definition of “household packaging” in regulation 7(1) is sufficiently clear on the point that “household packaging” is any primary or shipment packaging which is not supplied to a business as the final user of that packaging. This is further clarified by regulation 7(2).

The overall packaging Extended Producer Responsibility (“EPR”) scheme is being introduced across all four nations of the UK with mirroring data reporting regulations being laid in each of the legislatures. The definition used is consistent with that used in the regulations in England, Scotland and Northern Ireland as a common definition is vital to aid compliance by businesses and ensure consistency of data collection and reporting across the UK.

An amendment to address this technical scrutiny point is not considered necessary.

Technical Scrutiny Points 8-11:

The Welsh Government accepts technical scrutiny points 8 to 11. The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Point 12:

The Committee have commented that *“In paragraph 1(a) of Schedule 1, the term “commencement date” is defined as having a meaning “In this Schedule”. But, the definition doesn’t appear to be used in the Schedule, so this is defective drafting.”*

The term “commencement date” is defined in paragraph 1(a) of Schedule 1 as meaning *“the date on which these Regulations come into force”*. However, as that term is not used subsequently in the Schedule, the Welsh Government accepts technical scrutiny point 12. The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Point 13:

“Llunio” is listed as one of the possible translations of “conceive” in Geiriadur yr Academi (The Welsh Academy Dictionary). However, in the interests of consistency the Welsh Government accepts technical scrutiny point 11. The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Technical Scrutiny Point 14:

We can confirm that in paragraph 15(c) of Schedule 1 the intention is to place a duty to keep records of “unfilled packaging” and “unfilled household packaging”. Technical scrutiny point 14 is accepted and the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 have been withdrawn and will be amended before re-laying.

Merits Scrutiny Point 15:

The point is noted. However, the Welsh Government considers that the legislation is accessible since the public will have access to the Waste Directive on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merits Scrutiny Point 16:

The point is noted. However, the Welsh Government considers that the legislation is accessible since the public will have access to the Packaging (Essential Requirements) Regulations 2015 on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merit Scrutiny Point 17:

This point is noted. However, the Welsh Government has already consulted with stakeholders (including NRW) on the establishment of the new EPR scheme. In addition, the introduction of these Regulations is being supported by comprehensive UK-wide stakeholder engagement. This includes a series of awareness sessions targeted at those obligated under the regulations which is already underway and on-going. These are designed to communicate these changes and support businesses in understanding the obligations placed on them. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merits Scrutiny Point 18:

This point is noted. However, the Welsh Government considers that the signposting in the Regulations ensures that the Regulations are accessible and provides clarity to producers on what their obligations are under the Regulations.

In addition, the introduction of these Regulations is being supported by comprehensive stakeholder engagement. This includes a series of awareness sessions targeted at those obligated under the Regulations which is already underway and on-going. These are designed to communicate these changes and support businesses in understanding the obligations placed on them.

Merits Scrutiny Point 19:

This point is noted. However, it was not considered necessary to define “reasonable period” given that what may be considered reasonable will likely differ depending on the level of information requested in each individual case. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merits Scrutiny Point 20:

This point is noted. However, these Regulations will be superseded by the main set of Extended Producer Responsibility (“EPR”) Regulations which will introduce the other aspects of the packaging EPR reforms and so this requirement is timebound. Under the EPR Regulations the responsibility to publish lists of recycled items will move from NRW to a scheme administrator which will be established to operate the regime. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merits Scrutiny point 21:

This point is noted. However, the Welsh Government would not want a situation where deemed consent is the default position and it is important that NRW as the regulator determines the application. An amendment to address this merits scrutiny point is therefore not considered necessary.

Merits Scrutiny Point 22:

The Welsh Government accepts this point. The Explanatory Memorandum has been withdrawn and will be amended before re-laying.

Julie James MS
Minister for Climate Change

14 March 2023

Dear Julie

The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

At our meeting this week we considered your letter dated 10 March 2023; which follows your letter to us on 1 March 2023 and the withdrawal of The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 (the Regulations) on 8 March 2023.

Your letter of 1 March drew our attention to errors you have identified in the Regulations. Your most recent letter of 10 March acknowledges that the Welsh Government was sent our draft report on the Regulations before they were withdrawn.

The questions and matters raised in the draft report for the version of the Regulations withdrawn on 8 March are replicated in the Annex. We would not usually seek a government response to a draft report after the Regulations to which it relates have been withdrawn. However, in the current circumstances, it would assist our consideration of the replacement regulations if you would address these matters and respond as soon as possible. In particular I would be grateful if you could respond to the points in the draft report where further explanation is sought under Standing Order 21.2(v).

I would also be grateful for your views on whether any of the matters raised may have implications for the corresponding regulations for England, Northern Ireland and Scotland.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



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

In regulation 2(1), in the definition of “pub operating agreement”, there is a difference in meaning between the English and Welsh texts. In the Welsh text, the phrase “on or from the premises” has been translated as meaning “on or off the premises”.

The phrase “on and off the premises” is used later in regulation 9(2)(b)(i) and (ii), and both language texts are equivalent in that regulation.

Therefore, further explanation is required as to whether the English text in the definition of “pub operating agreement” in regulation 2(1) is correct in using the phrase “on or from the premises”, or whether the Welsh text has incorrectly translated the meaning of the phrase here.

(See section 3(2)(c) of the Public Health (Minimum Price for Alcohol) (Wales) Act 2018 (anaw 5), and paragraph 3(1)(b) of Schedule 2 to SI 2020/1149 (W. 261) for examples of where “on or from the premises” has been translated correctly in the Welsh text of legislation.)

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

In regulation 2(1), the definition of “recovery” (“adfer”) does not appear to be used anywhere in either the English or Welsh text of this SI with the meaning given by Article 3(15) of the Waste Directive, and is therefore defective drafting.

In addition, there is an example of “recovery” used in the English text of regulation 5(4) in the context of sports drinks. Therefore, “recovery” in the English text of regulation 5(4) will bear the meaning given by regulation 2(1) as currently drafted which appears to be incorrect. The Welsh text uses a different word to convey “recovery” in regulation 5(4) compared with regulation 2(1), so this additional issue does not occur in the translation.

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

In regulation 2(1), should there be a definition of “supplies” explaining that it has the meaning given in regulation 10(1)? Other terms that are defined in later regulations have been signposted in this manner in regulation 2(1) such as “drink”, “packaging”, “licensor” and “pub operating business”.

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

In regulation 3(5), in the English text, there is an obligation to notify the UK regulator in the “country” specified in a notice given under regulation 3(3). However, the term “nation” is used elsewhere in the English text throughout the SI including in regulation 3(3). Therefore, the English text is inconsistent as

regards terminology and differs from the rest of the SI. In the Welsh text, the same term “gwlad” has been used in regulation 3(3) and (5) for both “nation” and “country”, and throughout the rest of the SI for “nation”.

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

In regulation 6(1)(b), there is a difference between the English and Welsh texts. The English text includes the words “whether it is supplied as such to the final user or consumer”. However, the Welsh text has used “sold” (“ei werthu”) rather than “supplied” (“ei gyflenwi”) in the corresponding place in the translation. The meaning of “supply” is given by regulation 10 of these Regulations so it is a significant difference.

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

In the Welsh text of regulation 2(1), “Packaging” has been defined and translated as “Pecynwaith” which is used throughout these Regulations. However, in regulation 6(3), “Deunydd Pacio” has been used in the title of “the Packaging (Essential Requirements) Regulations 2015”. It's the only place where “Deunydd Pacio” has been used as a translation in these Regulations for “Packaging” and it is inconsistent with the terminology used elsewhere. This suggests to the reader of the Welsh text that it has a different meaning from “Packaging”.

In both language texts, it refers to “the rules set out in paragraph (2)” but if you turn to paragraph (2) of regulation 6 it describes them as “the criteria”. Therefore, the terminology of paragraphs (2) and (3) is inconsistent within regulation 6 of these Regulations. In addition, regulation 3(3)(a) of, and Schedule 5 to the Packaging (Essential Requirements) Regulations 2015 refer to them as criteria.

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

Regulation 7(1) provides the meaning of “household packaging”. We do not consider that the drafting provides a clear definition of what is meant by household packaging in this context.

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

In regulation 8(2), the terms “brand owner” and “branded packaging” are defined and given a meaning. “Brand owner” is also listed in regulation 2(1) where it is explained that it has the meaning given in regulation 8(2). However, this isn't done for “branded packaging” and in regulation 10(3) “branded packaging” is explained as having the meaning within regulation 8(2). It is true to say that regulation 10(3) is the only other place where “branded packaging” is used in these Regulations, but should it have been signposted in regulation 2(1) to aid the reader like the term “brand owner” ? In which case, the phrase “within the meaning of regulation 8(2)” could then have been omitted from regulation 10(3).

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

In regulation 16(2)(b)(iii) and (3)(b)(iii), there are references to “relevant packaging waste” having the same meaning as in paragraph 23(5) of Schedule 1. However, the term that appears in paragraph 23(5) of that Schedule is defined as having that meaning “In this paragraph” because it is used in paragraph 23(1) of Schedule 1. This is misleading to the reader as “relevant packaging waste” does bear the same meaning in regulation 16 as well as paragraph 23 of Schedule 1. Therefore, should that term have been defined in regulation 2(1) as having that meaning in these Regulations rather than defined in paragraph 23(5) of Schedule 1? Alternatively, should the term have been defined in regulation 2(1) as having the same meaning as in regulation 16(7), the definition added to regulation 16(7) and omitted from paragraph 23(5) of Schedule 1?

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

In regulation 17(2)(b), it appears that the specific year is missing in the date “1 January” in both places where it occurs. If you turn to Schedule 1, paragraph 1(b)(ii) it refers to regulation 17(2)(b) and a period beginning on 1 January 2023 and ending on 30 June 2023. Regulation 17(2)(b) is therefore defectively drafted.

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

In regulation 23(5), there is a slight difference between the English and Welsh texts. The English phrase “corrected information” has been translated as meaning “correct information”. Therefore, it could be argued that the Welsh text doesn’t fully convey the meaning of the English text.

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

In paragraph 1(a) of Schedule 1, the term “commencement date” is defined as having a meaning “In this Schedule”. But, the definition doesn’t appear to be used in the Schedule, so this is defective drafting.

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

In Schedule 1, in paragraph 13(2)(e), in the Welsh text, the term “conceived” has been translated as “llunio”. Elsewhere in the SI, a form of “creu” rather than “llunio” has been used in the Welsh text for “conceived”. Therefore, the translation of the term is inconsistent in this paragraph compared with the rest of the SI and it suggests to the reader that it has a different meaning from “conceived”.

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

In Schedule 1, in paragraph 15, in the opening words before sub-paragraph (a), the phrase “unfilled household packaging and other unfilled packaging” occurs where it is clear that “unfilled” applies to both the household packaging and other packaging.

Later in sub-paragraph (c), there is a duty to keep records of the weight of “unfilled packaging and of household packaging”. The construction of the sentence in English suggests that “unfilled” only applies to “packaging” in this sub-paragraph rather than to both “packaging” and “household packaging”.

In addition, the syntax of the Welsh translation of “unfilled packaging and of household packaging” in sub-paragraph (c) limits the application of “unfilled” to “packaging”. The grammatical construction of the translation doesn’t allow any possible application of “unfilled” to “household packaging”.

Therefore, the drafting and translation of paragraph 15(c) requires further explanation as to whether the intention is to place a duty to keep records of “unfilled packaging” and “unfilled household packaging”, or “unfilled packaging” and “household packaging”.

15.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

Regulation 4 modifies the Waste Directive¹, and in particular the modification relates to the Waste Directive’s definition of “waste”, which is key to the understanding of these Regulations. We note that the Waste Directive is available to the general public on legislation.gov.uk.

However, we wonder whether there is a more accessible way of legislating in this regard to enable a reader to see the provisions on the face of these Regulations.

16.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

Regulation 6(3) provides that Schedule 5 to the Packaging (Essential Requirements) Regulations 2015 contains illustrative examples of packaging.

It is unclear why these examples have not been included in a schedule to the Regulations. This would have improved accessibility, for what are already complex regulations.

¹ Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851

17.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

Regulation 14 provides for situations where a producer dies, becomes bankrupt or incapacitated (the “first producer”). A person who carries on the activities of the first producer is required by Regulation 14(3) to inform NRW within 28 days of commencing those activities. Given that this is a specific request, with a relatively short timescale depending on the circumstances, it is unclear how this requirement will be highlighted/publicised, so as to enable those obliged to inform NRW to do so in good time.

18.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

In general terms, the Regulations can be difficult to navigate through. In our view, regulation 15 is not easily accessible and this may cause difficulty for a producer to work out what their obligations are. There are essentially four steps in regulation 15. Firstly, a producer must identify which provision of regulation 15 is relevant to their business. This directs them to specific provisions of regulations 16 and 17. Secondly, the relevant provision in regulation 16/17 then directs them to specific paragraphs to the Schedule. Thirdly, those paragraphs of the Schedule direct them to further separate paragraphs of the Schedule. Finally, only then can the producer see the information they are required to collect/report, although they may have to jump between separate paragraphs to ascertain the complete list.

It would appear more appropriate if the Schedule were simplified so that it contains a separate list for each type of producer, which clearly sets out all the information required of that producer.

We do not believe that this is the most accessible means of drafting the regulations.

19.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

Regulation 19(2)(a) provides that paragraph 19(1) applies if a producer provides information the operator of a scheme requests within a “reasonable period of receiving such a request”. However, there is no detail as to what such a reasonable period might be.

20.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

Regulation 22 requires NRW to publish lists of items collected for recycling. However, there is no specific requirement on the face of the Regulations to keep these lists up to date. It is therefore unclear if the intention is for the lists in Regulation 22 to be kept updated.

21.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

Regulation 25(1) enables NRW to supply a form for an approved person to apply for approval to delegate their functions to another person under regulation 24(3).

Regulation 25(2) provides for a 28 day period during which NRW may grant or refuse the application for approval.

We wonder whether a provision granting deemed consent, in circumstances where NRW does not grant or refuse the application within the specified timescale, was considered and whether it would assist applicants.

22.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

The Explanatory Memorandum at paragraph 27 explains that the approach to include an exemption for smaller business to minimise the impact on them:

To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to include a threshold within the regulations to exempt producers that do not handle more than 25 tonnes of packaging a year and have an annual turnover of more than £1 million. Producers that do not handle more than 50 tonnes of packaging a year and have an annual turnover of more than £2 million will be exempt from the reporting obligations but will still need to collect and retain data.

However, there is no clear explanation as to the value of smaller businesses collecting and retaining this data, if it is not to be reported to NRW. A Welsh Government response is requested to outline what benefit the collection and retention of this data will provide.

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Agenda Item 10

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

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