

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee Room 4, Tŷ Hywel and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 15 May 2023	0300 200 6565
Meeting time: 13.30	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Environment (Air Quality and Soundscapes) (Wales) Bill: Evidence Session with the Minister for Climate Change

(13.30 – 14.30)

(Pages 1 – 21)

Julie James MS, Minister for Climate Change

Helen Rowley, Lawyer, Welsh Government

Rhian Williams, Bill Manager, Welsh Government

Olwen Spiller, Deputy Head of Environmental Protection, Welsh Government

[Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#)

[Explanatory Memorandum](#)

[Statement of policy intent](#)

Attached Documents:

LJC(6)-15-23 – Paper 1 – Legal Briefing

LJC(6)-15-23 – Paper 2 – Research Briefing

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

(14.30 – 14.35)



3.1 SL(6)352 – The Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023

(Pages 22 – 27)

Attached Documents:

LJC(6)-15-23 – Paper 3 – Report

LJC(6)-15-23 – Paper 4 – Welsh Government response

3.2 SL(6)353 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2023

(Pages 28 – 31)

Attached Documents:

LJC(6)-15-23 – Paper 5 – Report

LJC(6)-15-23 – Paper 6 – Welsh Government response

4 Inter-Institutional Relations Agreement

(14.35 – 14.40)

4.1 Correspondence from the Deputy Minister for Climate Change: Transport Inter-Ministerial Standing Committee

(Pages 32 – 33)

Attached Documents:

LJC(6)-15-23 – Paper 7 – Letter from the Deputy Minister for Climate Change, 9 May 2023

4.2 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd regarding the Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023

(Pages 34 – 35)

Attached Documents:

LJC(6)-15-23 – Paper 8 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 10 May 2023

5 Papers to note

(14.40 – 14.45)

5.1 Correspondence from the Minister for Climate Change: Welsh Government's response to the Committee's report on the Legislative Consent Memoranda on the Levelling-up and Regeneration Bill

(Pages 36 – 39)

Attached Documents:

LJC(6)-15-23 – Paper 9 – Letter from the Minister for Climate Change, 25 April 2023

5.2 Correspondence from the Minister for Health and Social Services to the Health and Social Care Committee: Health Service Procurement (Wales) Bill

(Pages 40 – 41)

Attached Documents:

LJC(6)-15-23 – Paper 10 – Letter from the Minister for Health and Social Services to the Health and Social Care Committee, 5 May 2023

5.3 Correspondence from the Minister for Social Justice and Chief Whip: Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill

(Pages 42 – 44)

Attached Documents:

LJC(6)-15-23 – Paper 11 – Letter from the Minister for Social Justice and Chief Whip, 9 May 2023

LJC(6)-15-23 – Paper 12 – Letter to the Minister for Social Justice and Chief Whip, 3 May 2023

5.4 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Agriculture (Wales) Bill

(Pages 45 – 47)

Attached Documents:

LJC(6)-15-23 – Paper 13 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 9 May 2023

5.5 Statements in relation to the Retained EU Law (Revocation and Reform) Bill

(Pages 48 – 49)

Attached Documents:

LJC(6)-15-23 – Paper 14 – Statement by the Secretary of State for Department for Business and Trade, 10 May 2023

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

(14.45)

7 Environment (Air Quality and Soundscapes) (Wales) Bill:

Consideration of evidence

(14.45 – 15.00)

8 Legislative Consent Memorandum on the Non-Domestic Rating Bill

(15.00 – 15.15)

(Pages 50 – 58)

Attached Documents:

LJC(6)-15-23 – Paper 15 – Legal Advice Note

9 Retained EU Law (Revocation and Reform) Bill – latest developments

(15.15 – 15.30)

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Agenda Item 3.1

SL(6)352 – The Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023

Background and Purpose

The Education (Wales) Act 2014 (**the 2014 Act**) confers functions on the Education Workforce Council (**the Council**) in relation to persons who are required to register with the Council. The categories of registered persons are set out in Table 1 in paragraph 1 in Schedule 2 to the 2014 Act.

Part 6 of this Order amends Table 1 to add the following categories of registered persons:

- independent school teacher;
- independent school learning support worker;
- independent special post-16 institution teacher;
- independent special post-16 institution learning support worker.

Part 2 of this Order provides that independent school teacher services may only be provided in or for independent schools by persons who are registered with the Council in the category of independent school teacher. This Part also provides that only persons registered in the category of independent school learning support worker may support the provision of independent school teacher services in or for an independent school. However, the requirements to register set out in this Part do not apply to persons who provide the services or support the provision of services as volunteers. Part 3 makes similar provision in respect of independent special post-16 institution teachers and learner support workers.

Part 4 provides that a person is eligible for provisional registration as a youth worker if they are working towards obtaining a youth worker qualification. Also, a person is eligible for provisional registration as a youth support worker if they are working towards obtaining a youth support worker qualification.

Part 4 also imposes duties on the Council to prepare and maintain a list of youth worker qualifications and youth support worker qualifications. The Council must inform the Welsh Ministers, on an annual basis, of any amendments that should be made to the list of youth worker and list of youth support worker qualifications as set out in Schedules 1 and 2 to the Education Workforce Council (Registration of Youth Workers, Youth Support Workers and Work Based Learning Practitioners) Order 2016 (**the 2016 Order**).

Part 5 makes amendments to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 (**the 2015 Regulations**) in relation to school teachers and learning support workers. The definition of “specified work” in regulation 17 of the 2015 Regulations is amended to make sure all teachers who are head teachers or have another senior leadership role are



captured in the category of school teacher. The amendments also simplify the requirements in relation to school learning support workers and make clear that a school teacher does not also have to register in the category of learning support worker unless that person is employed or otherwise engaged as a school learning support worker in a school in Wales. The amendments also amend the requirements in relation to further education learning support workers to make clear that a further education teacher does not also have to register in the category of further education learning support worker unless that person is employed or otherwise engaged as a further education learning support worker in a further education institution in Wales.

Part 7 of this Order amends the Education Workforce Council (Registration Fees) Regulations 2017 to make provision in relation to the amount of registration fee payable by the new categories of registration.

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

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Part 6 of the Order amends Schedule 2 to the 2014 Act by adding four new categories of registered persons:

- independent school teacher;
- independent school learning support worker;
- independent special post-16 institution teacher;
- independent special post-16 institution learning support worker.

Article 2 of the Order deals with the interpretation of the Order. Article 2 signposts to the meaning of “independent school teacher” and “independent special post-16 institution teacher” in Schedule 2 to the 2014 Act. However, it does not signpost to the meaning of “independent school learning support worker” or “independent special post-16 institution learning support worker” in Schedule 2 to the 2014 Act.

It is unclear why two of the new categories are included in article 2 of this Order while the other two new categories are not.



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

Schedule 1 to the 2016 Order sets out a list of approved youth worker qualifications (i.e. qualifications approved for the purposes of registration as a youth worker).

This Order updates the list; however, this Order includes two qualifications that are already in the list, namely:

- postgraduate diploma in youth and community development awarded by Bradford College;
- undergraduate degree in youth and community work awarded by the University of Bedfordshire.

It is unclear why these qualifications have been included in this Order.

We also note the inconsistent approach taken in this Order to updating the list. For example, two new awarding bodies (University of Bolton and University of Wolverhampton) have been included in respect of the undergraduate degree in community development and youth work. However, different approaches have been taken to the inclusion of those awarding bodies, meaning that the list in the 2016 Order will now look like this (red text showing the text inserted by this Order):

Qualification in relation [to] England	Awarding body
Undergraduate degree in community development and youth work	Ruskin College, Oxford University of Wolverhampton
Undergraduate degree in community development and youth work	University of Bolton

It may have been clearer if the updated entry for this qualification looked like this:

Qualification in relation [to] England	Awarding body
Undergraduate degree in community development and youth work	Ruskin College, Oxford University of Bolton University of Wolverhampton

Merits Scrutiny

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

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



The title of this Order is “The Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023”. However, this Order appears to do more than just create additional categories of persons who are required to register with the Council. For example:

- Part 4 of this Order deals with qualification requirements in respect of youth workers and youth support workers. “Youth worker” and “youth support worker” already exist as registration categories; they are not additional categories.
- Part 5 of this Order amends registration requirements within the already-existing category of “school teacher”; Part 5 does not create an additional category of registration.

Therefore, we wonder whether the title of this Order sufficiently reflects what this Order does.

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 11 of this Order amends the description of “school learning support worker” in Schedule 2 to the 2014 Act. Article 11 amends the description so that the current reference to a school learning support worker ‘providing’ services is changed to a reference to a school learning support worker ‘supporting’ the provision of services.

That change is, as expected, also reflected in amendments made to the Education Workforce Council (Main Functions) (Wales) Regulations 2015.

However, we note that the same change has not been made to the descriptions of “further education learning support worker” and “youth support worker” in Schedule 2 to the 2014 Act – those two descriptions still refer to support workers ‘providing’ services.

Given that the Explanatory Memorandum provides no explanation of the change made in respect of “school learning support worker”, it is unclear whether the same change should be made in respect of the descriptions of “further education learning support worker” and “youth support worker”.

Welsh Government response

A Welsh Government response is required to each of the reporting points.

Committee Consideration

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



Government Response: The Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023

Technical Scrutiny point 1: The Welsh Government agrees with this technical point, however, we consider the meaning of the terms in question is sufficiently clear so that the reader would not be misled.

Technical Scrutiny point 2: The Welsh Government agrees there is unnecessary duplication in respect of the entries identified. Although there is no danger of the error misleading the reader the issue will be corrected when the Order is next amended.

The Welsh Government also agrees that slightly different drafting approaches have been taken. We do not consider the reader will be misled as the legal effect is clear and correct. We do not propose to amend these provisions, but will bear this in mind for any future changes to the Order.

Merit Scrutiny point 3: The Welsh Government notes the merit point, however the Welsh Government is satisfied that the title gives a sufficient description of the nature of the statutory instrument. The Order inserts several new categories of worker required to register with the EWC and the amendments made to pre-existing categories of registered worker are relatively minor, providing greater clarity to existing requirements. There is no requirement that the title must fully describe every provision made by a statutory instrument and so the Welsh Government is therefore satisfied that on balance the title is sufficiently reflective of what the Order does.

Merit Scrutiny point 4: The Welsh Government notes the merits point. There is no intention to amend the definitions of “further education learning support worker” nor that of “youth support worker”. The Welsh Government accepts that adopting a different form of words to express the same concept is not best practice. The Welsh Government does not consider that this presents sufficient uncertainty to require correction, but will bear this in mind when amending the SI in future.

Agenda Item 3.2

SL(6)353 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2023

Background and Purpose

These Regulations make amendments to Schedule 12 to the Renting Homes (Wales) Act 2016 (“2016 Act”). Schedule 12 to the 2016 Act deals with the conversion of tenancies and licences that were in existence prior to the 2016 Act coming into force on 1 December 2022.

Under Schedule 12 of the 2016 Act, the landlord of a converted occupation contract is required to give a written statement of that converted contract to the contract-holder before the end of the period of six months starting with the appointed day (“the information provision period”), that is, it must be given by 31 May 2023. The requirement to provide a written statement where there has been a change in the identity of the contract-holder was disapplied in relation to converted contracts during the information provision period.

The amendments to Schedule 12 to the 2016 Act therefore provide:

- where there has been a change in the identity of the contract-holder (under a converted or substitute contract) during the information provision period, the landlord will be required to provide a written statement within 14 days of either 1 June 2023 or, if later, the day on which the landlord becomes aware of the change in contract-holder;
- where a substitute contract comes into existence during the information provision period, the landlord will have 14 days from 1 June 2023 to provide a written statement; and
- where a substitute contract comes into existence after the information provision period, the landlord will have 14 days from the date of occupation under that substitute contract to provide a written statement.

These Regulations also make consequential amendments to Schedule 12 and the Renting Homes (Amendment) (Wales) Act 2021.

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



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

1. Standing Order 21.2002(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In the Welsh text, in regulation 4(a), in the new sub-paragraph (1A), the word “identity” at the beginning of the sub-paragraph has been translated differently from that already used in section 31 of the 2016 Act, and elsewhere in the 2016 Act such as in sections 39(2) and 42(2).

This means that the word “identity” is translated differently at the beginning of the new sub-paragraph (1A) when compared with the text from section 31(2), which is quoted for modification at the end of that sub-paragraph, even though they refer to the same thing.

A reader of the Welsh text may find this confusing. Although it is acknowledged that “hunaniaeth” could be a valid choice of word for “identity” in the translation of legislation, depending on the context, it would appear preferable for new inserted text to be consistent with the existing style and vocabulary of the original legislation. Such an approach would also be in accordance with the Welsh Government’s drafting guidance – see Writing Laws for Wales, paragraph 7.30.

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.

The Minister for Climate Change wrote to the Chair of the Legislation, Justice and Constitution Committee on 3 April 2023 in relation to these Regulations. The letter states:

“I am writing in relation to the timescales for the making of subordinate legislation in connection with the implementation of the Renting Homes (Wales) Act 2016 (‘the 2016 Act’).

...

Separately, the need to make an amendment to Schedule 12 of the 2016 Act before 31 May 2023, regarding the issuing of written statements of occupation contracts, has also been identified.”

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

The Explanatory Memorandum notes that:

“Under paragraph 11(1) of Schedule 12, the landlord of a converted occupation contract is required to give a written statement of that converted contract to the contract-holder



before the end of the period of six months starting with the appointed day ("the information provision period"), that is, it must be given by 31/05/23. Paragraph 11(1A) of Schedule 12 (which was inserted by the 2021 Act) provided that the requirement in section 31(2) of the 2016 Act (to provide a written statement where there has been a change in the identity of the contract-holder) was disapplied in relation to converted contracts during the information provision period.

However, it has become apparent that Schedule 12 did not make clear provision about written statements requirements after the end of the information provision period and particularly where, at the end of a converted contract, a substitute contract arises. A substitute contract is a type of contract (specified by paragraph 32 of Schedule 12) that arise after a converted contract ends."

The Explanatory Memorandum also explains that no formal consultation has been undertaken "*Due to the technical nature of the SI*". It is not clear whether the Welsh Government has promoted the amendments relating to written statements given that the Explanatory Memorandum states that the position was not clear.

Welsh Government response

A Welsh Government response is required in relation to the Technical Scrutiny point and the second Merits Scrutiny point.

Committee Consideration

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



Government Response: The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2023

Technical Scrutiny point 1: The Welsh Government take the view that the new paragraph 11(1A) of Schedule 12 (inserted by regulation 4(a)) achieves the necessary legal effect with no ambiguity as to the meaning and, consequently, the Welsh Government does not consider that an amendment is needed. The Welsh Government thanks the Legislation, Justice and Constitution Committee for its diligence, notes the comments made and endeavours to adhere to the drafting guidelines set out in “Writing Laws for Wales” wherever possible.

Merit Scrutiny point 3: The Welsh Government has provided a link to the draft Regulations and Explanatory Memorandum with landlord and letting agent representatives including the National Residential Landlord Association, Propertymark and Rent Smart Wales. Subject to the Regulations being agreed by the Senedd, Rent Smart Wales have agreed to issue an update directly to landlords. We will also update the relevant Renting Homes guidance on the Welsh Government website to provide additional information to landlords on this matter.

Agenda Item 4.1

Lee Waters AM
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

9 May 2023

Dear Huw,

Inter-Institutional Relations Agreement: Transport Inter-Ministerial Standing Committee

I am writing in accordance with the inter-institutional relations agreement to notify you of the inaugural meeting of the Transport Inter-Ministerial Standing Committee, which will take place on 24 May.

I will be chairing this virtual meeting where I anticipate the discussion will focus on active travel and data sharing.

I will provide an update after the meeting.

I am also copying this letter to Mick Antoniw MS, the Counsel General and Minister for the Constitution; the Rt Hon Elin Jones MS, the Llywydd; the Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,

Bae Caerdydd • Cardiff Bay
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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.

Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

10th May 2023

Dear Huw,

I refer to my letter to you of 1 April 2023. I wish to inform the Committee I have given my consent to the Secretary of State to lay Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found <https://senedd.wales/media/trtfe4k0/ws-ld15813-e.pdf>.

Part of the Regulations intersect with devolved policy and will apply to Wales, with the exception of measures on Oak Processionary Moth (OPM), which extend to England and Wales but apply in relation to England only. The provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations extend to England, Scotland and Wales.

The Regulations were made in exercise of the powers conferred by Regulation (EU) 2016/2031. The Statutory Instrument was subject to the negative procedure and was laid before UK Parliament on 2 May 2023, with a commencement date of 24 May 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales. The major changes introduced in the Regulations (the OPM changes) only apply to an area which is centred on London area at present. The other changes in the Regulations are minor and technical in nature, amend existing GB-wide legislation and any divergence in regulations between Wales and England would cause greater confusion and burden for delivery bodies and industry. On this occasion, I considered legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

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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.

Therefore, I have given my consent to these Regulations. There is no policy divergence between the Welsh and UK Government in this matter.

Yours sincerely

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

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

Agenda Item 5.1

Julie James MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1145/23

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

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25 April 2023

Dear Huw,

Many thanks to you and the Legislation, Justice and Constitution Committee members for considering the Legislative Consent Memoranda (initial Memorandum, revised memorandum, and Memorandum No. 2) in respect of the UK Government's Levelling-up and Regeneration Bill (the Bill).

I welcome the report published by the Committee on 24 February noting your request for a response to the recommendations. I apologise for the delay in providing this response.

Recommendation 1. The Minister should confirm whether the clauses identified in paragraph 59 of the revised Memorandum require the consent of the Senedd and, if not, why the Welsh Government has a different view from the UK Government.

The clauses identified in paragraph 59 of the revised Memorandum do not constitute a 'relevant provision' on the basis that they fall within the exception set out in Standing Order 29.1(i). That is, that they are incidental or consequential amendments (to retain the existing legislative position) to a reserved position (in this case a provision which applies only in relation to England). As such they do not require the consent of the Senedd. The UK Government is in agreement that the provisions do not modify the executive competence of the Welsh Ministers or the legislative competence of Senedd Cymru. I apologise if their inclusion as 'other amendments' in paragraph 59 of the revised Memorandum has caused confusion.

Recommendation 2. The Minister should explain why she is seeking amendments to the Bill to seek executive powers for the Welsh Ministers in relation to planning data provisions and environmental outcome reports rather than negotiating that those provisions apply to England only.

I have previously identified that the provisions in respect of planning data provisions and environmental outcome reports are potentially beneficial, and I was open to persuasion on their application to Wales.

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

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

I stand by this position. The position of Environmental Impact Assessment (EIA) in Wales is currently very complicated, with the relevant EU Directives governing this area currently implemented through a complex range of different methods, including primary legislation and Statutory Instruments made under section 2(2) of the European Communities Act 1972 (ECA) on an England and Wales, or Wales only basis, and under existing powers, such as section 71A of the Town and Country Planning Act 1990 (the TCPA). The system is complicated because EIA covers a very large number of policy areas, ranging from planning, water, marine through to agriculture and transport. More importantly the legislation is unable to adapt to changing circumstances as the majority of these policy areas do not have primary legislation to enable their future amendment. Therefore, what we have now, is what we have. It is also worth noting that there may be limited powers to preserve and assimilate retained EU law in devolved areas by virtue of the powers in the UK Government's Retained EU Law (Reform and Revocation) Bill. However, these powers are complex and limited in scope and time, and they may not provide an ability to amend upon expiry of the powers. The Bill is currently progressing through Parliament and is subject to change.

Whilst the majority of policy areas are clearly within devolved competence, there are other aspects of the current EIA regime that relate to reserved matters and are therefore dealt with by the UK Government on an England and Wales basis, for example in relation to nationally significant infrastructure projects and national security. If a Senedd Cymru Bill were to seek to make such provision, consideration would need to be given as to the extent that the reservation was engaged.

On this basis my officials have been engaging with the UK Government over what would be required to make the provisions acceptable and realise benefits to Wales. Of course, should those benefits not be realised I would seek to have the provisions apply in England only.

Recommendation 3. The Minister should clarify whether it would be possible for the Welsh Government to bring forward its own Bill covering planning data provisions and / or environmental outcomes reports, and if not what the barriers are to such an approach.

The Welsh Government would be able to bring forward primary legislation covering planning data provisions and / or environmental outcomes reports.

The legislative programme is set by the First Minister's statement announcement. The Counsel General has also announced the programme to improve the accessibility of Welsh Law. Under these programmes, we are currently progressing the Infrastructure Consenting Bill and the Planning Consolidation Bill. The Infrastructure Consenting Bill is very narrow in scope focusing on simplifying the consenting process for specified types of major on and offshore infrastructure and so could not accommodate the changes across so many different policy areas. The Planning Consolidation Bill can only consolidate the legislation under the remit of standing order 26C, therefore also preventing the inclusion of these provisions.

Recommendation 4. The Minister should provide an update on who, in Wales, the Welsh Government considers could be a 'relevant planning authority' for the purposes of Chapter 1 of Part 3 of the Bill.

The definition of a 'relevant planning authority' will apply in two situations in Wales. The first is in relation to non-devolved matters. Regulations affecting planning data, made under the Bill provisions, could be applied to local planning authorities and Natural Resources Wales as they undertake their consultee role, responding to Nationally Significant Infrastructure Projects under the Planning Act 2008.

In the second situation 'relevant planning authority' would refer to public authorities that have functions under Part 5 of the Bill on introduction (now Part 6). Functions may mean either preparing Environmental Outcomes Reports (EORs), contributing to such reports or considering them alongside an application for a permission, consent or other approval.

EORs are proposed as a replacement for Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). As Clause 120 of the Bill (as introduced) seeks to prevent regression in environmental protection, it is anticipated that regulations made by the Secretary of State to define which public authorities have functions under the new regime would mirror those authorities currently engaged.

Across most of the sectors to which EIA applies, Natural Resources Wales and the Welsh Ministers would fall under the definition of 'relevant planning authority'. Other bodies falling under the definition in specific sectors would be local authorities and national park authorities, internal drainage boards, harbour authorities and community councils.

The public authorities currently engaged with SEA and would therefore be likely to fall under the definition 'relevant planning authority' would be those preparing relevant plans and programmes. These are plans and programmes which set the framework for future development consents in a number of policy areas: agriculture; forestry; fisheries; energy; industry; transport; waste management; water management; telecommunications; tourism; town and country planning; and land use.

Recommendation 5. The Minister should clarify what is meant by the sentence “We will work with the UK Government to ensure all relevant Wales only legislation is also included” in paragraph 13.1 of her letter of 25 November 2022. In so doing, she should explain the practical effect of the change she appears to be seeking to clause 130 of the Bill (as introduced).

Clause 130 as introduced (now clause 152) defines the existing environmental assessment legislation that transposes or incorporates the SEA and EIA Directive. Clause 127 as introduced (now clause 149) ensures that EOR legislation made under this part is able to interact with existing environmental assessment legislation, as well as the Habitats Regulations subject to non regression provisions. Clause 120 as introduced (now clause 142) enables regulations to be made only if satisfied that making the regulations will not result in environmental law providing an overall level of environmental protection that is less than that provided by environmental law at the time this Act is passed.

As the provisions seek non-regression of existing law it is considered important that the level of environmental protection set by Welsh law is maintained. This would be achieved by ensuring it was referenced in clause 130 of the Bill (as introduced).

Recommendation 6. The Minister should clarify whether she has sought to reverse the provision in clause 128(2) (as introduced) omitting section 71A of the Town and Country Planning Act 1990, which includes the current executive power of the Welsh Ministers to make provision in respect of the consideration of the likely environmental impacts of proposed development. If not, the Minister should explain the reasons why.

In line with the response to recommendation 2, should the proposals not realise benefits in Wales I would seek the application of the provision to England only.

Recommendation 7. The Minister should state whether clause 112 (as introduced) and amendment NC60 (Street votes: community infrastructure levy) will have an impact on the drafting of the Consolidation Bill on planning law which we are aware the Welsh Government is preparing for introduction to the Senedd.

These clauses make technical and clarifying legal amendments only. The forthcoming Planning Consolidation Bill will consolidate the law that affects Wales at the time of introduction. If clause 112 (as introduced) and amendment NC60 (Street votes: community infrastructure levy) are included in the Bill at Royal assent, it is anticipated they will be subsumed into our Planning Consolidation Bill.

Recommendation 8. The Minister should provide the Committee with an update regarding her negotiations with the UK Government about all provisions of the Bill for which she is recommending consent is withheld.

I wrote to Dehenna Davison MP Minister for Levelling Up on 19 December outlining my firm view that on Part 1, any actions to deliver against these missions could interfere significantly with the policy objectives of the Welsh Government. The letter also included a request to discuss the matters in person. This request was accepted and the Minister for Social Justice attended a meeting on 22 March at which she reiterated our opposition to the provisions.

While we have recommended withholding consent for the provisions relating to planning data and EOR in Chapter 1 of Part 3 and Part 5 (now Part 6) respectively, we have maintained the line with UK Government that if equivalent regulation making powers were offered for the Welsh Ministers we would re-consider our position. This is because the approach could simplify consenting procedures for a range of projects, however without sight of detailed drafting it has not been possible to consider whether the provisions would be appropriate for Wales.

On introduction, the planning data and EOR provisions were drafted as regulation making powers for the Secretary of State only, with prior consultation with the Welsh Ministers. This provides no constitutional protection, hence my recommendation. The UK Government have subsequently provided draft clauses that offer both the Welsh Ministers and the Secretary of State to make regulations. These powers can also be exercised jointly. However, the Secretary of State retains the constrained power to make provision in devolved areas, following consultation with the Welsh Ministers. The proposed draft clauses have not been formally laid. The draft clauses remain unacceptable as they also do not provide sufficient constitutional protection and do not adhere to the Cabinet principles on concurrent powers. At the meeting on the 22 March, draft text providing for equivalent powers was offered, however this is yet to be received.

Yours sincerely,



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

Agenda Item 5.2

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



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee
Senedd Cymru
Cardiff
CF99 1SN

SeneddHealth@senedd.wales

5 May 2023

Dear Russell,

Thank you for the opportunity to provide evidence to the Health and Social Care Committee on the 30 March in respect of the Health Service Procurement (Wales) Bill.

I have taken the opportunity to consider the transcript of the session, where a number of questions were raised by Committee Members to explore the provisions in the Bill for transparency and competitive tendering as part of the proposed new health service procurement regime in Wales.

Paragraphs 145-146 and 176-177 of the transcript detail the discussion on the steps that will need to be followed as part of a competitive tendering exercise under the future procurement regime, and in particular, how these matters are addressed on the face of the Bill.

I would like to provide clarity on how the Bill will address this matter.

Section 10A(2) of the NHS (Wales) Act 2006, as would be inserted by section 3(2) of the Bill, includes a provision to ensure that the future regulations must specify the steps to be taken when following a competitive tendering process. In addition, section 10A(3) states that future regulations must make provision for the purposes of ensuring key procurement principles of transparency and fairness, as well as ensuring compliance can be verified and manage conflicts of interest.

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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.

As such, the face of the Bill itself does not set out the detailed steps that 'relevant authorities' need to take when following a competitive tendering process and ensure transparency under the proposed new procurement regime – these steps will be included as part of the detail in the future regulations. Having reviewed the transcript of the session and responses to these matters, I wanted to take the opportunity to clarify these points for accuracy.

If there are any further questions or areas requiring clarification, my officials and I are happy to provide information as necessary to support the Bill as it navigates the Senedd scrutiny process.

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

Yours sincerely,

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

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

Agenda Item 5.3

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

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

09 May 2023

Dear Huw,

Thank you for your letter regarding the Memorandum of Understanding (MoU) relating to the commencement powers for the Protection from Sex-Based Harassment in Public Bill.

I am grateful for your consideration of this Bill and the resultant LCM. Creating an offence for those that perpetrate sex-based harassment in our streets and public places will ensure women and girls are afforded the right level of protection but will also signal that such behaviour will not be tolerated.

In line with updated information on the scheduling of this Bill in the Lords, the Senedd's Business Committee extended the reporting deadline for considering the LCM to 8th June. Officials are currently working on the wording of the MoU to ensure the Welsh Government is able to agree to a timetable for the Secretary of State to make regulations to commence the relevant provisions in the Bill. This will be made available to you at the earliest opportunity and in advance of the revised deadline.

Women and girls' safety from abuse, both in public and private spaces, is a priority for the Welsh Government. Our Programme for Government committed to expanding the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) strategy to include harassment and abuse in the street and workplace as well as the home in order to make Wales the safest place in Europe to be a woman. The strategy was published in May 2022 and can be found here: [Violence against women, domestic abuse and sexual violence: strategy 2022 to 2026 \[HTML\] | GOV.WALES](#).

Women and girls should be safe in all aspects of their lives, including public places, and this piece of legislation is only one part of our ambition to achieve this aim.

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

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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.

Jane Hutt MS
Minister for Social Justice and Chief Whip

3 May 2023

Dear Jane

Legislative Consent Memorandum: Protection from Sex-based Harassment in Public Bill

You will be aware that my Committee has been asked to consider the [Welsh Government's Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill](#); we began our consideration at our meeting [this week](#).

We noted that at paragraphs 24 and 25 of the Memorandum you state:

"The Home Office has offered a Memorandum of Understanding for the use of the commencement powers in Clause 4 (only insofar as it relates to the commencement of clauses 1 and 3), whereby the UK Government and the Devolved Governments agree to a timetable for the Secretary of State to make regulations to commence the relevant provisions in the Bill. In this context, while this is a devolved area, the Welsh Government is content for the Bill to make provision for Wales and for the Secretary of State to retain the commencement powers.

A copy of the Memorandum of Understanding with the UK Government on the use of the commencement powers within clause 4 of the Bill will be made available to the Legislation, Justice and Constitution Committee."

We have not yet received a copy of the Memorandum of Understanding (MoU) referred to in these paragraphs of the Memorandum.

Given our reporting deadline on the Memorandum is 18 May, I would be grateful to receive a copy of the MoU by the morning of Wednesday 10 May.

I am copying this letter to the Equality and Social Justice Committee, to which the Memorandum has also been referred.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



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

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

Peredur Owen Griffiths MS
Chair of the Finance Committee

9 May 2023

Dear Chairs

Agriculture (Wales) Bill – Stage 3 Explanatory Memorandum update

Ahead of the Stage 3 debate on the Agriculture (Wales) Bill on 16 May. I wish to inform you 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 and to reflect the Bill as amended at Stage 2.

In addition a further update to the EM has been included with the removal of paragraph 7.874 (within the EM as introduced) as we understand it does not reflect Rentokill's current policy.

The EM will be updated to reflect the Bill as amended at Stage 3 and will also include an amendment in response to the WWF petition.

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

I thought it would be helpful to provide detail in relation to the following Committee recommendations, so you are assured these have been appropriately dealt with:

Economy, Trade and Rural Affairs Committee (ETRA)

In response to ETRA Committee recommendations 15 and 16 revisions have been made to EM Part 1.

Recommendation 15: Revisions have been made to the narrative text to indicate that there will be an expectation on Ministers to review previous SoNaRR reports if deemed necessary (see Part 1, Chapter 3, paragraph 3.89).

Recommendation 16: Further clarity, where appropriate, by way of additional examples of the varying scope of 'ancillary activities' have been provided within the updated EM (see Part 1, Chapter 3, paragraphs 3.316 to 3.318).

Finance Committee

In response to Finance Committee recommendations, revisions have been made to the narrative text of the EM Part 2 - Regulatory Impact Assessment (RIA).

Recommendation 2: We have added further information relating to the Wales Rural Development Programme elements not included in the RIA at introduction of the Bill (see Part 2, Chapter 7, Paragraphs 7.338 to 7.341).

Recommendation 4: Where possible, additional information has been included for the unquantified costs, and uses previous experience to provide a sensitivity analysis to show the potential range of costs (see Part 2, Chapter 6, Unquantified Costs and Disbenefits table).

As I stated in my response to the Committee for some of the powers being taken in the Bill it is not possible to quantify costs, for example we cannot know when a crisis might occur, and on what scale, so we cannot plan for all expected costs.

Recommendation 7: As part of the post-implementation review, additional text has been added to the 'next steps' section in order to give further clarity around quantifying the benefits arising from the Bill (see Part 2, Chapter 7, paragraphs 7.623 to 7.625).

Recommendation 8: Further details of the IT development costs have been provided (see Part 2, Chapter 7, paragraph 7.359 and table 44). These costs are estimates based on our initial assessment of options relating to the delivery of the current scheme design proposals.

Legislation, Justice and Constitution Committee (LJC)

In response to LJC Committee recommendations, revisions have been made to the EM Part 1.

Recommendation 6: A number of updates have been made to the Explanatory Memorandum as a means of explaining clearly the purpose of Parts 1, 2 and 3 of the Bill and what each is seeking to achieve (these have been made throughout Part 1, Chapter 3).

Recommendation 8: The Explanatory Memorandum has been reviewed and updated, as appropriate, to provide further clarity on the relationship between Part 1 and Part 2 of the Bill for stakeholders (see Part 1, Chapter 3, paragraph 3.39).

Stage 2 Amendments

Revisions have been made to the EM and Explanatory Notes (EN) to include all amendments made to the Bill following conclusion of Stage 2 ETRA Committee meeting held on 23 March.

SLM first objective: The EM has been updated to reflect the amendment made to the first objective. This highlights the link between the production of food and other goods in a sustainable way, and the resilience of agricultural businesses (see Part 1, Chapter 3, paragraph 3.44 and Explanatory Notes).

Power to Provide support – additional purposes: The EM and RIA have been updated to reflect the amendment made to the list under Section 8, adding in 3 new purposes for which support may be provided (see Part 1, Chapter 3, paragraph 3.102 to 3.118 and also Part 2, Chapter 7, paragraphs 7.575 to 7.622 and Explanatory Notes).

Amendment to Enforcement provisions in Sections 11, 31, 32 and 33: The EM has been updated to reflect the amendments to these sections achieving consistency in drafting throughout the Bill (see Part 1, Chapter 3 and Explanatory Notes).

Changes to the Affirmative Procedure Sections 15-18 and 22: The EM has been updated to reflect the amendments to these sections to state they are made by way of the Affirmative Procedure. The table in Chapter 5 has also been updated to reflect these amendments (see Part 1, Chapter 3 and also Chapter 5, table 5.1).

Agricultural Business definition in Section 48: The EM has been updated to reflect the amendment made to the 'meaning of Agriculture' to include agricultural businesses (See Part 1, Chapter 3, paragraph 3.315).

Schedule 3 commencement of Part 4 of Schedule 7 Agriculture Act 2020 on 13 December 2022: The ENs have been updated to reflect the now obsolete references to the relevant paragraphs.

Regards

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

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

Agenda Item 5.5

Statement by Kemi Badenoch MP, Secretary of State for Department for Business and Trade, to the House of Commons

Regulatory Reform Update

Statement made on 10 May 2023

[Statement UIN HCWS764](#)

I am pleased to be able to update the House on the Government's regulatory reform programme, and on amendments that we are tabling to the Retained EU Law (Revocation and Reform) Bill ('the Bill').

The ability for an independent UK to forge its own place in the world is one of the main reasons the country voted to leave the European Union. This Government is committed to seizing the opportunities following our exit, which is why we are now removing EU laws from the UK statute book.

The Government introduced the Bill so that we could end the special status of retained EU law. It ensures that, for the first time in a generation, the UK's statute book will not recognise the supremacy of EU law or EU legal principles. As the Bill is currently drafted, almost all REUL is automatically revoked at the end of 2023, unless a statutory instrument is passed to preserve it.

Over the past year Whitehall departments have been working hard to identify retained EU law to preserve, reform or revoke. However, with the growing volume of REUL being identified, and the risks of legal uncertainty posed by sunset instruments made under EU law, it has become clear that the programme was becoming more about reducing legal risk by preserving EU laws than prioritising meaningful reform. That is why today I am proposing a new approach: one that will ensure ministers and officials can focus more on reforming REUL, and doing that faster.

Today the Government is tabling an amendment for Lords Report, which will replace the current sunset in the Bill with a list of the retained EU laws that we intend to revoke under the Bill at the end of 2023. This provides certainty for business by making it clear which regulations will be removed from our statute book, instead of highlighting only the REUL that would be saved. We will retain the vitally important powers in the Bill that allow us to continue to amend EU laws, so more complex regulation can still be revoked or reformed after proper assessment and consultation. Today we also update the REUL dashboard, available on gov.uk.

We will still fully take back control of our laws and end the supremacy and special status of retained EU law by the end of 2023. We will also make our laws fit for UK purposes: reducing the regulatory burden and controlling the flow of new regulation. We will no longer tie business up in red tape.

I am pleased to say that the Government has already revoked or reformed over 1,000 EU laws since our exit. In addition to the list of around 600 we propose to revoke directly through the REUL Bill, the Financial Services and Markets Bill and the Procurement Bill will revoke around a further 500 pieces of REUL. We are committed to lightening the regulatory burden on businesses and helping to spur economic growth, and our Edinburgh Reforms of UK financial services include over 30 regulatory reforms to unlock investment and boost growth in towns and cities across the UK.

As part of this drive for deregulation, today I can announce that we will make improvements to employment law which could help save businesses around £1 billion a year, while safeguarding the rights of workers. We will consult on cutting unnecessary red tape on recording working hours, streamline engagement with workers when a business transfers to new owners, and provide up to 5 million UK workers greater freedom to switch jobs by limiting non-compete clauses.

The regulatory reform update, 'Smarter Regulation to Grow the Economy', which I am publishing today will be the first in a series of updates on how this Government intends to reform regulations to support economic growth. It sets out improvements to the Better Regulation Framework to ensure that HMG only uses regulation where necessary, and where regulation is used the impacts on wider government priorities including competition and innovation are understood.

Our focus will be on policies that push businesses forward, increase their competitiveness in global markets and spur national growth.

Reforming and ending the special status of retained EU law in the UK is about making sure our laws work for the people who use them. Regulatory reform is integral to the Prime Minister's mission to boost the UK economy; a mission that puts business, consumers, and the British public first.

Linked statement - [Statement UIN HLWS751](#)

Agenda Item 8

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

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