

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 5 June 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest
(13.30)

2 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3
(13.30 – 13.35)

Made Negative Resolution Instruments

2.1 SL(6)359 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) (Wales) Regulations 2023

(Pages 1 – 2)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-17-23 – Paper 1 – Draft report

2.2 SL(6)361 – The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023

(Pages 3 – 7)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)-17-23 – Paper 2 – Draft report

LJC(6)-17-23 – Paper 3 – Letter from the Minister for Finance and Local Government to the Llywydd, 23 May 2023

Affirmative Resolution Instruments

2.3 SL(6)360 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023

(Pages 8 – 11)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-17-23 – Paper 4 – Draft report

LJC(6)-17-23 – Paper 5 – Written Statement by the Minister for Climate Change, 22 May 2023

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

(13.35 – 13.40)

Made Negative Resolution Instruments

3.1 SL(6)356 – The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023

(Pages 12 – 15)

Attached Documents:

LJC(6)-17-23 – Paper 6 – Report

LJC(6)-17-23 – Paper 7 – Welsh Government response

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.7 – previously considered

(13.40 – 13.45)

4.1 SL(6)357 – School Admission Appeals Code

(Pages 16 – 25)

Attached Documents:

LJC(6)-17-23 – Paper 8 – Report

LJC(6)-17-23 – Paper 9 – Welsh Government response

5 Inter-Institutional Relations Agreement

(13.45 – 13.50)

5.1 Correspondence from the Minister for Climate Change: Net Zero, Energy and Climate Change Inter-Ministerial Group

(Page 26)

Attached Documents:

LJC(6)-17-23 – Paper 10 – Letter from the Minister for Climate Change, 22 May 2023

5.2 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group on Justice

(Page 27)

Attached Documents:

LJC(6)-17-23 – Paper 11 – Letter from the Counsel General and Minister for the Constitution, 23 May 2023

5.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Agriculture and Horticulture Development Board (Amendment) Order 2023

(Pages 28 – 30)

Attached Documents:

LJC(6)-17-23 – Paper 12 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 26 May 2023

6 Papers to note

(13.50 – 14.00)

6.1 Correspondence from Peter Fox MS: Response to the Committee's report on the Food (Wales) Bill

(Pages 31 – 37)

Attached Documents:

LJC(6)-17-23 – Paper 13 – Letter from Peter Fox MS, 19 May 2023

6.2 Correspondence from Peter Fox MS to the Chair of the Finance Committee: Response to the Finance Committee's report on the Food (Wales) Bill

(Pages 38 – 43)

Attached Documents:

LJC(6)-17-23 – Paper 14 – Letter from Peter Fox MS to the Chair of the Finance Committee, 19 May 2023

6.3 Correspondence from Peter Fox MS to the Chair of the Economy, Trade and Rural Affairs Committee: Response to the Economy, Trade and Rural Affairs Committee's report on the Food (Wales) Bill

(Pages 44 – 52)

Attached Documents:

LJC(6)-17-23 – Paper 15 – Letter from Peter Fox MS to the Chair of the Economy, Trade and Rural Affairs Committee, 19 May 2023

6.4 Correspondence from the Economy, Trade and Rural Affairs Committee to the Minister for Rural Affairs and North Wales, and Trefnydd: Food (Wales) Bill

(Page 53)

Attached Documents:

LJC(6)-17-23 – Paper 16 – Letter from the Economy, Trade and Rural Affairs Committee to the Minister for Rural Affairs and North Wales, and Trefnydd, 31 May 2023

6.5 Correspondence with the Business Committee: Food (Wales) Bill

(Pages 54 – 56)

Attached Documents:

LJC(6)-17-23 – Paper 17 – Letter from the Business Committee, 31 May 2023

LJC(6)-17-23 – Paper 18 – Letter to the Business Committee, 16 May 2023

**6.6 Written Statement by the Counsel General and Minister for the Constitution:
Statement on the progress of the Independent Commission on the
Constitutional Future of Wales**

(Page 57)

Attached Documents:

LJC(6)-17-23 – Paper 19 – Written Statement by the Counsel General and
Minister for the Constitution, 23 May 2023

**6.7 Correspondence from the Minister for Health and Social Services: Health
Service Procurement (Wales) Bill**

(Pages 58 – 60)

Attached Documents:

LJC(6)-17-23 – Paper 20 – Letter from the Minister for Health and Social
Services, 24 May 2023

**6.8 Correspondence from the Finance Committee to the Minister for Finance and
Local Government: Legislative Consent Memorandum on the Non-Domestic
Rating Bill**

(Pages 61 – 62)

Attached Documents:

LJC(6)-17-23 – Paper 21 – Letter from the Finance Committee to the Minister
for Finance and Local Government, 26 May 2023

**6.9 Correspondence from the British Red Cross: Legislative Consent
Memorandum on the Illegal Migration Bill**

(Pages 63 – 69)

Attached Documents:

LJC(6)-17-23 – Paper 22 – Letter from the British Red Cross, 31 May 2023

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

(14.00)

8 Supplementary Legislative Consent Memorandum on the Illegal Migration Bill

(14.00 – 14.10)

(To Follow)

Attached Documents:

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

9 Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill: Draft report

(14.10 – 14.25)

(To Follow)

Attached Documents:

LJC(6)-17-23 – Paper 24 – Draft report

10 Supplementary Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) Bill

(14.25 – 14.35)

(Pages 70 – 72)

Attached Documents:

LJC(6)-17-23 – Paper 25 – Legal Advice Note

11 Consideration of correspondence in relation to the Legislative Consent Memorandum on the Non-Domestic Rating Bill

(14.35 – 14.40)

(Pages 73 – 77)

Attached Documents:

LJC(6)-17-23 – Paper 26 – Letter from the Minister for Finance and Local Government, 1 June 2023

LJC(6)-17-23 – Paper 27 – Letter to the Minister for Finance and Local Government, 18 May 2023

12 Monitoring report

(14.40 – 14.50)

(Pages 78 – 93)

Attached Documents:

LJC(6)-17-23 – Paper 28 – Draft report

13 Forward Work Programme

(14.50 – 15.00)

(Pages 94 – 99)

Attached Documents:

LJC(6)-17-23 – Paper 29 – Briefing

SL(6)359 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) (Wales) Regulations 2023

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 to certain persons not ordinarily resident in the United Kingdom.

Regulation 2(a) adds Bermuda, Cayman Islands and Pitcairn, Henderson, Ducie and Oeno Islands to the list of countries or territories with whom the UK Government has entered into a reciprocal agreement in Schedule 2 to the Principal Regulations. Regulation 2(b) amends St Helena to include Ascension and Tristan da Cunha.

Section 4 of the Explanatory Memorandum to the Regulations explains that the agreements set out that each Overseas Territory will be provided with a limited quota of places for patient referrals for treatment in the UK, the number of referrals notified by the UK from time to time. The UK has agreed with the Overseas Territories that this will be set at five patients per Overseas Territory per year at this time. Should any of these Overseas Territories be in receipt of Official Development Assistance, this quota will increase to 10 patients for the Overseas Territory in question. The quota is spread across a three-year period with a three-year rolling allocation of quota places. Any patients sent to the UK for treatment over and above the relevant quota will be charged at 100% of NHS tariff.

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.

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

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

19 May 2023



SL(6)361 – The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023

Background and Purpose

These Regulations revoke and replace the Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023. They amend various United Kingdom public procurement regulations for the purpose of implementing the procurement chapters of two Free Trade Agreements entered into by the United Kingdom, one with Australia (the “UK-Australia FTA”) and the other with New Zealand.

The Regulations also make the following general amendments to public procurement regulations to ensure compliance with commitments made in the UK-Australia FTA:

- the introduction of a rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement (including special provision for situations in which the value of one or more lots cannot be estimated);
- the removal of the possibility of using a prior information notice or periodic indicative notice as the call for competition; and
- a prohibition on contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA.

The Regulations also make provision for transitional arrangements.

The Regulations apply in relation to devolved Welsh authorities and come into force on 26 May 2023.

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 2 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.

These Regulations revoke and replace the Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023 in order to address the technical reporting points identified by this Committee in its report on those Regulations.

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 breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Local Government, in a letter to the Llywydd dated 23 May 2023.

In particular, we note that the letter says:

“The effect of ...[these Regulations]... will be to fulfil an obligation to implement the Free Trade Agreements between the UK and Australia and the UK and New Zealand in respect of devolved Welsh authorities, to avoid any possible disputes with the member states and/or their bidders and to avoid uncertainty which may have an impact on UK bidders into these procurement markets. The UK Government have made similar Regulations which will come into force on 25 May 2023.

The Welsh Government is not adhering to the 21-day convention due to the fact that the coming into force of...[these Regulations].. is required to align with the coming into force of the UK Government Regulations in order for the Free Trade Agreements to be fully implemented across the United Kingdom. Both the UKG Regulations and...[these Regulations]... have related provisions, which require their coming into force consecutively. A commitment has been provided to Australia and New Zealand that the Regulations will be in force no later than 26 May 2023.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

25 May 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

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Legislation, Justice and Constitution Committee



Eich cyf/Your ref
Ein cyf/Our ref:

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

23 May 2023

Dear Llywydd,

The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No.2) Regulations 2023

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No.2) Regulations 2023 (“the Replacement Regulations”) will come into force on 26 May 2023, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The purpose of the Statutory Instrument is to revoke and replace The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023 (S.I. 2023/506 (W.76) (“the Original Regulations”) in response to the report of the Legislation, Justice and Constitution Committee (Report No: SL(6)356). The original Regulations were made on 3 May 2023 and laid on 5 May 2023 with a coming into force date of 26 May 2023, in accordance with Standing Order 27.2.

The effect of the Statutory Instrument will be to fulfil an obligation to implement the Free Trade Agreements between the UK and Australia and the UK and New Zealand in respect of devolved Welsh authorities, to avoid any possible disputes with the member states and/or their bidders and to avoid uncertainty which may have an impact on UK bidders into these procurement markets. The UK Government have made similar Regulations which will come into force on 25 May 2023.

The Welsh Government is not adhering to the 21-day convention due to the fact that the coming into force of the Replacement Regulations is required to align with the coming into force of the UK Government Regulations in order for the Free Trade Agreements to be fully implemented across the United Kingdom. Both the UKG Regulations and the Replacement Regulations have related provisions, which require their coming into force consecutively. A

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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.

commitment has been provided to Australia and New Zealand that the Regulations will be in force no later than 26 May 2023.

Furthermore, the substance, purpose and effect of the Replacement Regulations is identical to that of the Original Regulations. As such Welsh Ministers would contend that the substantive provisions of the Replacement Regulations have been laid before the Senedd, and therefore available for scrutiny since 5 May.

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

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AS/MS

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

Agenda Item 2.3

SL(6)360 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023

Background and Purpose

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the 2014 Regulations”) which make provision for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance.

These Regulations amend regulations 3, 4, 5 and 6 of the 2014 Regulations. The Regulations extend eligibility for an allocation of housing accommodation and housing assistance provided by local authorities to people who are British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds arriving in the UK due to the civil unrest in Sudan, which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.

The Explanatory Memorandum provides that *“the Welsh Government’s firm commitment to end homelessness in Wales strengthens the justification for this proposal, as any barrier which prevents help from getting to people seeking housing or housing assistance would contradict current homelessness policy”*.

Procedure

Draft Affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

The following 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

We note that there has been no consultation on these Regulations for reasons outlined in the following paragraph of the Explanatory Memorandum:



Due to the speed at which events in Sudan have occurred and the practical necessity of ensuring those who have arrived or are arriving in Wales can access housing or housing assistance, we consider it would be disadvantageous to undertake a consultation exercise. As the amending Regulations will also deliver outcomes relating to reserved UK Government policy (immigration and welfare), it would not be possible to undertake a meaningful consultation on alternative approaches, as the effect of the amending Regulations is to ensure consistency between Welsh housing law and immigration/welfare law.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

31 May 2023





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Draft Allocation of Housing and Homelessness (Eligibility)
(Wales) (Amendment) (No. 2) Regulations 2023**

DATE **22 May 2023**

BY **Julie James MS, Minister for Climate Change**

Due to the sudden escalation of violence in Sudan, which began on 15 April 2023, the UK Government has made changes to the way it applies the habitual residence test for those evacuated to the UK. The habitual residence test, which prevents someone who has a right to enter the UK from claiming benefits immediately after their arrival, and can take up to three months to complete, will be disapplied for those who have escaped the conflict in Sudan. Disapplying the habitual residence test will give those arriving in the UK immediate access to benefits, including housing and homelessness assistance.

To align housing law in Wales with the UK Government's change of approach, so that people who come to Wales from Sudan can be made eligible to apply for social housing and homelessness assistance, I intend to lay the draft Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023 ("the draft Regulations"). Those eligible will be British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds evacuated from the conflict in Sudan.

We expect the numbers of people arriving in Wales to be very small, however, as people are already arriving in the UK from Sudan these changes must be made as soon as possible. Consequently, the draft Regulations will be laid on 22 May for consideration by the Senedd on 6 June. I have taken the decision to accelerate this process due to the urgency of the situation and to provide certainty to stakeholders and to those arriving from Sudan in relation to the services they can access upon arrival.

I have written to the Legislation, Justice and Constitution Committee to seek their assistance for urgent consideration of the Regulations, in order that Members of the Senedd have sight of the Committee's report before the debate on 6 June 2023.

I am grateful to the committee and to colleagues in the Senedd for their support on this unusual but urgent matter.

Agenda Item 3.1

SL(6)356 – The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations amend various United Kingdom public procurement regulations for the purpose of implementing the procurement chapters of two Free Trade Agreements entered into by the United Kingdom, one with Australia (the “UK-Australia FTA”) and the other with New Zealand.

The Regulations also make the following general amendments to public procurement regulations to ensure compliance with commitments made in the UK-Australia FTA:

- the introduction of a rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement (including special provision for situations in which the value of one or more lots cannot be estimated);
- the removal of the possibility of using a prior information notice or periodic indicative notice as the call for competition; and
- a prohibition on contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA.

The Regulations also make provision for transitional arrangements.

The Regulations apply in relation to devolved Welsh authorities and come into force on 26 May 2023.

Procedure

Negative.

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

Technical Scrutiny

The following 3 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.

Regulations 2(7) and (8)(b) of the subject Regulations seek to omit the following text from regulations 27(4) and 28(6) of the Public Contracts Regulations 2015 respectively:

*“which was not itself used as a means **for** calling for competition” [**emphasis added**].*

However, the relevant text in each of regulations 27(4) and 28(6) to be omitted appears to be:

*“which was not itself used as a means **of** calling for competition”.*

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

Regulations 4(11)(b)(ii), (15)(a)(ii), (18)(c)(ii), (20)(b) and (22)(b) omit regulations 52(23)(b), 65(2)(b), 73(5)(b), 91(1)(b) and 105A(3)(b) respectively from the Utilities Contracts Regulations 2016.

In each case, the omitted provision comprises a sub-paragraph followed by a conjunction (“or” or “and”). However, the regulations do not provide for those conjunctions to be omitted along with the relevant sub-paragraph.

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

Regulation 5(2) specifies the circumstances in which a procurement is deemed to have commenced for the purposes of the transitional provision in regulation 5(1).

However, the regulation does not clarify whether the specific circumstances listed in sub-paragraphs (a)-(c) of paragraph (2) are intended to operate cumulatively, or as alternatives, in order for the transitional provision in paragraph (1) to have effect.

Merits Scrutiny

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

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.

These Regulations amend, and come into force on the day after, equivalent regulations being made by the UK Government. The Explanatory Memorandum to these Regulations notes that,

“This is so as to ensure that the changes being made by the UK Government regulations for contracting authorities which are not devolved Welsh authorities and those being made by the Welsh Ministers in relation to devolved Welsh authorities, together result



in a co-ordinated set of amendments to the existing underpinning procurement legislation.”

Welsh Government response

A Welsh Government response to the technical reporting points is required.

Committee Consideration

The Committee considered the instrument at its meeting on 22 May 2023 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

Government Response: The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023

Technical Scrutiny points 1, 2 and 3: The Welsh Government thanks the Committee for raising the reporting points and have subsequently laid replacement Regulations (*The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023*) which address the issues raised and revoke The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023.

Agenda Item 4.1

SL(6)357 – School Admissions Appeals Code

Background and Purpose

The School Admission Appeals Code, which was issued in 2013, has been revised to reflect the changes made by the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”) that came into force on 3 May 2023.

The 2023 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”) to include an option for admission appeals to be undertaken remotely, as well as in person, or a mixture of both. They codify certain temporary arrangements that were introduced in response to the coronavirus pandemic.

The 2023 Regulations apply to both types of admission appeal hearings dealt with under the 2005 Regulations; namely appeals against an admission authority’s refusal to admit a child and appeals by governing bodies against a local authority’s decision to admit a child who has been permanently excluded from two or more schools.

This Code also includes some technical amendments which reflect legislative changes since the previous code was issued in 2013.

Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft).

Scrutiny under Standing Order 21.7

The following point is identified for reporting under Standing Order 21.7 in respect of this code:

1. The Committee has identified a substantial number of errors in the Code which are listed in the Annex to this report. In particular, there are several significant inconsistencies between the meaning of the English and Welsh texts which could lead to the code being interpreted incorrectly by the reader.

Government response

A Welsh Government response is required.



Committee Consideration

The Committee considered the instrument at its meeting on 22 May 2023 and reports to the Senedd in line with the reporting point above.

School Admissions Appeals Code
LJC Draft Report: Annex



Substantive errors

1. The Code contains references to “(date)” (at pages 1 and 2) and “[HTML]” (at pages 27, 37 and 49) where those placeholders have been left in and the relevant date/link has not been inserted.
2. In the Introduction, in paragraph 1.1, “LAS” is used from the beginning without having been first defined in the Code.
3. In paragraph 3.4, in the final bullet point, in the Welsh text, the words “in writing” have been translated as “drwy lythyr” which literally means “by letter”. The same thing occurs elsewhere in the translation of “in writing” in paragraphs 6.1, 7.2 and 7.11 of the Code. Later in Annex D, in paragraph D.3, there is also an instance where “in writing” has been translated as “ar bapur” which is an idiom that can mean “in writing” but literally means “on paper”. Elsewhere in the Code, the Welsh text has translated “in writing” more literally as “yn ysgrifenedig” in the majority of the paragraphs where the phrase is used. It is true that the Code does refer to decision letters as a means of notification, but it might not be appropriate to use phrases which mean “by letter” or “on paper” in the Welsh text as they could be viewed as appearing to limit the ways of notification or communication when that isn’t expressly stated in those paragraphs. It also means that there isn’t a way of distinguishing between “by letter” and “in writing” when it is expressly stated in the English text, if the same translation is used in the Welsh text for both those phrases.
4. In paragraph 4.13, in the Welsh text, in the penultimate sentence, the word that corresponds to “must” in the phrase “this **must** be explained to the appellant” isn’t shown in red font in the translation. This is significant as the red coloured font is used to show guidelines of the Code that must be followed as explained in paragraph 1.3.
5. In paragraph 5.12, in the Welsh text, in the first bullet point, the word “prejudice” has been translated as “niweidio”. But the word “prejudice” has been translated elsewhere throughout the Code using various forms of “anfantais” in the same context. It is therefore inconsistent with the rest of the Code and suggests to the reader of the Welsh text that “prejudice” has a different meaning in this paragraph.
6. In paragraph 6.14, in the second bullet point, the Welsh text has incorrectly translated “**un**reasonably” as meaning “**re**asonably”. Therefore, the English and Welsh text are directly contradictory.
7. In paragraph 7.2, the Welsh text doesn’t appear to convey the same meaning in relation to the time allowed for an appeal. The English text states that an appeal against a decision must be made “**not later than the fifteenth** school day after the day it is given notice”. It appears to include the fifteenth school day in the time allowed for making the appeal but the Welsh text states that it must be made **before the fifteenth** school day (“**cyn** y pymthegfed diwrnod ysgol”) which wouldn’t include that day in the time allowed. Furthermore, the English text is more precise in stating that the number of school days is calculated from “after **the day** it is given notice” whereas the Welsh text is more vague by stating that it begins after it is given notice (“**ar ôl** iddo gael rhybudd”). This could be interpreted as meaning that the number of days is calculated as beginning from the same day it is given notice or from the following day. It might also be worth reviewing the translation of paragraph 7.3 to reflect any changes made to paragraph 7.2 in the light of these comments.



8. In paragraph A.25, there is a difference between the English and Welsh texts as the word “should” is missing from the opening words of the translation. In addition, in the English text, the word “should” appears in a different shade of blue in the opening words when compared with its appearance in later example of “should” in the second bullet point of the English text.

Further errors

9. On page 2, in the Welsh text, the term that corresponds to “Action Required” isn’t correctly aligned with the related text on the right-hand side. In addition, all of the terms listed on the left-hand side in the English text are spelt with capital first letters for each word other than “Additional copies”. In the Welsh text, only the first words of those terms are capitalised.
10. On page 3, in the Contents pages, under paragraph 4, and later in the actual heading above paragraph 4.13, in the English text, “Representation” is spelt with a capital first letter in the heading “Attendance and Representation”. But it is spelt with a lower case first letter in the main body of paragraphs 4.13 to 4.16 under the heading, and in the corresponding Welsh text. In the other headings only the first letters of the first words are spelt with a capital letter, so it is also inconsistent with the approach taken in the other headings.
11. On page 4, in the Contents pages, under Annex A, the entries for “Equality Act 2010” and “Human Rights Act 1998” and their respective page numbers are missing from the Welsh translation.
12. On page 4, in the Contents pages, in the Welsh text, a few of the entries in Annex A and Annex C aren’t correctly aligned in the list so they appear further left – e.g., the entries that correspond to “Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (as amended)” and “Restrictions on the scope of admissions appeals as a result of statutory Infant class size limits”.
13. On page 6, in the Summary, the Education (Admission Appeal Arrangements) (Wales) (Amendment) Regulations 2023 are defined as “the 2023 Regulations”. However, the definition isn’t used in the Summary. Later in the Introduction on page 7, in paragraph 1.2, the title of that SI is repeated in full on the first occasion before the definition is used within that sentence. As a result, there doesn’t seem to be any purpose in defining the SI in the Summary and it would make more sense for the definition to appear in brackets after the first reference in paragraph 1.2, or simply to use the phrase “those Regulations” rather than “the 2023 Regulations” in paragraph 1.2.
14. In the Introduction, in paragraph 1.1, “the 1998 Act” appears in blue text with a hyperlink in the Welsh text unlike the English text. These differences occur regularly throughout the Code.
15. In the Introduction, in paragraph 1.1, there are spaces between the section, subsection, paragraph and sub-paragraph numbers in the reference, “section 88 (1) (a) (ii)” but it should be referenced as “section 88(1)(a)(ii)” without spacing.
16. In paragraph 1.4, the significance of the phrases “should” and “should not” are explained for the purposes of the guidelines. The terms are shown in a blue coloured font when they are used for this purpose in the English text. However, the Welsh text has used a different coloured blue font for the corresponding terms in the translation of this paragraph. Furthermore, the translation then varies throughout the Code between the different coloured blue fonts when using the words that correspond to “should”/ “should not” –



compare for example paragraphs 1.4 and 1.7. In addition, the blue coloured fonts are sometimes used for hyperlinked references to legislation which adds to the confusion as to the significance of the colour of the text in the translation. A few practical examples of the mixing of the blue fonts colours in the Welsh text include but aren't limited to paragraphs 4.15 and 4.18, and footnotes 3 and 7. In places, the English text also uses different blue font colours for "should"/ "should not" and the hyperlinked references to legislation which further compounds the problem.

17. In paragraph 2.1, and throughout the rest of the Code, the Welsh translation varies in whether "practice" ("arfer") is to be treated as a masculine or feminine noun. As a result, the Welsh text varies in the translation of "good practice" between "arfer **dda**" and arfer **da**". The translation should be consistent throughout the Code – see paragraphs 2.1 and 2.11 for "arfer da" and paragraphs 2.19, 4.6, and 4.11 for "arfer dda". (It is also mutated as a feminine noun in paragraph 1.4 as "arfer wael" is the translation for "bad practice").
18. On page 10, in footnote (3) for paragraph 2.1, in the English text, the first, second and third lines all incorrectly end with a full stop in the middle of the titles of the SIs. There is also an incorrect "and the" rather than ", the" in the third line, and in the fourth line of the English text there should be a space between "(Wales)" and "(Amendment)".
19. In paragraph 2.3, in the first and second bullet points, the abbreviation "LA" is incorrectly abbreviated as "**Al**" rather than as "**LI**" in the corresponding Welsh text.
20. In paragraph 2.5, the reference should say "paragraphs 2.2 **and** 2.3" rather than "2.2 **to** 2.3" as they are consecutive paragraphs.
21. In paragraph 2.10, there is a slight difference between the English and Welsh texts where "relevant court rulings and guidance" has been paraphrased as meaning "relevant court rulings and **latest** guidance".
22. In paragraph 2.13, a capital first letter has been used for "**R**egulations" but this is normally done in legislation when referring to a specific set of Regulations. Elsewhere in the Code, such as in paragraphs 3.2 and C.18, a lower case first letter has been used for the spelling of "regulations" when referring to sets of regulations in general rather than a specific set of Regulations.
23. From paragraph 4.9 onwards, in the Welsh text there is a slight difference in how the phrase "the timetabled admissions process" has been translated from a grammatical point of view. In paragraph 5.21 it has been translated as "y broses **dderbyn** a amserlennwyd" but in paragraphs 4.9, 4.10, 4.12 and 6.1 it has been translated as "y broses **derbyn** a amserlennwyd" without the soft mutation. There should be a consistent approach throughout the Code.
24. In paragraph 4.11, in the second sentence, there is a slight difference between the English and Welsh texts, as the word "appeal" in the phrase "**appeal** panel members" is missing from the Welsh translation.
25. In paragraph 4.16, the Welsh text has used a capital letter for "member" in the phrase that corresponds to "**m**ember of the Senedd" where the English text has a lower case first letter.
26. On page 20, in footnote (9) for paragraph 4.13. there is a reference to "paragraphs A15 to **A23**" but this appears to be incorrect and should state "paragraphs A15 to **A22**" ?
27. In paragraph 5.4, there is an incorrect reference to "paragraph 5.3 **and** 5.4". This requires explanation as to the intended correct reference that should be found here. In addition, the reference should use a plural noun "paragraphs" if it refers to several paragraphs.



28. In paragraph 5.12, in the first bullet point, the reference “paragraphs 5.19 **to** 5.20” should use a conjunction “and” rather than “to” as they are consecutive paragraphs – “paragraphs 5.19 **and** 5.20”.
29. In paragraph 5.18, in the English text, in paragraph (a), the second paragraph appears aligned slightly further left than the later paragraphs within paragraphs (b) and (c). In the Welsh text all of the corresponding paragraphs in (a), (b) and (c) are aligned much further left in the text.
30. In paragraph 5.26, the reference “paragraphs 5.17 **to** 5.18” should use a conjunction “and” rather than “to” as they are consecutive paragraphs – “paragraphs 5.17 **and** 5.18”.
31. In paragraph 5.36, in the Welsh text, the word “Education” is missing from the translation of the title of the Act – “the **Education** Act 1996”. In addition, in the reference “paragraphs 3.51 **and** 3.52”, the translation has conveyed the meaning as “**to**” rather than “and”.
32. In paragraph 5.40, the abbreviation for individual development plan is included in brackets “IDU” after the term on the first occasion, but isn’t actually used in the Code. Presumably, this is to aid the reader rather than for the intention of using it as a definition in the Code.
33. In paragraph 5.42, in the English text, “Disability Discrimination” appears spelt with capital first letters and a single quotation mark at the beginning and double quotation marks at the end. In the Welsh text, the corresponding words aren’t capitalised and there aren’t any quotation marks around them. It doesn’t appear to be a publication but rather a section on the EHRC website, so it follows that the words should simply be incorporated into the sentence without capital letters and quotation marks in the English text as well.
34. In paragraph 6.1, the phrase “**five** working days” is used, where the number of days is expressed by the word “five”. Elsewhere in the Code, numerals rather than words are used in both languages for expressing the number of working days in a similar context (e.g., paragraphs 4.3, 4.4 and 4.23).
35. In paragraph 6.10, there is a slight difference between the Welsh and English texts where the word “panel” is missing from the translation of the phrase “different **panel** members”.
36. In paragraph 7.1, there is a reference to “the 1998 Act and paragraph 2(2) of Schedule 2 to the 2005 Regulations” at the end of the sentence which is all underlined and has a hyperlink. In the English text, the entire reference is shown in a blue font colour which is used for actions that should be taken. In the corresponding Welsh reference, only the words that correspond to “the 1998 Act” are underlined with a hyperlink, and they are shown in a different light blue font colour.
37. In paragraph 7.4, it refers to child looked after by “a Welsh LA”. It is only time that “Welsh LA” rather than “LA” is used in the Code.
38. In paragraph 7.5, in the English text, the first letter in the reference “**section** 95(2)” isn’t coloured blue and underlined, and the corresponding Welsh text is coloured a different shade of blue. In addition, in the Welsh text, “the 1998 Act” has also been coloured blue and underlined even though this doesn’t occur in the English text. These problems occur throughout the Code in various places in relation to the formatting differences between the language texts.
39. On page 36, in footnote 26 for paragraph 7.4, “Regulation” should be spelt with a lower case first letter as it is referring to a specific individual regulation rather an entire set of Regulations.
40. In the heading of Annex A, in the English text, there is a colon after “Admission appeals” but there is a hyphen in the corresponding Welsh text.



41. In Annex A, in paragraph A.5, there is a reference to “section 94” but it doesn’t add “of the 1998 Act” unlike all the other references in paragraphs A.3 to A.13.
42. In Annex A, in paragraph A.7, in the second bullet point, there is an error in the English text which states “made **on or** behalf of” when the intention appears to be to state “made **by or on** behalf of”. The Welsh translation has assumed that it should say “made by or on behalf of” and has translated it as having that meaning.
43. In Annex A, in several places, the references to “the 1998 Act” have been shown in blue font and underlined in the Welsh text although that hasn’t been done in the English text. For examples, see paragraphs A.6, A.8, A.9 and A.13.
In addition, in the English text, the reference to “the 1998 Act” has been shown in blue font, underlined and with a hyperlink in paragraph A.12 although this hasn’t been done for all of the earlier references to that Act.
44. In Annex A, in paragraph A.13, in the Welsh text, the word that corresponds to “year” in “year group” has been shown in a light blue colour, underlined, and with a hyperlink although it doesn’t occur in the English text. This is addition to the other formatting differences that have already been mentioned in relation to this paragraph.
45. In paragraph A.15, there is a significant difference between the English and Welsh texts as the words “and victimisation” are missing from the translation.
46. In paragraphs A.18 and A.20, the words “victimise” and “victimisation” occur in the English text, and they have been included in the Welsh text. However, they have been translated differently as “trin [person] yn annheg” and “erledigaeth” in those paragraphs. They do appear to refer to the same concept in law and therefore they should be consistent regarding their terminology. The Welsh Government’s terminology website does suggest “erledigaeth” as the preferred term with a status B for “victimisation”.
47. In paragraph A.19, in the Welsh text, there appears to be a minor grammatical error where “having a religious character” has been translated as “rhai â chanddynt gymeriad crefyddol”. However, there shouldn’t be a circumflex above the “a” in the words “rhai â chanddynt”.
48. In paragraph A.21, in the English text, the sentence doesn’t make sense as it states “is available **the from the**”. The corresponding Welsh text does make sense and has translated the meaning as “available from the”.
49. In Annex B, in paragraph B.5, in the first bullet point of the final words, the English text states “have understood the reasons for the decision, **which must** be expressed clearly and concisely (in writing)”. The Welsh text interprets “which must” as referring to “the decision”, and if that is the intention of the English text, the translation is correct. But, if the English text is referring to “the reasons” then the translation has misinterpreted the English text and is incorrect.
50. In Annex C, in paragraphs C.9 and C.15, there are references to “paragraphs 5.17 **to** 5.18”. But they should use the conjunction “**and**” rather than “to” as they are consecutive paragraphs.
51. In Annex C, in paragraphs C.9 and C.16(a), in the English text, there is a slight inconsistency where the word “met” is used in relation to the conditions referred to in paragraphs C.6 and C.7. But, in paragraphs C.6 and C.7, the panel must be satisfied that the conditions “apply” rather than are “met”. The Welsh translation of those paragraphs is consistent and uses the word “apply” in all of those paragraphs.
52. In Annex C, in paragraph C.17, in the final sentence of the Welsh text, the words “bydd eu” have become merged as “byddeu” which doesn’t make sense.



53. On page 49, in footnote (33) for paragraph C.18, there are opening brackets before the words “within the meaning of” but there aren’t any closing brackets in the footnote.
54. On page 49, in footnote (34) for paragraph C.18, there are square brackets around the words “child arrangements” in the phrase “a [child arrangements] order”.
55. In Annex D, in paragraph D.3, in the Welsh text, the translation of the publication “The Equal Treatment Bench Book” is in the blue font colour used for things that “should” be done, underlined and hyperlinked unlike in the English text.
56. In Annex E, it states that “Guidance is available on **the EHRC’s** website” but the link is to the **EASS** website. I understand that the EASS is an independent advice service and that it isn’t operated by the EHRC. Therefore, this would appear to be incorrect, and should say “the **EASS** website. In addition, it appears as though a bullet point could be missing before the information about the EASS.
- In the Welsh text, there is also a typographical error in the translation of the name of the Equality Advisory and Support Service in the website link where the letter ‘h’ is missing in “Cyngori” which should be spelt “Cyng**h**ori”. Furthermore, the text of the name of that Service appears in different font colours in the Welsh text and the English texts. There are also different words in brackets after the name of the Service in the link in the Welsh and English texts. The Welsh text has “(custhelp.com)” but the English text has “(equalityadvisoryservice.com)”.
57. In Annex F, the “Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (“the 2011 Regulations)” and “Guidance: The Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021 [HTML] | GOV.WALES” appear in blue coloured text, underlined and with a hyperlink unlike the other related documents listed in the Annex.
58. In Annex F, in the English text, the case “R (ota I) v The Independent Appeal Panel of St Edward’s College [2001] ELR 542” doesn’t appear to be in the correct place as it should appear before the case beginning “R (ota K and S)” to be in the correct order.
59. In the Glossary, in the English text, in the entry for “Admission Authority”, the second sentence appears in a different font size to the rest of the entries – size 11 rather than 12.
60. In the Glossary, in the entry for “Admission round (normal)”, in the English text, “Foundation” has been spelt with a capital first letter in the words “Foundation school” but is spelt with a lower case first letter in the Welsh text. The Welsh text appears to be correct in this instance.
61. In the Glossary, in the Welsh text, in the entry that corresponds to “Infant class size limit”, a word is missing after “of the 1998 Act” with the result that the translation doesn’t make sense. The Welsh word “yn” should appear after “o Ddeddf 1998” to complete the meaning of the sentence.
- In addition, in the English text of that entry a longer part of the sentence appears in blue, underlined and with a hyperlink compared with the Welsh text.
62. In the Glossary, in the entry for “Looked after children”, in the English text, the words in the term “Previously Looked after Children” are all spelt with capital first letters. But only the first word of the term is spelt with a capital letter in the later entry for that term in the Glossary. In the Welsh text it is spelt consistently with only the first letter capitalised in both places.
63. In the Glossary, in the entry for “Oversubscription” there is a slight difference between the Welsh and English text. In the English text, it refers to “the school’s published admission number”, but the Welsh text has the meaning “the admission number published on the



school's website". In addition, in the Welsh text, it could be argued that it would have been sufficient to put "Goralw" in the heading without the additional explanation, as the entry itself provide an explanation of the meaning of "Goralw" ("Oversubscription"). It also means that if anyone searches for the term "goralw" in the Glossary it will not be found under the letter "g" because the heading begins with the first letter of the explanation "Mwy o..." which doesn't seem helpful to the reader.



Government Response: School Admission Appeals Code

The Welsh Government notes the reporting point raised by the Committee. We will withdraw the Code in order to further consider the Annex to the Committee's report and will re-lay a new version of the Code as soon as practicable.

Agenda Item 5.1

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/145/2023

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

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

22 May 2023

Dear Chairs,

I am writing in accordance with the inter-institutional relations agreement, to report on the latest meeting of the Net Zero, Energy and Climate Change Inter-Ministerial Group, held on 27 April 2023, with discussions focused on the grid network investment and inter-Government collaboration.

The meeting was attended by Mairi McAllan MSP, Cabinet Secretary for Net Zero and Just Transition; Katrina Godfrey, Permanent Secretary at the Northern Ireland Department of Agriculture, Environment, and Rural Affairs; Graham Stuart MP, Minister of State Energy Security and Net Zero; and Gareth Davies MP, Exchequer Secretary to the Treasury.

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

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

Agenda Item 5.2

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/151/2023

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

SeneddLJC@senedd.wales

23 May 2023

Inter-Institutional Relations Agreement: Inter-Ministerial Group on Justice

I wrote to you on 15 May to inform you that the inaugural meeting of the Inter-Ministerial Group on Justice was due to take place on 24 May. Unfortunately, this meeting has now been postponed due to the unavailability of Lord Bellamy KC, Parliamentary Under-Secretary of State for Justice, who was due to chair the inaugural meeting.

We are actively seeking an alternative date for the meeting to be held and I will notify you as soon as a date has been agreed.

I am copying this letter to the Minister for Social Justice and Chief Whip.

Yours sincerely,



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

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

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



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

26th May 2023

Dear Huw

I am writing to inform you of my approval being granted for a Statutory Instrument being made by the UK Government which contains elements within the competence of Welsh Ministers.

The Agriculture and Horticulture Development Board (Amendment) Order 2023 (2023 Order) will make amendments to the Agriculture and Horticulture Development Board Order 2008 (2008 Order), a UK wide SI, following a UK wide targeted consultation with industry and stakeholders.

I am agreeing, in this case, to give approval to Lord Beynon, Minister for Biosecurity, Marine and Rural Affairs to make amendments to 2008 Order. The Agriculture and Horticulture Development Board (AHDB) was established by the 2008 Order under powers contained in the Natural Environment and Rural Communities Act 2006 (the NERC Act).

The 2023 Order amends the 2008 Order and is made by the Secretary of State under powers conferred by sections 87, 88 and 97(1) of, and paragraph 6(a) of Schedule 8 and paragraphs 5 and 8 of Schedule 10 to, the NERC Act with the approval of Welsh Ministers.

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

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

Section 87 of the NERC Act provides the “appropriate authority” with the power to make an Order which establishes a body for a purpose or purposes falling within section 88 (permissible purposes of boards) and to assign to it a function or functions falling within section 89 (permissible functions of boards).

An “appropriate authority” is defined in section 96(1) of the NERC Act as including, in relation to matters concerning Wales only, the National Assembly for Wales (transferred to the Welsh Ministers by paragraph 30(2) to Schedule 10 of GOWA). Section 96(1)(e) sets out that the SoS (acting with the approval of the devolved governments) can be the “appropriate authority” in relation to matters referred to in section 96(2). These include exercising other powers in relation to a cross-border function of a board. ‘Cross-border functions’ are defined as functions relating to England, Wales, Scotland and Northern Ireland.

The 2008 Order was made by the SoS (with the approval of Devolved Governments). For current purposes, the amendments made by the 2023 Order is considered to fall within “exercising other powers in relation to a cross-border function of a board”.

The period for which I am giving approval is limited to the passage of the 2023 Order.

Under Section 96(1) of the NERC Act, the Welsh Ministers are an “appropriate authority” and have the power to legislate in relation to matters concerning Wales. However, as the proposed amendments will affect the cross-border functions of AHDB, the SoS (with the approval of the Devolved Governments) is the appropriate authority when making an Order of this nature.

Wales’ interests remain protected with the passage of the 2023 Order which requires the approval of Welsh Ministers.

Welsh Government officials discussed and refined the 2023 Order with counterparts in DEFRA, the Scottish Government and DAERA, including the development of the consultation document and the responses which have shaped the content of the Order. The UK Government continues to recognise the areas in which the 2023 Order applies to Wales as within the competence of Welsh Ministers. DEFRA officials have been aware of the need to seek the approval of Welsh Ministers for the 2023 Order and have fully engaged with officials as the Order has been drafted and reflected comments within the Order.

I am copying this letter to the Economy, Trade, and Rural Affairs Committee for their information.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

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

Peter Fox OBE MS

Aelod o'r Senedd dros
Mynwy

—
Member of the Senedd for
Monmouth

Senedd Cymru

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Agenda Item 6.1

Welsh Parliament

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

0300 200 7298 

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Peter Fox MS 

19 May 2023

Dear Huw,

Food (Wales) Bill: response to the Legislation, Justice and Constitution Committee's Stage 1 report

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Food (Wales) Bill ("the Bill") during Stage 1 and for the report which was published on 11 May 2023.

I have set out my response to the Committee's recommendations in Annex A.

While it has not been possible for me to accept all of the Committee's recommendations, I hope you will find this response useful. I will also be writing to the Chairs of the Finance Committee and the Economy, Trade and Rural Affairs Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Kind regards,



Peter Fox MS for Monmouth
Member-in-Charge, Food (Wales) Bill

Response from Peter Fox, MS to the Legislation, Justice and Constitution Committee's Stage 1 Report on the Food (Wales) Bill

Recommendation 1. As part of its review of the Member Bill procedure, the Business Committee should explore the feasibility of introducing a more transparent process for engagement between the Welsh Government, its officials and Members of the Senedd who have secured leave to proceed to introduce a Member Bill.

Response: Noted

I very much welcome this recommendation. I understand, and accept, that the process for introducing primary legislation into the Senedd needs to be robust – and that includes Member Bills. However, it is difficult for individual Senedd Members to fully meet the requirements of Standing Order 26.6 without having engagement with and assistance from Welsh Government officials.

While Senedd Members are responsible for developing the policy and drafting the Member Bill, it will in most cases be the Government that has to implement the legislation once enacted.

In relation to the Food (Wales) Bill, it was necessary to provide flexibility for Welsh Government to (for example) shape the National Food Strategy, or set the food targets. Greater communication between Welsh Government, its officials and the Member will only help the development of the legislation.

Having had the experience of winning the Ballot and securing leave to proceed, I would be happy to feed in to any wider review of Member Bills that might be undertaken by Business Committee.

Recommendation 2. The Member in charge should table an amendment to the Bill to provide that statutory guidance must be issued to public bodies on how the duties imposed on them by the Bill interact with their existing duties under the Well-being of Future Generations (Wales) Act 2015.

Response: Accept

I acknowledge the concerns raised during Stage 1 about how the provisions of the Bill would interact with the Well-being of Future Generations (Wales) Act. While I believe both Acts would work seamlessly together, I can see the benefit of issuing statutory guidance to public bodies setting out how the duties under the Food Bill would interact with existing duties

under the Future Generations Act. I will, therefore, bring forward an amendment at Stage 2 for this purpose.

Recommendation 3. The Member in charge should table an amendment to the Bill to remove section 2 of the Bill, which sets out the primary food goal.

Response: Reject

I believe the inclusion of the primary food goal provides an overarching vision for the food system in Wales, as well as acting as an anchor point that policy created through the Bill will aim to achieve. I do not agree that this should be removed from the Bill.

The Bill was developed following extensive engagement and consultation with stakeholders across Wales. The inclusion of this overarching primary food goal was included in the draft Bill in response to discussions I had had with stakeholders who felt there was a need for a key principle to be set out in the Bill.

In the consultation on the draft Bill 59% of those responding agreed with the inclusion of a primary food goal supplemented by secondary food goals. Only 8% of those who responded disagreed with this approach. There were views expressed about the detail and focus of the primary food goal, there was majority support from stakeholders to its inclusion.

Discussions during the Economy, Trade and Rural Affairs Committee's Stage 1 scrutiny highlighted again that there were differing views amongst stakeholders on the detail of the primary food goal, but there was no call for its removal.

Recommendation 4. The Member in charge should outline the mechanisms by which public bodies will be provided with full and comprehensive information about the secondary food goals and how they are to be interpreted.

Response: Accept

In the drafting of the Bill it was envisaged that the Commission will proactively be providing public bodies with information in the day to day exercise of its functions. The statutory framework set out in the Bill aims to promote ongoing cooperation between the Commission and the relevant public bodies.

Section 10 of the Bill sets out the functions of the Welsh Food Commission. These include developing, and assisting public bodies to develop, policies in relation to food matters; as well as advising, informing and assisting public bodies in relation to food matters. The functions of the Food Commission also include, in particular, a function:

(d) to provide oversight and performance review of the exercise of the functions of public bodies in relation to the food goals and food targets;

Section 18 of the Bill provides that public bodies may consult the Food Commission, Future Generations Commissioner, or other appropriate persons, before making a food plan. This would include seeking advice on the food goals.

I believe these functions provide the mechanisms by which public bodies will be provided with all the information they need on how the food goals should be interpreted, in order for them to develop and make their local food plans.

Recommendation 5. The Member in charge should table an amendment to section 3(3) of the Bill so that the duty to consult before amending the descriptions of the secondary food goals applies to other appropriate bodies as well as the Welsh Food Commission.

Response: Accept

As I set out in my letter to the Committee of 8 March 2023, the intention through the Bill is that the Welsh Food Commission will lead on driving the food goals forward, playing a central role as the body that the Welsh Ministers look to for advice and information. That's why there is a requirement that the Welsh Ministers consult the Commission before amending any of the secondary food goal descriptions.

Having that requirement does not prevent Welsh Ministers also seeking the views of other bodies and stakeholders. For example, if the Welsh Ministers decide to amend the description of the environment secondary food goal, they may seek the views of (for example) Natural Resources Wales as well as the Food Commission.

However, as I also set in my letter, if there was a consensus among the Committee that there was a need to specify on the face of the Bill that other appropriate persons may or must be consulted prior to the descriptions being amended, then this is something that I would look to do through amendments at stage 2.

Recommendation 6. The Member in charge should table an amendment to section 4(5) of the Bill to provide that the first regulations setting one or more targets for each secondary food goal must be made and come into force within two years of section 4 coming into force.

Response: Accept

As set out in my letter to the Committee on 8 March 2023, I agree that this amendment is necessary. It is my intention to bring forward this amendment at Stage 2.

Recommendation 7. The Member in charge should table an amendment to the Bill to expand the duty within section 5 of the Bill to consult the Welsh Food Commission to also include bodies the Welsh Ministers deem appropriate to consult.

Response: Accept

The detail in the Committee's report seems to suggest that the concerns around Section 5(1)(b) of the Bill were with the inclusion of the duty for Welsh Ministers to seek advice from "other persons the Welsh Ministers consider to be independent and to have relevant expertise".

While this recommendation seeks for section 5 of the Bill to be expanded to **also** include bodies the Welsh Ministers deem appropriate to consult, the narrative in the report, and in the scrutiny session, seem to suggest that the amendment you wish to be tabled would actually remove the reference to 'other persons the Welsh Ministers consider to be independent and to have relevant expertise' and replace it with reference to 'other persons who the Welsh Ministers consider appropriate'.

As I set out to the Committee during the scrutiny session, this was an area that we needed to reflect on further to ensure that we didn't exclude somebody who could usefully contribute or who the Government might want to consult. I would therefore be happy to bring forward an amendment at Stage 2, as I set out above.

Recommendation 8. The Member in charge should table an amendment to section 17 of the Bill to extend the period of time within which a public body should publish a local food plan, from two years after the Bill coming into force to three years after that date.

Response: Accept

I agree with the committee that extending the period in within which public bodies should publish their food plans would reduce the risk of imposing additional pressures on public bodies if the Welsh Government has been unable to publish the national food plan in good time.

As I outlined to the Committee, I find it inconceivable that a Government couldn't put together a food strategy within two years, however the suggested amendment would reduce risk should that happen.

Recommendation 9. The Member in charge should provide examples of circumstances where a public body may be removed by the Welsh Ministers from the list of public bodies within section 22(1) of the Bill.

Response: Reject

As currently drafted, there is only a limited list of public bodies included on the face of the Bill. I cannot think of any circumstances where those public bodies already listed would be removed from Section 22(1).

However, section 22(2) of the Bill also allows Welsh Ministers to add public bodies to the list. It is possible therefore that the list of public bodies may look different over time.

Without knowing which bodies might be added to the list it would not be possible to provide specific examples of the circumstances that might lead to them being removed from the list. The provisions set out in Section 22(2) of the Bill (that public bodies may be removed) is included in the Bill to 'future proof' this particular section of the legislation. If circumstances arise where it is considered appropriate to remove a public body, the provision is there.

In general terms, each public body (including any additional bodies added) must publish periodic reports assessing the effectiveness of its local food plan, and in particular, the contribution it has made towards advancing the food goals and achieving the food targets. Over time, those periodic reviews may underline that placing a duty on a particular body to produce local food plans does not align with the work or functions of that body. The decision may then be made to remove that body from the list.

Recommendation 10. The Member in charge should set out the disadvantages of providing in section 22(5)(b) of the Bill that the Welsh Ministers must consult with a person which is to be removed from the list of public bodies within section 22(1) of the Bill.

Response: Reject

The drafting used in section 22 of the Bill is consistent with other Welsh legislation including section 52(4) of the Well-being of Future Generations (Wales) Act 2015.

Adding a body to the list of public bodies will always require consultation, to inform that body of any additional responsibilities it will be subject to. Whereas removing a body from the list does not impose any additional responsibilities on that body, only removing those duties, therefore they will not always need to be consulted.

In addition, section 22(5)(c) provides when making Regulations to remove a public body from the list, the Welsh Ministers must consult with any persons they consider appropriate, which will in all likelihood include the body which is being removed.

I therefore do not believe placing a duty on the face of the Bill that Welsh Ministers must consult with those persons being removed is required. I would say that setting out my reasoning is more appropriate than setting out the disadvantages of something that is (in my view) not required.

—
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Peter Fox MS 

19 May 2023

Dear Peredur,

Food (Wales) Bill: response to the Finance Committee's Stage 1 report

I would like to thank the Finance Committee for their scrutiny of the Food (Wales) Bill ("the Bill") during Stage 1 and for the report which was published on 12 May 2023.

I have set out my response to the Committee's conclusions and recommendations at Annex A. Where conclusions have been made, or where recommendations are aimed at Welsh Government rather than for me as the Member in Charge of the Bill, I have noted these, but have included my own thoughts in response where appropriate.

While it has not been possible for me to accept all of the Committee's recommendations, I hope you will find this response useful. I will also be writing to the Chairs of the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Kind regards,



Peter Fox MS for Monmouth
Member-in-Charge, Food (Wales) Bill

Response from Peter Fox, MS to the Finance Committee's Report on the Food (Wales) Bill

Conclusion 1. The Committee is disappointed with the lack of information on a number of elements of the Bill and therefore is unable to draw a conclusion as to whether the resources are adequate and reasonable to deliver the legislation. We have made a number of recommendations and should this Bill proceed we would expect to see the information requested included in an updated Regulatory Impact Assessment following Stage 2 proceedings.

Conclusion 2. We reiterate previous calls that Regulatory Impact Assessments must contain the best estimate possible for costs and benefits to enable us to fully scrutinise the overall financial implications of a Bill. This includes all Bills introduced in the Senedd by the Welsh Government, individual Members and Committees.

Response: Noted

I understand the Committee's disappointment that there may have been a lack of information on the costs of some elements of the Bill. However, as an individual Member it would be almost impossible to provide accurate costs for elements of a Bill that are subject to a future national strategy and subsequent regulations, without having considerable engagement with Welsh Government officials sanctioned by the Minister.

The Bill was deliberately drafted as a framework Bill, giving flexibility for Welsh Government around the implementation of key provisions. This would include (for example) for the detail contained in future Regulations. Allowing Welsh Government to have control over this 'secondary' phase was essential. While it was possible to engage with stakeholders to estimate the administrative costs of the Bill, it would not have been possible for me to provide accurate costs for many elements of the Bill.

I agree with the Committee's view that RIAs must contain the best estimate possible for costs and benefits. However, in agreeing this, it must be borne in mind that the best estimate that is 'possible' for individual Members to include for their Bills is likely to be less comprehensive than the estimates that Welsh Government themselves could bring forward. In relation to the Food (Wales) Bill, I believe that the estimates I provided were the best estimates that were possible with the resources available to me as an individual Member of the Senedd.

Recommendation 1. The Committee recommends that in future, the Welsh Government commits to assisting individual Members and/or Committees proposing legislation by providing relevant financial information prior to a Bill's introduction to ensure that costs in Regulatory Impact Assessments are as comprehensive and detailed as possible.

Response: Noted

As outlined in my response to Conclusions 1 and 2, it would be almost impossible for individual Members to provide accurate, or sometimes any, costs for certain elements of a Bill, which are subject to future regulation making powers based on a yet to be formed national strategy, without having assistance from Welsh Government. However, I can also see the difficulty from the Government's perspective in providing those costings prior to introduction. This recommendation would have resource implications for Welsh Government in providing that assistance.

As I said during scrutiny, there was always going to be a need to provide flexibility for Welsh Ministers and the Food Commission to give direction on important elements of the Bill – much of which would require Regulations to be made later.

In relation to the costs included for those elements of the Bill that are not subject to future Regulation, I believe these have been costed to the best of my ability. I would like to thank all the people who helped out on costings, in organisation across Wales and officials in Scotland. The engagement we had with those organisations was very helpful.

Recommendation 2. The Committee recommends that the Member in Charge reassess and updates the costs in the Regulatory Impact Assessment based on the latest costs provided by the Scottish Government for The Good Food Nation (Scotland Act 2022)

Response: Accept

As the Committee will already be aware, I gave a commitment during the scrutiny of the Food (Wales) Bill as Stage 1 that I would engage further with officials in the Scottish Government as the Bill progressed through the legislative process in the Senedd. I also refer the Committee to my letter to the Minister for Rural Affairs and North Wales, and Trefnydd dated 4 May – where I reiterate this commitment. I appreciate the Committee including reference to that letter of 4 May in this Stage 1 report despite it being sent late in the Stage 1 timetable.

Recommendation 3. The Committee recommends that the Member in Charge liaises with the Welsh Government in relation to the scale and scope of the Food Commission, including the number of staff required to support it and updates the Regulatory Impact Assessment.

Response: Accept

I would very much welcome the opportunity to discuss the scale and scope of the Food Commission as the Bill progresses through the legislative process. Should the Regulatory Impact Assessment require updating as a result, I will work with Welsh Government to provide updated information and include it in a revised RIA.

Conclusion 3. The Committee is unable to reach a view, on whether the Bill would create duplication with the Well-being and Future Generations (Wales) Act 2016 and if the Future Generations Commissioner for Wales has the expertise or capacity to undertake the necessary work relating to the Bill, given the lack of information available on this issue.

Response: Noted

It is disappointing that the Committee could not reach a view on this. I strongly believe, as did a number of key stakeholders during Stage 1 scrutiny, that the Food (Wales) Bill and the Well-being and Future Generations (Wales) Act would align with each other, and act in a complimentary way. The Future Generations Commissions would also have a role to play in helping to shape, for example, the National Food Strategy going forward.

In terms of whether the Future Generations Commissioner for Wales has the expertise or capacity to undertake the necessary work relating to the Bill, it was very clear to me from discussions I had with the Commissioner that she did not believe this to be the case. This is something that I raised specifically during Stage 1. I have not had opportunity to discuss the Bill with the new Future Generations Commissioner, but would be happy to do so as the Bill progresses through the process.

Recommendation 4. The Committee recommends that the National Food Strategy is accompanied by a full impact assessment and that the Welsh Government ensures the Senedd will have the opportunity to scrutinise any costs associated with it.

Response: Noted

Although this is not a requirement set out on the face of the Bill, it should be the expected practice that the Welsh Government would undertake an impact assessment of any new 'policy' it implements. This would include the development and implementation of the National Food Strategy.

Recommendation 5. The Committee recommends that the Member in Charge undertakes further work analysing the cost benefits of the Bill and that the Regulatory Impact Assessment should be updated to include further information on these benefits, including how they will be analysed and when they are anticipated to be delivered.

Response: Reject

As I outlined in my response to conclusions 1 and 2, it is extremely difficult for individual Members to provide accurate costs on every element of the Bill without assistance from the Welsh Government. The same principle applies to the potential benefits, as much would depend on the implementation of the Act. I believe that the information I provided on the cost benefits was as full as it could be at that time.

This also links through to Recommendation 4, where the Committee has called for a full impact assessment of the National Food Strategy. The full costs and benefits will be best assessed alongside the National Food Strategy and the impact assessment produced.

It is also likely that the Bill will be amended at Stages 2 and 3, which would have an impact on the potential costs and benefits. So again, these would be best re-assessed once the amending stages are complete.

Recommendation 6. The Committee recommends that the Member in Charge provides details of the public bodies that are already undertaking work to implement local food plans, and uses this information to calculate a potential range of costs arising from the Bill. This information should be included in a revised Regulatory Impact Assessment.

Response: Accept in part

The Explanatory Memorandum that accompanied the Bill on introduction provides examples of public bodies that already undertake work on local food plans / community food strategies, etc. However, I can see the benefit in expanding this information so will update the RIA with further details and publish as part of the revised RIA after Stage 2 of the process.

However, as set out in the RIA (para 326) it was not possible to quantify the cost of **implementing** local food plans without knowing the full detail of what is required in those plans. The detail of local food plans:

- (a) must set out how the 'food targets' would be achieved, but those targets would be set by Regulation later in the process, and
- (b) must also have regard to the National Food Strategy.

To provide accurate costs – or even an accurate range of costs – for the implementation of local food plans would therefore not be possible as those required details are not yet known.

This part of the recommendation is therefore rejected. This links back to the issues raised in Recommendation 4 where costs link back to the Strategy.

Recommendation 7. The Committee recommends that the Member in Charge updates the costing of the Regulatory Impact Assessment over a ten-year appraisal period to allow the inclusion of more complete costs relating to local food plans.

Response: Reject

As set out in the report, the Committee is concerned 'that the costs in relation to the five-year review of food plans will fall outside the timeframe of costing of this impact assessment'.

In relation to the five-year review of local food plans, these would be required before the end of a period of 5 years beginning with the day the first plan is published. The plans themselves must be made within 2 years of the Act coming into force. Therefore within a ten-year appraisal period, there would be only one review of local food plans.

As the Committee will be aware, providing costs over a 5 year period was consistent with previous Member Bills. While I knew that the five-year review period would be outside this, the RIA did set out an estimate for the review of local food plans. Para 381 of the EM states:

"The strategy must be reviewed every 5 years. This would fall outside the 5 year timeframe for estimating costs. However, the costs would not be significant. For example, the Good Food Nation Bill estimated that their 5 year update and consultation around their strategy would cost between £12,549 and £17,549."

Including this information within a ten-year appraisal period would not provide any additional detail on the potential estimate for the review of local food plans.

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19 May 2023

Dear Paul,

Food (Wales) Bill: response to the Economy, Trade and Rural Affairs Committee's Stage 1 report

I would like to thank the Economy, Trade and Rural Affairs Committee for their scrutiny of the Food (Wales) Bill ("the Bill") during Stage 1 and for the report which was published on 12 May 2023. I would also like to pass on my thanks to all those who took the time to give evidence to the Committee, whether that was in writing or in person during the Stage 1 scrutiny sessions. I have been overwhelmed by the level of engagement on this Bill throughout the legislative process.

I have set out my response to the Committee's recommendations in Annex A. Where recommendations are aimed at Welsh Government rather than for me as the Member in Charge of the Bill, I have noted these, but have included my own thoughts in response where appropriate.

While it has not been possible for me to accept all of the Committee's recommendations, I hope you will find this response useful. I will also be writing to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Kind regards,



Peter Fox MS for Monmouth
Member-in-Charge, Food (Wales) Bill

Response from Peter Fox, MS to the Economy, Trade and Rural Affairs Committee's Stage 1 Report on the Food (Wales) Bill

Recommendation 1. Although the Committee unanimously supports the policy objectives of the Bill, it cannot come to a unified position on the need for legislation to deliver those objectives. We therefore recommend that the Senedd decides whether it agrees the general principles of the Bill.

Response: Noted

I welcome the Committee's unanimous support for the policy objectives of the Food (Wales) Bill. This very much reflects the majority of evidence that I have seen presented to the Committee.

It is disappointing that the Committee could not reach a unified position on the need for legislation to achieve the policy objectives. As you have stated in your report, the majority of those who responded to the Committee's consultation were in favour of the legislation, with support from farming unions, environmental non-governmental organisations, animal welfare groups, academics, local authorities and local health boards.

There are specific objectives of the Bill that could be delivered without the need for primary legislation – for example, the Welsh Government could bring forward a national food strategy. However, I have been clear all along that one of the benefit of setting out the policy through primary legislation is that future Welsh governments would be bound by the legislation to deliver the policy in a consistent way. The lack of legislation to deliver the policy would also leave that policy without any proper mechanism for scrutiny or accountability.

I note the recommendation that the Senedd decides whether it agrees the general principles of the Bill. I very much hope that the Senedd reflects on the overwhelming support for the Bill from stakeholders and organisations across Wales, and decides to support its General Principles.

Recommendation 2. The Welsh Government must improve its approach to the food system by ensuring policies are joined-up and complementary. This could either be through this Bill or by non-legislative means. If the Bill falls, the Welsh Government must examine which elements of the Bill it could take forward by a non-legislative route.

Response: Noted

I welcome the Committee's recommendation. One of the key reasons underpinning the need for this Bill is the disjointed way in which Welsh Government approaches its food policy. As I state in the EM, and as you have quoted in the report: *"Current Welsh Government policy relating to food is not joined up, leading to policy incoherence and unintended consequences. There is a need for a single, overarching holistic approach to the whole food system in Wales to maximise the wide range of benefits a coordinated, resilient and sustainable food system can bring."*

In my own consultation on the draft Bill, 100% of those who responded on this specific question agreed that Welsh Government food policy was not joined up.

Recommendation 3. If the Bill proceeds to Stage 2 the secondary food goals should be amended to be less sectoral.

Response: Accept in principle

During the development of the Bill, there was a high level of engagement on the detail of the food goals. I received suggestions from many stakeholders and organisations across different sectors about what the food goals should contain, and the areas they should cover.

Unfortunately, it would not have been possible to accommodate everybody's expectations and wishes on the face of the Bill.

I made a commitment to the Committee during Stage 1 that I would consider all of the evidence that was received to explore where the food goals may need to be amended. I am, however, not absolutely clear what providing 'less sectoral' food goals would mean in practice. However, reiterating the commitment above, I will be happy to work with the Committee, stakeholders, and with the Welsh Government to explore potential amendments to the food goals.

The key policy objective of the Bill is to deliver affordable, healthy, and economically, environmentally and socially sustainable food for people now and for future generations. The establishment of "food goals" in the opening part of the Bill provides a mechanism to help towards the delivery of that key policy objective. It is therefore vital that the food goals are aligned so that they feed in to delivering an integrated food system.



Recommendation 4. If the Bill falls the Welsh Government should commit to publishing a document setting out all of its food policies, across departments, and how these align against its key overarching objectives. This document should be regularly updated.

Response: Noted

I note the Committee's recommendation.

As with a number of the Committee's recommendations, I truly hope that the Bill does proceed to Stage 2 of the legislative process. My responses throughout this report reflect my belief that the best way to achieve the policy objectives I have set out, and to which the Committee has unanimously agreed, is through enactment of the Food (Wales) Bill.

On this specific recommendation, I would welcome the publication of such a document by Welsh Government. It is important that all of their food policies are properly mapped out against objectives – and published.

Recommendation 5. If the Bill proceeds to Stage 2 it should be amended to require a strong monitoring and evaluation mechanism to be incorporated for each food target when that target is set.

Response: Accept in principle

The Bill already includes mechanisms for monitoring and evaluating the food targets. In particular:

- the reporting requirements in section 6 provide the mechanism for scrutiny and accountability for progress towards meeting the targets set; and
- the reviewing requirements in section 7 help ensure that the targets set in accordance with the Bill remain relevant and measurable.

However, I agree that the monitoring and evaluation mechanisms for the food targets need to be robust and as strong as they can be. I would therefore be happy to work with stakeholders and the Welsh Government to explore whether amendments at Stage 2 are necessary to strengthen these requirements.

Recommendation 6. If the Bill falls the Welsh Government should undertake a gap analysis exercise of existing targets of relevance to the food system, and in consultation with stakeholders introduce new targets to fill any gaps.

Response: Noted

I agree that the Welsh Government should commit to undertaking work in this area to ensure that there are no 'gaps'. However, this should not be done in isolation, and this work should be aligned to any work the Government does to develop any new food strategies etc.

Recommendation 7. If the Bill proceeds to Stage 2 it should be amended to require the Welsh Government to consult on expanding the functions of the Welsh Food Commission to include additional responsibilities. These could include monitoring UK and international food policy and trading relationships which impact on the Welsh food system.

Response: Reject

The functions of the Food Commission should be set out on the face of the Bill. As introduced, the Bill does not provide Welsh Ministers with the power to amend those functions through Regulations. To meet this recommendation, the Bill would not only need to be amended to require the Welsh Government to consult, it would need to be amended to introduce a new Regulation making power to enable the Welsh Government to amend the Commission's functions.

If the functions of the Food Commission were to be expanded, the most appropriate mechanism for doing this would be through amendment at Stage 2. Given the strength of views expressed during Stage 1, I would be happy to bring forward relevant amendments at Stage 2 for this purpose and will consult stakeholders accordingly.

Recommendation 8. If the Bill falls the Committee recommends that the Welsh Government should either establish an internal food policy board or work with the Future Generations Commissioner to create a dedicated food-systems post to drive joined-up food policy in Wales, with the aspiration of delivering affordable and healthy food that is economically, environmentally, culturally and socially sustainable for people now and in the future. The Minister should update the Committee on the work of this board on an annual basis.

Response: Noted

I note the Committee's intentions here, but strongly believe that the best way to drive forward joined-up food policy in Wales – with the aspiration of delivering affordable and healthy food that is economically, environmentally, culturally and socially sustainable for people now and in the future – would be to enact the Food (Wales) Bill and establish an independent Food Commission.

Recommendation 9. Regardless of whether the Bill proceeds or falls, the Committee supports the development of a national food strategy by the Welsh Government with the key aim of joining up Welsh Government food policy across departments.

Response: Noted

I very much welcome the Committee's recommendation. As set out in my response to Recommendation 2, Welsh Government food policy needs to be much more joined up. The development of a national food strategy is integral to that.

Recommendation 10. The national food strategy should include existing and any new food targets set.

Response: Reject

Unfortunately it is not clear what the intention of this recommendation is, as there is insufficient narrative around this issue in the report.

If this recommendation is referring to new targets set under Section 4 of the Bill, then these would be reflected in the national food strategy as part of the process set out in the Bill (i.e. the strategy must set out the policies to be pursued in order to meet the targets – and that would apply to all targets made under the Bill).

If however, the Recommendation is referring more generally to the food targets the Welsh Government sets outside of the Bill's provisions, it is not clear whether the Committee is calling for amendments to the Bill to ensure they are included in the strategy.

Without that detail, I am unable to accept the recommendation.

Recommendation 11. If a Welsh Food Commission is established it should have a strong role in advising the Welsh Government in the development and implementation of the national food strategy.

Response: Accept

While I accept this recommendation, the Bill already provides mechanisms that will enable the Food Commission to have a strong role in advising, and scrutinising, Welsh Government on the development and implementation of the national food strategy. In particular:

- Section 12 of the Bill already makes it a requirement for Welsh Ministers to seek the advice of the Food Commission before making the national food strategy.
- Section 10 of the Bill (functions of the Commission) includes the function to scrutinise the national food strategy and local food plans.

I would be happy to work with the Committee at Stage 2 to explore whether amendments are needed at Stage 2 to further strengthen these mechanisms, if that is considered appropriate.

Recommendation 12. If the Bill falls and the recommendation to establish an internal food board within Welsh Government is taken forward this board should have an oversight role regarding development and implementation of the strategy.

Response: Noted

As with recommendation 8, I note the Committee's intentions here, but strongly believe that the best way to take this forward would be to enact the Food (Wales) Bill and establish a Welsh Food Commission.

Specifically in relation to whether the internal food board should have an oversight role on the development and implementation of the Food Strategy, I do not believe an internal, non-statutory, Government Board would have the level of independence required to have proper oversight of Welsh Ministers in delivering this policy.

Recommendation 13. The strategy must not "sit on the shelf" and should be implemented at both a national and local level. If the Bill proceeds to stage 2 consideration should be given to amendments that would support public bodies' implementation of the strategy.

Response: Reject

The way the Bill is intended to operate is that there would be a national food strategy, implemented on a national level. That national food strategy would set out the overall strategy and policies the **Welsh Ministers** will pursue to advance the food goals and achieve the food targets.

The Bill then requires public bodies to make local food plans, to be implemented on a local level. These local food plans would set out the policies the **public bodies** will pursue to advance the food goals and achieve the food targets. In making the local food plans, a public body must have regard to the national food strategy.

The distinction between the national strategy and the local plans is a very important one. It is not intended that the national strategy should be implemented on a local level, as that is what the local food plans will do.

Recommendation 14. Section 17 should be amended to include the need for local food plans to support local procurement of food.

Response: Accept in principle

As I have set out in relation to Recommendation 13, local food plans would set out the policies the public bodies will pursue to advance the food goals and achieve the food targets.

The primary food goal includes the provision of socially sustainable food; the Economic well-being secondary food goal includes reference to creating new economic opportunities through promotion of locally produced food. In advancing these food goals a public body could include local procurement of food within its local food plans.

However, I would be happy to work with the Committee at Stage 2 to amend the Bill to make it more explicit that local procurement of food should be included in local food plans. I believe the most appropriate way of doing that would be to amend the description of the relevant food goal in Section 3, rather than amending section 17 itself.

As I set out in my response to Recommendation 3, I made a commitment to the Committee during Stage 1 that I would consider all of the evidence that was received to explore where the food goals may need to be amended.

Recommendation 15. If the Bill progresses to Stage 2 an amendment to section 18 should be considered to include a duty to consult with community-based organisations currently delivering and promoting local food projects.

Response: Reject

Section 18(1) of the Bill provides that before making a local food plan, public bodies **may** consult with specific bodies or persons. In developing the Bill this provision was carefully considered, and drafted to ensure that any consultation undertaken by public bodies was a choice rather than a duty. It was considered that making this a duty could potentially negatively impact on certain public bodies, who already undertake substantial work on delivering local food policies.

Section 18(1)(a) & (b) contain specific reference to two bodies that may be consulted (the Food Commission and the Future Generations Commissioner for Wales). Section 18(1)(c) of the Bill sets out a general provision relating to consultation with 'such other persons as the public body considers appropriate'. This would enable those community-based organisations to be consulted if the public body considered it appropriate.

I do not believe it would be appropriate to provide a list of who those 'other persons' should be within section 18 of the Bill. This opens up a Pandora's box of who should be included and who shouldn't. This general provision for consultation is also consistent with similar provisions in other legislation including the Well-being of Future Generations (Wales) Act 2015.

Recommendation 16. If the Bill falls the Minister should, via appropriate guidance, encourage actions that would promote the implementation of local food plans to encourage the use of locally sourced food by public sector organisations.

Response: Noted

As with earlier recommendations, I note the Committee's intentions here, but strongly believe that the best way to take this forward would be to enact the Food (Wales) Bill which would require the implementation of local food plans, which build from a national strategy. I find it extremely difficult to see how the use of non-statutory guidance to encourage action in this area would have the desired effect. The use of guidance in this way would also not ensure a consistent approach that is maintained over future years.

Recommendation 17. If the Bill falls the Welsh Government should encourage more emphasis on food sustainability at a local level through the best mechanisms available under the Well-being of Future Generations Act 2015. This could be through including a new Well-being indicator/s with milestones to support a better food system. This should result in Public Services Boards further considering public procurement and sustainability of food in their well-being plans and assessments.

Response: Noted

It will be for the Welsh Government to discuss with the Future Generations Commissioner how this could be done through the Well-being of Future Generations Act.

Agenda Item 6.4

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

**Economy, Trade and
Rural Affairs Committee**

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

31 May 2023

Food (Wales) Bill

Dear Lesley,

I am writing following the fall of the Food (Wales) Bill on 24 May. I was pleased to hear in the debate that you support the broad aims of the Bill and you want to build on the momentum Peter Fox has built up around food policy with this Bill. As outlined in our report, the Committee also fully supported the policy aims of the Bill.

As you are aware, we drafted the Committee report on the general principles to include policy recommendations that could be pursued if the Bill fell. Please can you outline your plan to capitalise on the momentum created by Peter and respond to our recommendations 2, 4, 6, 8, 9, 10, 12, 16, and 17?

I have also copied this letter to Peter Fox in his capacity as the Member in charge of the Bill, Huw Irranca-Davies in his role as Chair of the Legislation, Justice, and Constitution Committee, and Peredur Owen Griffiths in his capacity as Chair of the Finance Committee.

Kind regards,



Paul Davies MS

Chair: Economy, Trade and Rural Affairs Committee

Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

31 May 2023

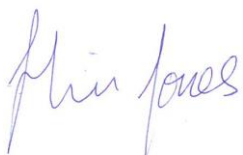
Recommendation concerning the Member Bill process

Dear Huw,

Thank you for your letter of 16 May drawing our attention to *Recommendation 1* of your report on the Food (Wales) Bill, which relates to the Business Committee's proposed review of the Member Bill procedure.

Business Committee considered the letter at our meeting on 23 May and noted the recommendation. We recently considered and agreed an updated programme for our procedural work at our meeting on 9 May, agreeing to give further consideration to the Member Bill process prior to the summer recess. Specifically, following recent correspondence received from the Legislation, Justice and Constitution Committee, we agreed that we would consider advice during the summer term on the feasibility of considering the selection process for Member Bills in isolation, or whether this should be done as part of a full review. We will take your Committee's recommendation into account when considering our approach as well as during any subsequent full review.

Kind regards,



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.

Rt Hon Elin Jones MS
Llywydd
Chair, Business Committee

16 May 2023

Annwyl Lywydd

Report on the Food (Wales) Bill

Last week we laid our report on the Food (Wales) Bill; a Bill introduced to the Senedd by Peter Fox MS.

I would like to draw to your attention recommendation 1 of our report, which states:

Recommendation 1. As part of its review of the Member Bill procedure, the Business Committee should explore the feasibility of introducing a more transparent process for engagement between the Welsh Government, its officials and Members of the Senedd who have secured leave to proceed to introduce a Member Bill.

Yours sincerely,



Huw Irranca-Davies
Chair

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Statement on the progress of the Independent Commission on the Constitutional Future of Wales

DATE 23 May 2023

BY Mick Antoniw MS, Counsel General and Minister for the Constitution

In November I provided a progress report on the work of the Independent Commission on the Constitutional Future of Wales.

This is the latest progress report received from the Co-chairs since the Commission produced its interim report in December <https://www.gov.wales/independent-commission-on-the-constitutional-future-of-wales-progress-report>.

I would particularly draw your attention to the digital platform Engagement Space (useyourvoice.wales) / Y Safle Sgwrsio (defnyddiadylais.cymru). As I have said previously, it is important the work of the Commission is grounded in the everyday experience and views of communities throughout Wales, and I would urge you to encourage people from the communities you represent to engage with the Commission and make their views known.

The First Minister, Adam Price MS, and I met the Co-chairs earlier this month for a regular update on their work so far. We have been assured the Commission is on course to publish its final report, including recommendations, by the end of 2023.



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee

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

Peredur Owen Griffiths MS
Chair, Finance Committee

24 May 2023

Dear Chair,

The Health Service Procurement (Wales) Bill – Stage 2 Government Amendment

Today I have tabled a Government Amendment for Stage 2 of the Health Service Procurement (Wales) Bill. The Purpose and Effect table (copy attached at **Annex A**) provides an explanation of the amendment.

The amendment is in response to Scrutiny Committee recommendations; in particular in response to Health and Social Care Committee recommendation 5 and Legislation, Justice and Constitution Committee recommendation 4. These two recommendations have been considered together, as both seek to place a duty to consult in relation to regulations made under s.10A(1) of the National Health Service (Wales) Act 2006 (to be introduced by section 3 of the Bill) on the face of the Bill.

In the General Principles debate on the 9 May and in the follow up correspondence to the Chairs of both Health and Social Care Committee and Legislation, Justice and Constitution Committee, I indicated that whilst we were unable to fully accept the suggested wording in the two recommendations, I was happy to accept in principle, both committees recommendations. As such, I have brought forward an amendment at Stage 2 which places a requirement on the face of the Bill for the Welsh Ministers to consult before making regulations under s.10A(1). The intention of the proposed Government amendment is to provide a middle-ground between the two recommendations proposed by both Committees.

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.

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Correspondence.Eluned.Morgan@gov.wales

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 would like to take the opportunity again to reiterate my thanks to all three Committees for scrutinising the Bill and it's supporting documentation.

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

THE HEALTH SERVICE PROCUREMENT (WALES) BILL – STAGE 2 GOVERNMENT AMENDMENT

This table provides information about the amendment tabled in the name of Eluned Morgan MS on 24 May 2023.

No.	GOVERNMENT AMENDMENT	GWELLIANT Y LLYWODRAETH	PURPOSE AND EFFECT
1.	Section 3, page 2, after line 19, insert— ‘() Before making regulations under subsection (1), the Welsh Ministers must carry out such consultation as they consider appropriate.’	Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder— ‘() Before making regulations under subsection (1), the Welsh Ministers must carry out such consultation as they consider appropriate.’	The purpose of this amendment is to amend the section of the Bill which inserts a new section (10A) into the National Health Service (Wales) Act 2006, which enables Ministers to make regulations in relation to the procurement of health services in Wales. The effect of this amendment is to add a requirement that the Welsh Ministers carry out such consultation as they consider appropriate before making regulations under s.10A(1).

Rebecca Evans MS

Minister for Finance and Local Government

26 May 2023

Dear Rebecca

The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill

The Finance Committee considered the Welsh Government's Legislative Consent Memorandum for the Non-Domestic Rating Bill ('the memorandum') at our meeting on 24 May, alongside a letter issued by the Chair of the Legislation, Justice and Constitution Committee ('LJC') on 18 May raising further questions about its content.

We share the concerns expressed by the LJC Committee in relation to the following areas:

The memorandum states, in relation to clause 13 and Part 4 of the Schedule to the Bill, that "the Welsh Government continues to engage with the UK Government" and "further discussions around these specific powers [are] anticipated throughout the passage of the Bill".

We reiterate calls made by the LJC Committee and ask for assurances that, if discussions with the UK Government result in amendments being made to the Bill which provide new delegated powers to the Welsh Ministers, a supplementary legislative consent memorandum will be laid before the Senedd. This would provide sufficient time for Senedd Committees to scrutinise any



changes made to the Bill and enable our committee to fully understand and consider the financial implications, if any, of such powers being delegated.

Secondly, paragraph 39 of the memorandum notes that clause 15(3)(d) of the Bill “alters the procedure for making regulations from made affirmative to draft affirmative”. As the letter from LJC makes clear, this regulation-making power was delegated to the Welsh Ministers through the Local Government and Elections (Wales) Act 2021. Like LJC, we are concerned that a UK Bill is being used to downgrade a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago.

Given the impact this will have on the ability of Senedd Committees to scrutinise the full impact of these regulations, both financial and otherwise, we reiterate calls asking you to provide a thorough explanation as to why the changes introduced by clauses 15(3)(d) and 15(4) are being made.

In order to inform the Committee’s further consideration of the memorandum before the reporting deadline of 22 June, I would be grateful for a response by 9 June.

I am copying this letter to the Local Government and Housing Committee, the Economy, Trade and Rural Affairs Committee, and the Legislation, Justice and Constitution Committee.

Yours sincerely



Peredur Owen Griffiths MS
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



British Red Cross response to the Welsh Government's Legislative Consent Memorandum: Illegal Migration Bill May 2023**Background**

The British Red Cross welcomes the opportunity to provide evidence to assist the Senedd's consideration of the Welsh Government's Legislative Consent Memorandum on the UK Government's Illegal Migration Bill. The British Red Cross is particularly concerned about the impact this Bill may have on unaccompanied children and victims of human trafficking where there are existing protections in devolved structures. When considering the matter of legislative competence, the British Red Cross encourages the Senedd to also consider what alternative routes may be available to mitigate risks and uphold protections for those affected by this legislation.

About the British Red Cross

We are part of the world's largest humanitarian network, the International Red Cross and Red Crescent Movement, which has 17 million volunteers across 192 countries. The British Red Cross helps people in crisis, whoever and wherever they are. We are part of a global voluntary network, responding to conflicts, natural disasters, and individual emergencies. We help vulnerable people prepare for, withstand, and recover from emergencies in their own communities.

In Wales, we provide a range of services across emergency response, health and social care and refugee support. We are the largest independent provider of refugee and asylum support in the UK and in 2022 our Refugee Services team in Wales helped 1,533 people. Our work includes supporting resettlement, destitution support, casework, advocacy, and peer led programs as well as international family tracing, family reunion and integration work. This sits alongside work in other nations of the UK where we work within a variety of frameworks and protection mechanisms.

Introduction

The British Red Cross is deeply concerned that the Illegal Migration Bill would punish people seeking safety simply for the way they arrive, when for the very large majority it is not possible to claim asylum in any other way. If successful, the Bill would prevent most people fleeing war

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and persecution from claiming asylum in the UK, including when they are from places where nearly everyone is recognised by the Home Office as being a refugee, such as Afghanistan, Syria, and Eritrea.¹

However, it will not stop people coming here. That is because policies of deterrence in destination countries are rarely effective – not least because people on the move often do not know about them. The Home Office’s own research² shows that people seeking asylum have limited to no knowledge of migration policies, and usually come because they have no choice where they end up, or because of family or cultural ties and sometimes because of the language. We believe this legislation would be devastating for the men, women, and children searching for safety in the UK.

At the same time, the Bill could prevent survivors of modern slavery from receiving any support simply because of how they arrived in the UK, including people who have been trafficked here. **Crucially, it would create enabling powers to disapply devolved legislation concerning trafficking and modern slavery.** It undermines the UK’s world-leading Modern Slavery Act 2015 and is likely to increase the risk of re-exploitation as fewer people will seek support.

Summary

The Bill proposes automatic 28 days of detention for anyone entering the UK without a legitimate visa, with no right for bail or appeal, and opens the possibility of indefinite detention. Each year the British Red Cross helps more than 30,000 refugees and people seeking asylum in the UK and many more displaced people around the world. We see the devastating impact that living in detention has on people’s physical and mental health, the emotional strain of being separated from family and the consequences for people living in destitution, including heightened risks of exploitation, and not being able to afford even the most basic of things, like food, shoes or toiletries.³ Besides being unworkable, the Bill risks worsening all of these experiences.

This legislation comes at a time of wider policy change in the migration space, including the full dispersal of people seeking asylum to every local authority in the UK and a move to institutional forms of accommodation for those in the asylum system, including barges and

¹ In the year ending March 2023, the grant rate an initial decision for Afghans was 98%, Syrians 99% and Eritreans 99%. Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

² Home Office (2020). Sovereign Borders: International Asylum Comparisons Report. Section 1: Drivers and impact on asylum migration journeys. Available at: <https://freemovement.org.uk/wp-content/uploads/2022/11/Annex-A-Sovereign-Borders-International-Asylum-Comparisons-Report-Section-1-Drivers-and-impact-on-asylum-migration-journeys.pdf>

³ See: British Red Cross (2018) Never truly free: the humanitarian impact of the UK immigration detention system.

British Red Cross: How will we survive? Exploring destitution in the UK asylum system.

British Red Cross: and UNHCR (2022): At risk: exploitation and the UK asylum system

All available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

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military bases. We have previously raised concerns with the use of Penally Barracks in Pembrokeshire and are concerned by the use of further inappropriate accommodation where people's needs aren't met⁴. Protections for those in the system living in House in Multiple Occupancy properties have been removed under UK legislation in England⁵ and may be removed for those in Wales in the future too.

These changes are taking place alongside the UK's response to Ukraine. In Wales, the Welsh Government has supported a safe route to protection for displaced people from Ukraine through its Super Sponsorship Scheme and there are opportunities to expand the protection and sanctuary to other refugees and people seeking asylum.

The British Red Cross wants to see a fairer, more compassionate, and effective asylum system.

To achieve this, we believe that the focus of governments across the UK should be to:

- Uphold the principle of being able to claim asylum by ensuring all claims are considered, no matter someone's mode of arrival.
- Ensure more people fleeing war and persecution can reach the UK safely without risking their lives and falling into the hands of smugglers.
- Prioritise a more efficient decision-making process so people's claims are determined quickly and correctly.
- Ensure refugees and people seeking asylum are better supported once they are in the UK so they engage effectively with the process and for those that stay, can integrate and contribute.

Concerns

While the UK asylum system is reserved, there are opportunities for devolved governments to intervene and provide support to displaced people. This includes through integration and access to public services but crucially by creating protections for victims of trafficking and unaccompanied children.

While we accept that the Welsh Government has limited powers in some areas, there is still scope for it to act. The Welsh Government should maximise its legislative competencies as part of protecting trafficking survivors and unaccompanied children. This could be through the establishment of a trafficking survivor identification and decision agency to complete an

⁴ British Red Cross, Far from a home: why asylum support accommodation needs reform (2021) available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

⁵ <https://homeofficemedia.blog.gov.uk/2023/04/03/accommodation-sites-factsheet-april-2023/>

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anti-trafficking process. The Welsh Government should also safeguard all available legal measures to ensure non-discrimination for unaccompanied children arriving in Wales.

Unaccompanied children

We are concerned about how this Bill would impact unaccompanied asylum-seeking children. The Immigration Act 2014 put a limit on the detention of unaccompanied asylum-seeking children of 24 hours in a short-term holding facility. This Bill removes this provision, giving the Secretary of State the power to detain a person of any age as she considers appropriate. Unaccompanied children are also subject to removal when they turn 18 and the bill opens up the possibility of returning a child before they turn 18, however this is not a duty.

Welsh Government statistics show that there are 110 unaccompanied children in Wales who are looked after by local authorities⁶. This figure may be much larger as many unaccompanied children are often not identified as such due to issues surrounding the effectiveness of age assessments. There has been a significant rise in the number of age disputes as a result of contested age assessments. These disputes have nearly quadrupled between 2019 and 2023, from 798 to 2999 respectively⁷. From the cases that were resolved, 61% of those assessed were found to be children⁸. This is extremely concerning as failure to identify unaccompanied children places them at considerable risk, such as being housed with adults or even placed in immigration detention. The Bill increases the risks of detention due to the aforementioned duties to detain and to remove from the UK.

If a child does remain in the UK, under the provisions in the Bill and the duty placed under Clause 4(2), they will be removed once they reach 18. The impacts of these provisions are significant, placing children beyond the protections afforded in Welsh legislation, notably the Social Services and Wellbeing (Wales) Act 2014⁹ and international law under Article 8 of the European Convention on Human Rights and provisions of the UN Convention on the Rights of the Child. Alongside other areas of devolved competence, this goes against the intentions of the Wellbeing of Future Generations Act 2015 (Wales), where children face detention, the removal of protections and will be barred from becoming citizens and face return.

The Bill gives power to the Secretary of State in Clause 15 to provide or arrange for the provision of accommodation and support for unaccompanied children in England, as

⁶ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/unaccompaniedasylumseekingchildrenbeinglookedafteratthe31march-by-localauthority>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1156821/age-disputes-datasets-mar-2023.xlsx

⁸ As above.

⁹ Section 110 of the Social Services and Wellbeing (Wales) Act 2014 recognises the need of young people leaving care for continued support and contact.

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opposed to local authorities. Clause 19 allows the Secretary of State to make regulations enabling Clause 15 to apply in Wales without conferring powers on Welsh Ministers. This would place extremely vulnerable and likely already traumatised children beyond the protection of local authorities.

Children who arrive seeking asylum but without a legitimate visa to enter the UK will have no possibility of having their asylum claim considered, which will automatically be declared 'inadmissible' under Clause 4. This is despite unaccompanied asylum-seeking children having an asylum grant rate of over 80% at initial decision in the year ending March 2023.¹⁰ This will also apply to children who are victims of human trafficking and slavery who have been exploited, including those exploited in the UK.

Consistent with the "child first, migrant second" perspective set out in *Child First, Migrant Second: Ensuring that Every Child Matters*¹¹, organisations such as the Anti-Trafficking Monitoring Group have proposed a focus on child protection, with unaccompanied children to be placed in the children protection system's multi-agency safeguarding hubs for a determination of their trafficking status and the local authority child protection systems for care and protection issues¹². This approach would mean that the immediate needs and safety of a child would be the primary concern, placing concerns around migration and border security as secondary. Others have added to this concept, suggesting that "any reforms should ensure that government departments with responsibility for children lead on the issue."¹³

-We encourage the Welsh Government to consider new practice models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs, as well as adults too.

Recommendation: The Welsh Government should seek to explore what opportunities may exist to uphold and enhance protections for unaccompanied children arriving in Wales, mitigating negative impacts of this Bill.

Victims of trafficking

¹⁰ Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

¹¹ Crawley, H. (2006) *Child First, Migrant Second: Ensuring that Every Child Matters* London, Immigration Law Practitioners' Association Policy Paper

¹² ATMG - Anti-Trafficking Monitoring Group (2014) *Proposal for a Revised National Referral Mechanism (NRM) for Children* London, Anti-Trafficking Monitoring Group Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=9c439adf-97ef-45f8-ad4fc73752f2676d>

¹³ Sereni, A. and Baker, C. (2018) *Before the Harm is Done: Examining the UK's Response to the Prevention of Human Trafficking* London, Anti-Trafficking Monitoring Group

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In 2022, over 16,938 people were referred to the UK's National Referral Mechanism as potential survivors of trafficking. 88% received positive reasonable grounds decisions. 89% of just over 6,000 conclusive grounds decisions made in 2022 were positive, confirming that people were survivors of modern slavery.¹⁴ ¹⁵ Under the provisions of the Bill, when a survivor of modern slavery who arrived in the UK without permission consents to enter the NRM and receives a positive reasonable grounds decision, their claim will not be considered, and they will not be provided with support. Instead, they will be detained and removed. We know through our work supporting survivors of trafficking, people need immediate access to support, including a safe house, washing facilities, rest and advice after leaving exploitation. Detention is a wholly inappropriate setting for someone in need of support as a result of their exploitation.

There may be avenues for protections to be granted under existing Welsh legislation, which are worthy of consideration. We would support a commitment to protection frameworks which exist in devolved legislation, designed to support and protect adults and children living in Wales.

Recommendation: The Welsh Government should pilot devolved decision-making around trafficking status to explore ways to increase protections for migrant victims of modern slavery and trafficking in Wales¹⁶.

Recommendations

We would encourage the Senedd and Welsh Government to:

- Protect victims of trafficking and those in the asylum system, including children, by safeguarding all available legal measures to ensure non-discrimination for children arriving in Wales and by instructing Welsh agencies, such as social work services, to identify and support those in need of protection.
- Use mechanisms such as the pilot of devolved decision-making power¹⁷ around trafficking status to explore ways to increase protections for migrants arriving in Wales.

¹⁴ Once referred to the NRM, individuals receive decisions on two grounds: reasonable grounds, and conclusive grounds. A positive reasonable grounds decision means the decision-maker believes, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour). A positive conclusive grounds decision indicates that there is sufficient information to consider the individual is a victim of modern slavery.

¹⁵ Home Office (2023). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, year ending 2022. Available at: <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december2022/irregular-migration-to-the-uk-year-ending-december-2022>

¹⁶ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

¹⁷ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

Y Groes Goch Brydeinig

- Commit to models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs in line with a “child first, migrant second” approach.
- Enhance the monitoring, inspection, regulation, and enforcement of the asylum system within Wales, especially the use of accommodation. These should be underpinned by comprehensive, cross-government strategies that respond to the increasing vulnerabilities and needs of vulnerable groups seeking protections.
- Consider how to offer the same level of protections for all refugees, people seeking asylum and reunited families, learning from the Ukrainian Super Sponsorship Scheme.
- Work alongside the UK Government to increase safe, regular routes to the UK for those in need of asylum.

Further information

We are keen to continue to support the Welsh Government and Senedd on the impacts of the Illegal Migration Bill and wider policies relating to refugees and people seeking asylum. We would be happy to answer any questions or provide further information in a follow up meeting or in writing.

Contact: Naomi White, Policy and Public Affairs Officer (Wales), British Red Cross,



Agenda Item 10

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

Document is Restricted

Ein cyf/Our ref: MA/RE/0660/23

Llywodraeth Cymru
Welsh Government

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

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01 June 2023

Dear Huw,

The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill

I am writing in response to your letter of 18 May to fully inform the Legislation, Justice and Constitution Committee's consideration of the Memorandum on the Non-Domestic Rating Bill (the Bill), prior to reporting to the Senedd.

Question 1: At various places in the Memorandum (including paragraphs 4, 6, 7 and 63) you state that the Welsh Government has sought and requested provisions for Wales in the Bill. Can you confirm when collaborative discussions began with the UK Government and when provisions for Wales in the Bill were formally sought.

Discussions with the UK Government in relation to the Bill began in March 2022 and provisions for Wales (with the exception of those relating to the Digitalisation of Business Rates – see response to question 2a) were sought on 20 June 2022. At that stage, discussions were taking place in confidence and it was unclear if and when the Bill would be finalised and introduced.

Question 2: At paragraphs 45 to 47 of the Memorandum you note the delegation of powers in relation to clause 13 and Part 4 of the Schedule. You state that "There was insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers". You also state that the Welsh Government continues to engage with the UK Government and "further discussions around these specific powers [are] anticipated throughout the passage of the Bill".

- a) Given the commentary we have highlighted in question 1 – that there appears to have been collaborative working on the Bill – please would you provide further clarity as to how and why there was "insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers".***

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

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

When the engagement described in response to Question 1 took place, provisions relating to the Digitalisation of Business Rates (DBR) Programme were not part of the Bill content being developed. These provisions were developed during February and March 2023, shortly before introduction of the Bill. On 14 February, I wrote to the relevant Bill Ministers to request details of the provisions being developed and that consideration be given to extending them to Wales. Following a positive response and consideration of the detailed proposals, I formally sought provisions on 17 March and requested further discussion in relation to the relevant delegated powers. I recognised that it might not be possible to conclude those discussions prior to planned introduction of the Bill and a further exchange of letters with the Bill Ministers followed.

b) We note that the Bill is likely to complete its passage through the House of Commons by the end of May, after which it will proceed to consideration by the House of Lords. Should your discussions with the UK Government result in amendments being made to the Bill during Lords' consideration which provide new delegated powers to the Welsh Ministers, please would you confirm that you will lay the required supplementary legislative consent memorandum (containing full details of all relevant changes made to the Bill) in a timely fashion to allow Senedd Committees sufficient time to undertake their scrutiny.

I can confirm that our discussions with the UK Government on this matter concluded during the Bill's passage through the House of Commons. No amendments to the Bill are required as a result of those discussions. It is the Welsh Government's intention to support the Bill provisions extended to Wales in their entirety.

The powers delegated to the Commissioners of HMRC are limited. They do not need to be exercised to enable the legislative framework set out in the Bill to operate, and will only be used where a relevant administrative change to ensure the effective operation of the DBR programme by HMRC is considered necessary. Whilst any secondary legislation made under the delegated powers would alter the requirements placed on NDR ratepayers in Wales, it would also directly affect the functions conferred by the Bill on HMRC.

The Bill requires that the Commissioners of HMRC must consult the Welsh Ministers before making secondary legislation under the delegated powers and to the extent that it makes provision in relation to Wales. This approach will enable the aims of the DBR programme to be delivered and intended benefits realised in Wales. Only HMRC can deliver DBR for Wales, as the programme relies on the sharing and linking with information held by HMRC in relation to non-devolved taxes, as well as NDR.

I will lay a supplementary LCM to clarify the Welsh Government's position on this matter and address any amendments that are made to the Bill, in a timely manner.

Question 3: At paragraph 39 of the Memorandum you note that several provisions in clause 15 of the Bill apply in relation to Wales. In particular, you state that subsection 3(d) "alters the procedure for making regulations from made affirmative to draft affirmative". This regulation-making power, and the made affirmative scrutiny procedure attached to it, was delegated to the Welsh Ministers via the Local Government and Elections (Wales) Act 2021. No detailed explanation is given as to why

you are using a UK Bill to change (by downgrading) a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago. Please would you provide a thorough explanation as to why the changes introduced by clauses 15(3)(d) and 15(4) are being made.

The relevant regulation-making power allows Welsh Ministers to substitute the effect of the Consumer Prices Index on the setting of the non-domestic rating multiplier. This power has been exercised annually in recent years, to freeze the multiplier, as part of the package of support provided to ratepayers during the pandemic and subsequent economic pressures. As the related policy and funding decisions form part of the Welsh Government's Draft Budget, published in December each year, the timing constraints imposed by the existing procedures on the exercise of this power, including the interaction with the Senedd's consideration of the local government finance report, have proved themselves to present a practical challenge. In some years this has impacted negatively on the time available for Senedd scrutiny of the legislation, when the local government finance reports have been considered relatively soon after publication of the Draft Budget.

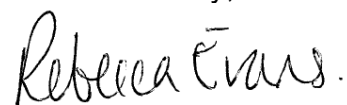
Clause 15(3)(d) removes the existing deadline (before the earlier of 1 March or the Senedd's approval of the local government finance report) for approval of the regulations by the Senedd and ensures that a draft of the regulations is scrutinised by the Senedd before it is made. I do not, therefore, consider that the change of procedure from made affirmative to draft affirmative amounts to a downgrading of scrutiny. If anything, in combination with the removal of unnecessary timing constraints, it will help to ensure that the Senedd has appropriate time for scrutiny of the regulations.

Clause 15(4) removes the existing restriction on when the multiplier can be calculated and confirmed for billing authorities. This will ensure that billing authorities and ratepayers in Wales can be provided with clarity as early as possible and are not disadvantaged compared to those in England due to procedural constraints which do not enhance (and may in some circumstances constrain) scrutiny.

Taken together, these changes will: ensure the Senedd has a consistent opportunity for scrutiny before regulations are made; and reduce the risk of delayed non-domestic rates billing, to the benefit of local authorities and ratepayers in Wales.

I am copying this letter to the Counsel General and Minister for the Constitution, and to the Local Government and Housing Committee, the Economy, Trade and Rural Affairs Committee, and the Finance Committee.

Yours sincerely,



Rebecca Evans AS/MS

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

Rebecca Evans MS
Minister for Finance and Local Government

18 May 2023

Dear Rebecca

The Welsh Government's Legislative Consent Memorandum for the Non-Domestic Rating Bill

At this week's meeting we discussed the Welsh Government's Legislative Consent Memorandum for the Non-Domestic Rating Bill (the Memorandum).

In order to fully inform our consideration of the Memorandum before we report to the Senedd, I would be grateful if you would respond to the questions in the Annex to this letter by 1 June 2023.

I am copying this letter to the Counsel General and Minister for the Constitution, and to the Local Government and Housing Committee, the Economy, Trade and Rural Affairs Committee, and the Finance Committee.

Yours sincerely,



Huw Irranca-Davies
Chair

ANNEX

Question 1: At various places in the Memorandum (including paragraphs 4, 6, 7 and 63) you state that the Welsh Government has sought and requested provisions for Wales in the Bill. Can you confirm when collaborative discussions began with the UK Government and when provisions for Wales in the Bill were formally sought.

Question 2: At paragraphs 45 to 47 of the Memorandum you note the delegation of powers in relation to clause 13 and Part 4 of the Schedule. You state that "There was insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers". You also state that the Welsh Government continues to engage with the UK Government and "further discussions around these specific powers [are] anticipated throughout the passage of the Bill".

a) Given the commentary we have highlighted in question 1 – that there appears to have been collaborative working on the Bill – please would you provide further clarity as to how and why there was "insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers".

b) We note that the Bill is likely to complete its passage through the House of Commons by the end of May, after which it will proceed to consideration by the House of Lords. Should your discussions with the UK Government result in amendments being made to the Bill during Lords' consideration which provide new delegated powers to the Welsh Ministers, please would you confirm that you will lay the required supplementary legislative consent memorandum (containing full details of all relevant changes made to the Bill) in a timely fashion to allow Senedd Committees sufficient time to undertake their scrutiny.

Question 3: At paragraph 39 of the Memorandum you note that several provisions in clause 15 of the Bill apply in relation to Wales. In particular, you state that subsection 3(d) "alters the procedure for making regulations from made affirmative to draft affirmative". This regulation-making power, and the made affirmative scrutiny procedure attached to it, was delegated to the Welsh Ministers via the *Local Government and Elections (Wales) Act 2021*. No detailed explanation is given as to why you are using a UK Bill to change (by downgrading) a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago. Please would you provide a thorough explanation as to why the changes introduced by clauses 15(3)(d) and 15(4) are being made.

Agenda Item 12

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

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Agenda Item 13

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

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