

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee Room 3, Senedd, and Video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 26 June 2023	0300 200 6565
Meeting time: 13.00	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.00)

2 UK – EU governance inquiry: Evidence Session

(13.00 – 14.05)

(Pages 1 – 15)

Panel 1

Charles Whitmore, Wales Civil Society Forum

Tom Jones, WCVA representative on the UK–EU Civil Society Forum

Brigid Fowler, Hansard Society

Attached Documents:

LJC(6)–20–23 – Paper 1 – Evidence session briefing

Break

(14.05 – 14.15)

3 UK – EU governance inquiry: Evidence Session

(14.15 – 15.20)

(Pages 16 – 31)

Panel 2

Professor Tobias Lock, Maynooth University

Lisa Whitten, Queen’s University Belfast

Dr Elin Royles, Aberystwyth University



Attached Documents:

LJC(6)-20-23 – Paper 2 – Written evidence submitted by Professor Tobias Lock

LJC(6)-20-23 – Paper 3 – Written evidence submitted by Dr Elin Royles

Break

(15.20 – 15.25)

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

(15.25 – 15.30)

Affirmative Resolution Instruments

4.1 SL(6)364 – The Animal By-Products, Pet Passport and Animal Health (Fees) (Wales) (Amendment) Regulations 2023

(Pages 32 – 35)

Attached Documents:

LJC(6)-20-23 – Paper 4 – Draft report

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

(15.30 – 15.35)

Affirmative Resolution Instruments

5.1 SL(6)362 – The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

(Pages 36 – 40)

Attached Documents:

LJC(6)-20-23 – Paper 5 – Report

LJC(6)-20-23 – Paper 6 – Welsh Government response

6 Common frameworks

(15.35 – 15.40)

6.1 Correspondence from the Counsel General and Minister for the Constitution: The Legislation, Justice and Constitution Committee's report on Common Frameworks

(Pages 41 – 42)

Attached Documents:

LJC–20–23 – Paper 7 – Letter from the Counsel General and Minister for the
Constitution, 22 June 2023

7 Inter–Institutional Relations Agreement

(15.40 – 15.45)

7.1 Written Statement and correspondence from the Counsel General and Minister for the Constitution: Inter–Ministerial Standing Committee

(Pages 43 – 46)

Attached Documents:

LJC(6)–20–23 – Paper 8 – Written Statement from the Counsel General and
Minister for the Constitution, 20 June 2023

LJC(6)–20–23 – Paper 9 – Letter from the Counsel General and Minister for
the Constitution, 20 June 2023

7.2 Correspondence from the Minister for Social Justice and Chief Whip: Safety, Security and Migration Interministerial Group

(Page 47)

Attached Documents:

LJC(6)–20–23 – Paper 10 – Letter from the Minister for Social Justice and
Chief Whip, 21 June 2023

8 Papers to note

(15.45 – 15.50)

**8.1 Correspondence from the Secretary of State for Business and Trade:
Response to the Legislation, Justice and Constitution Committee's report on
the Welsh Government's Legislative Consent Memoranda on the Retained EU
Law (Revocation and Reform) Bill**

(Pages 48 – 51)

Attached Documents:

LJC(6)-20-23 – Paper 11 – Letter from the Secretary of State for Business and Trade, 16 June 2023

**8.2 Written Statement and correspondence from the Counsel General and
Minister for the Constitution: White Paper – A New Tribunal System for Wales**

(Pages 52 – 54)

Attached Documents:

LJC(6)-20-23 – Paper 12 – Written Statement from the Counsel General and Minister for the Constitution, 16 June 2023

LJC(6)-20-23 – Paper 13 – Letter from the Counsel General and Minister for the Constitution, 16 June 2023

**8.3 Correspondence from the Minister for Education and Welsh Language to the
Children, Young People and Education Committee: Tertiary Education and
Research (Wales) Act 2022**

(Pages 55 – 60)

Attached Documents:

LJC(6)-20-23 – Paper 14 – Letter from the Minister for Education and Welsh Language to the Children, Young People and Education Committee, 21 June 2023

**9 Motion to elect a temporary Chair under Standing Order 17.22 for
the Committee meeting on 3 July 2023**

(15:50 – 15:55)

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

(15.55)

11 UK – EU governance inquiry: Consideration of evidence

(15.55 – 16.05)

12 Legislative Consent Memorandum on the Victims and Prisoners Bill: Draft report

(16.05 – 16.15)

(To Follow)

Attached Documents:

LJC(6)-20-23 – Paper 15 – Draft report

13 Environment (Air Quality and Soundscapes) Bill: Draft report

(16.15 – 16.55)

(Pages 61 – 74)

Attached Documents:

LJC(6)-20-23 – Paper 16 – Draft report

LJC(6)-20-23 – Paper 17 – Letter from the Minister for Climate Change, 15 June 2023

LJC(6)-20-23 – Paper 18 – Letter to the Minister for Climate Change, 25 May 2023

14 Review of the implications of the Retained EU Law (Revocation and Reform) Bill

(16.55 – 17.05)

(To Follow)

Attached Documents:

LJC(6)-20-23 – Paper 19 – Briefing paper

Document is Restricted

Agenda Item 3

UK-EU Governance: The Role of the Devolved Nations

Written evidence to the Legislation, Justice and Constitution Committee, Senedd Cymru

Professor Tobias Lock, Jean Monnet Chair in EU Law, Maynooth University (National University of Ireland, Maynooth), Ireland [REDACTED]

19 June 2023

This evidence addresses the role of devolved governments and legislatures in the institutional architecture and governance of the UK-EU agreements. It first provides an overview of the governance structures contained in the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA) and then discusses the arguments in favour and against granting the devolved governments and legislatures greater involvement in these.

This is followed by a short comparative exercise on how other countries with multi-level governance arrangements (Switzerland and Germany) approach the formulation of European policy where the competences of their respective sub-state entities are affected. This comparison demonstrates that there are examples of different approaches to the involvement of the sub-state level in matters of EU governance.

1. Governance structures in the Withdrawal Agreement and TCA

a) Withdrawal Agreement

Governance of the WA is complex as it contains a mix of directly effective rules (notably those on citizens' rights¹ and in the Protocol on Ireland/Northern Ireland²) where the European institutions have by and large retained their functions of enforcement (EU Commission) and dispute settlement (European Court of Justice); and "traditional" public international law rules, for which the governance arrangements (including dispute settlement) follow a relatively typical inter-governmental model.

The main institution established by the WA is the **Joint Committee** "comprising representatives of the Union and the United Kingdom". The Joint Committee is co-chaired by both parties and decides unanimously. This means each party has the power to block Joint Committee decisions.

Apart from its role in bilateral dispute settlement (Article 169 WA), the Joint Committee has important decision-making powers concerning the day-to-day running of the agreement. It can also issue recommendations, which despite not being binding have significant authority. In specified cases, it has the power to amend the WA (if expressly empowered to do so). Most significantly so far, the Joint Committee's decision 1/2023 effected the changes to the Protocol on Ireland/Northern Ireland envisaged by the Windsor Framework.³

¹ Article 158 WA

² Article 12 Protocol on Ireland/Northern Ireland.

³ <http://data.europa.eu/eli/dec/2023/819/oj>.

In addition to the Joint Committee, the WA sets up several specialised committees: on citizens' rights, other separation provisions, the Protocols on Ireland/Northern Ireland, Sovereign Base Areas in Cyprus and Gibraltar, and on the financial provisions.

In terms of membership the WA only stipulates that the Committees "comprise representatives of the Union and representatives of the United Kingdom." Who precisely these representatives are is in the discretion of the respective party. However, it is important to note that each party can only ever speak with one voice as decisions must be taken by mutual consent between the EU-side and the UK-side.

The decision-making powers of the Joint Committee and specialised committees are not aligned with the competence divide in the UK's devolution arrangements. This means that committee decisions adopted under the WA structures may affect policy areas that are devolved.

At present, the UK Government facilitates the attendance of representatives of the devolved governments at Joint Committee meetings as well as those of the specialised committees where issues touching on devolved competence are on the agenda.⁴

b) TCA

Governance of the TCA follows a similar basic structure as that of the WA, but the TCA contains some additional governance features.⁵

The **Partnership Council** is the main governance institution in the TCA. Like the Joint Committee under the WA, the Partnership Council comprises representatives of the EU and the UK and it has supervisory and decision-making powers. As the TCA too cuts across reserved and devolved competence areas, the Partnership Council may take decisions in areas of devolved competence, notably fisheries, animal and plant health, and the environment.

As with the Joint Committee, the UK Government enables representatives of the devolved governments to attend Partnership Council meetings where devolved matters are on the agenda. The UK Government strives to involve those representatives in the preparation of such meetings where items discussed include matters of devolved competence. However, the UK Government reserves for itself the final discretion as regards attendance, meaning that attendance (and involvement in preparation) does not happen by right, but is a privilege extended by the UK Government.⁶ It is therefore not clear how much (if any) influence the devolved governments have on the agenda or on the UK's overall position.

⁴ Letter by former Minister of State Lord Frost of 27 May 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990199/Letter_from_Lord_Frost_on_engagement_regarding_EU_matters.pdf.

⁵ The following is based on a briefing for the Scottish Parliament's CEEAC Committee co-authored by Tobias Lock and Iain McIver of the Scottish Parliament Information Centre (SPICe): CEEAC/S6/22/14/1 Annexe A (<https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/joint-briefing-from-spice-and-professor-tobia-lock-the-committees-adviser.pdf>).

⁶ See letter by Lord Frost, fn 4.

The Partnership Council is supported by 18 **specialised committees** and 4 working groups. Finally, there is the **Parliamentary Partnership Assembly (PPA)**, comprising members of the European Parliament and of the UK Parliament. The PPA has no decision-making role, but serves as a forum for exchanges of views between parliamentarians. It has the power to seek information from the Partnership Council, to be informed about decisions and recommendations of the Partnership Council and make its own recommendations to it.

The UK delegation to the PPA currently comprises of 5 MPs representing constituencies in the devolved parts of the UK, of which one is from Wales; one from Northern Ireland; and three from Scotland.⁷ The devolved legislatures have been invited to send two members each to attend meetings of the PPA as observers.

2. Should there be a greater role for the devolved legislatures and governments?

Both the WA and the TCA are treaties concluded between the UK and the EU only. At the same time both agreements deal with policy areas that – within the UK context – are in the competence of the devolved legislatures. Furthermore, even where the agreements deal with subject matters that are reserved, the devolved governments will have a duty to act in compliance with the agreement and may have duties in carrying out obligations under the agreement (e.g. non-discrimination duties under the citizens' rights part of the WA; border control posts at Welsh ports; etc).

The question therefore is whether a case can be made for greater involvement of the devolved legislatures and governments in the governance of UK-EU relations under the agreements currently in force.

a. Arguments against a greater involvement

The arguments against a greater involvement of the devolved legislatures and governments would result from taking a traditional international law perspective: the TCA and the WA were concluded between the EU and the UK. The UK is therefore responsible for any violation of these agreements (much like the EU is responsible for violations by the EU Member States) whether caused by central government or a devolved government or legislature; it should therefore be the UK government (and Parliament) alone that should be responsible for the governance of the agreements.

Furthermore, one could argue that on the EU-side its Member States are not directly involved in the TCA bodies either: it is the EU Commission that represents the EU at the Joint Committee/Partnership Council; and it is the EU Parliament that represents the EU-side at the PPA. Hence no argument from equality of arms with the EU Member States can be made in this regard.

⁷ <https://www.parliament.uk/mps-lords-and-offices/offices/delegations/uk-eu-parliamentary-partnership-assembly-delegation/uk-eu-parliamentary-partnership-assembly/>.

b) Arguments in favour of a greater involvement

The WA and the TCA both deal with devolved policy areas. Notably under the TCA the Partnership Council has the power to adopt binding decisions. This includes binding decisions to interpret the provisions of Part Two of the TCA (on trade), which affects also devolved areas, such as fisheries, level playing field obligations on the environment, sanitary and phytosanitary measures.⁸ While these do not have direct effect⁹ in the UK's legal orders, the Welsh government is obliged to respect the UK's international obligations and the Secretary of State has powers to ensure compliance with UK international obligations by Welsh Ministers under s. 82 of the Government of Wales Act 2006.

Furthermore, the Partnership Council has the power to make recommendations to the parties (UK and EU) affecting areas of devolved competence. While these are not legally binding, they have considerable authority given that they have been adopted on the basis of a consensus of both the EU and the UK. Hence they may well be followed up by legislative or executive acts, possibly adopted at the central level, which may – again – affect devolved competence. Finally, the power to adopt amendments to the TCA in the cases provided is potentially far-reaching and would occur purely at an intergovernmental EU-UK level without the need to involve Parliament or the devolved governments or legislatures.

Moreover, for the first four years (i.e. until May 2025) the Partnership Council has the power to amend the TCA to 'correct errors, or to address omissions or other deficiencies'.

Given the powers of the Partnership Council, the devolved legislatures and governments have a legitimate interest in influencing its decisions. Otherwise, there is a danger that devolved competence nominally existing under the Government for Wales Act 2006 and other devolution legislation is in practice squeezed out due to international obligations agreed by the UK Government without devolved input.

Additionally, the comparison with the EU Member States – which are not represented – is not entirely convincing. The reason the EU Member States are not represented in the TCA Partnership Council or in the WA Joint Committee is chiefly because these two treaties were concluded by the EU alone on the basis of exclusive EU competence. One can contrast the UK-EU agreements with other EU partnership agreements, e.g. the EU's association agreement with Ukraine,¹⁰ which was concluded as a so-called mixed agreement, i.e. between the EU and its Member States on the one side and Ukraine on the other. This happened because the EU did not have the competence to conclude the entire agreement on its own. As a consequence, the Member States (through the Council of the EU) are part of the Association Council (the equivalent to the Partnership Council in the TCA). Given therefore that the EU had the exclusive competence to conclude the TCA and the WA, the EU Member States did not need to be represented in this way.

The situation as far as the devolved parts of the UK are concerned is markedly different, however. For one, devolved competence areas are clearly affected by the TCA and WA. In

⁸ Article 519 (b) TCA.

⁹ Articles 4 and 5 TCA.

¹⁰ http://data.europa.eu/eli/agree_internation/2014/295/oj

other words, the subject matter of the agreements is not within the exclusive competence of the UK Parliament or UK Government.¹¹ Furthermore, the imbalance of the UK's devolution settlement – with devolution only applying to the three devolved parts of the UK but not to England – comes to bear here too. Whereas the EU Commission and other EU institutions are set up to serve (only) the EU interest – however defined – the UK Government is caretaker not only of the interests of the UK as a whole, but also fulfils the role of the government for England. Thus England's specific interests will always be represented at the Partnership Council or Joint Committee, whereas the specific interests of the devolved nations may not be.

As far as the PPA is concerned, however, the full membership of members of the devolved legislatures may not be possible given that the TCA expressly mentions "Members of the UK Parliament", i.e. Westminster. That said, there would appear to be space to upgrade the current observer status in practice, e.g. by granting full speaking rights to observers or giving them input into the agenda.

c) Review of the TCA as a specific and time-sensitive reason for engagement and involvement

According to Article 776 TCA, there shall be a joint review of the implementation of the TCA every five years. Given the TCA's entry into force on 1 May 2021, the first such review is due to take place around May 2026. While the TCA is open-ended as to the substance and specific procedure for such review, it is likely that the parties will thrive to keep any changes to the TCA confined to ones which can be effected by a Partnership Council decision and/or by way of a Partnership Council recommendation. This would save the parties the process of formal treaty amendment and subsequent domestic ratification.

Furthermore, the EU-UK fisheries deal – which is part of the TCA – will expire on 30 June 2026 and access to waters, quota, etc will have to be renegotiated on an annual basis.¹² In addition, a number of unilateral acts by both the UK and the EU will be up for renewal (or abandonment). These include the UK's decision to accept "CE" markings on goods as well as the UK's approach to chemicals regulation as well as the EU's adequacy decision on the free flow of personal data due to expire in June 2025.¹³

The Senedd and/or the Welsh Government may therefore want to use the opportunity to influence these decisions while they are being considered.

4. How can devolved input best be achieved?

Neither the TCA nor the WA are prescriptive as to the composition of the UK delegation or its internal decision-making processes. This means the UK delegation can feature representatives of the devolved administrations (be it at ministerial or civil servant level).

¹¹ Though of course, technically external relations are a reserved matter, so there is absolutely no suggestion being made here that the UK Government acted ultra vires when concluding the TCA or the WA.

¹² Annex 38 to the TCA; and Article 498 TCA (stipulating annual negotiations).

¹³ <https://ukandeu.ac.uk/wp-content/uploads/2023/01/UKICE-Where-Next-the-Future-of-the-UK-EU-Relationship-3.pdf>.

That said, the UK can only speak with one voice in the Partnership Council or in the Joint Committee. Thus the key to ensuring that the voice of the devolved governments and legislatures is heard is to be found at the domestic level. At present, the UK Government facilitates the attendance of devolved governments at meetings of the Partnership Council and Joint Committee as set out above. While this should be welcomed, it should be noted that this decision was entirely in the UK Government's discretion and could be reversed at any time.

Furthermore, meaningful involvement would require more than mere attendance at meetings. An ability to influence the meeting agenda, having access to meeting documents, or being able to introduce documents would be of greater benefit.

As far as the PPA is concerned, the TCA contains greater limitations as it is only open to Members of the UK Parliament and would thus exclude AMs, MLAs or MSPs as full members. The current observer status is probably the only achievable status. However, greater information flow and transparency might be unilaterally achieved by the UK. Furthermore, the UK delegation currently features three MPs representing Scottish constituencies and one each representing Wales and Northern Ireland. Greater regional balance could perhaps be achieved in this regard.¹⁴ Greater involvement of observers at meetings of the PPA, e.g. in terms of speaking rights, would need to be agreed with the EU, however.

5. Comparative examples

a) Switzerland

A useful comparison may be drawn with Switzerland, which is not a Member State. Its relations with the EU are governed by a large number of bilateral agreements, not entirely unlike the two agreements governing the UK-EU relationship. Switzerland is a federation and so the question of involving the Swiss cantons in the governance of EU-Swiss relations arises there too.¹⁵

Foreign policy is a federal competence. However, Article 55 of the Swiss Federal Constitution envisages an involvement of the cantons in certain situations:

1 The Cantons shall be consulted on foreign policy decisions that affect their powers or their essential interests.

2 The Confederation shall inform the Cantons fully and in good time and shall consult with them.

¹⁴ Note, however, that not all EU Member States are represented in the EU delegation.

¹⁵ Obviously, there are considerable differences between devolution (in essence parallel competences between the central and devolved level) and Swiss federalism where the cantons have certain exclusive competences.

3 The views of the Cantons are of particular importance if their powers are affected. In such cases, the Cantons shall participate in international negotiations in an appropriate manner.

This means that two situations must be distinguished depending on whether the powers (competences) of the cantons are affected or not. If they are not, the federation will inform them and consult with them. If they are, the federation must involve the cantons in the negotiations. In practice this means that the cantons are involved in the preparation of negotiations with the EU and they are represented in the Swiss delegations.¹⁶ Typically, the cantons will act in a concerted fashion here through the conference of canton governments,¹⁷ which adopts joint positions with a majority of 18 (out of 26).¹⁸

This gives the cantons some, but not decisive influence in Swiss European affairs. They must be informed and there is a formal process for making their views known, but the federation is not bound by these even if they concern matters falling within their exclusive competence.

b) Germany

Another example is Germany, which is a federal state and an EU Member State. EU competences and the competences of the German federal state are not aligned, which means that the EU sometimes legislates within the competence of the German *Länder* (states). Furthermore, even where there is an exclusive federal competence (the equivalent to a reserved matter in the UK's devolution settlement), the interests (be they only practical) of the *Länder* may be affected. This is recognised by the relevant provision in the German constitution (Basic Law). As can be seen in its wording, the Basic Law envisages a participation of the *Länder* governments (via the *Bundesrat* – Federal Council) with differing intensity depending on the intensity with which competences of the *Länder* are affected ranging from “participation in the decision making process”, to “taking into account”, to giving the *Länder* position “prime consideration” to ultimately ceding the representation of Germany at EU level to the *Länder*.

Article 23 (4) – (7) is worded as follows:

4) The Bundesrat shall participate in the decision-making process of the Federation insofar as it would have been competent to do so in a comparable domestic matter or insofar as the subject falls within the domestic competence of the *Länder*.

(5) Insofar as, in an area within the exclusive competence of the Federation, interests of the *Länder* are affected and in other matters, insofar as the Federation has legislative power, the Federal Government shall take the position of the Bundesrat into account. To the extent that the legislative powers of the *Länder*, the structure of Land authorities, or Land administrative procedures are primarily affected, the position of the Bundesrat shall receive prime consideration in the formation of the political will of the Federation; this process shall be consistent with the responsibility

¹⁶ <https://www.eda.admin.ch/missions/mission-eu-brussels/en/home/key-issues/cantons-role.html>.

¹⁷ <https://www.zh.ch/de/politik-staat/kanton/aussenbeziehungen/aussenpolitik.html>.

¹⁸ https://kdk.ch/fileadmin/redaktion/uber_uns/zweck_und_organisation/vereinbarung_kdk_2006-en.pdf.

of the Federation for the nation as a whole. In matters that may result in increased expenditures or reduced revenues for the Federation, the consent of the Federal Government shall be required.

(6) When legislative powers exclusive to the *Länder* concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a member state of the European Union shall be delegated by the Federation to a representative of the *Länder* designated by the Bundesrat. These rights shall be exercised with the participation of, and in coordination with, the Federal Government; their exercise shall be consistent with the responsibility of the Federation for the nation as a whole.

(7) Details regarding paragraphs (4) to (6) of this Article shall be regulated by a law requiring the consent of the Bundesrat.¹⁹

More details are contained in the Act on Cooperation between the Federation and the *Länder* in the affairs of the EU²⁰ and in administrative guidance.²¹ The latter spells out duties to share documents, including internal documents drawn up by the German EU representation and duties to consult in so far as the competences of the German Federal Council (which represents the *Länder* as an upper chamber of the federal parliament) are affected.

By contrast to the Swiss cantons, the German *Länder* do therefore have powers to veto initiatives that affect their competences. In this regard, the German model would certainly be one of a more robust involvement of the sub-state level.

This shows that there are different approaches to the involvement of the sub-state level in matters of EU governance. Again, both the Swiss and German approaches are entirely internally determined.

There is some criticism of this set-up as it is deemed to hamper effective policy formulation by the German state where EU affairs are concerned:²² it is said to be slow, so that German policy proposals often come too late to have any influence and – where no agreement can be reached internally – to result in Germany having to abstain on important issues.

These issues would also exist if the devolved parts of the UK were given greater decision-making powers with regard to the WA or TCA. However, these would be less problematic in practice: an inability to reach an internal compromise at UK level would not result in the UK voice not being heard (as is the case with a German abstention) because all decisions under the TCA and WA must be taken unanimously. Furthermore, there is not the same pressure to come to decisions as at the EU level: the TCA and WA are not designed to be dynamic, but largely static, so that decisions by the Joint Committee or Partnership Council will happen relatively rarely so that there would usually be enough time to come to a compromise.

¹⁹ https://www.gesetze-im-internet.de/englisch_gg/.

²⁰ Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union, <https://www.gesetze-im-internet.de/euzblg/BJNR031300993.html>.

²¹ https://www.verwaltungsvorschriften-im-internet.de/bsvwbund_29101993_E05.htm.

²² <https://www.bpb.de/shop/zeitschriften/apuz/30626/die-koordination-der-deutschen-europapolitik/>

That said, it should be reiterated that the situations of Germany and Switzerland differ considerably from that in the UK: Germany is an EU Member State, the UK is not. Both Germany and Switzerland are federations, which the UK is not.

The point of drawing this comparison is therefore not to suggest using it as a blueprint for the participation of the devolved nations in the governance of UK-EU relations, but to demonstrate that a) a structured and agreed approach to questions of participation of sub-state entities in EU-relations is possible; b) that different levels of involvement are conceivable; c) that transparency and information flow can be ensured in a systematic way; and d) that all of this can be done by way of internal rules.

1.0 Context

This submission on UK-EU governance draws on existing research on intergovernmental relations in the context of Wales' sub-state diplomacy in relation to the EU spanning the pre-1999 administrative devolution arrangements to the latest arrangements for UK-EU governance post-Brexit.¹ Research into current developments will develop further in a new project on post-Brexit IGR (see footnote 1). The submission focuses on the Welsh Government's representation in UK-EU relations and makes some points regarding the role of the Senedd in these governance arrangements. It also briefly mentions the Welsh Government's representation to the EU given the relevance to Wales' external affairs.

1.1 Main points raised in this submission

- Despite the differences, mechanisms for devolved government engagement with the UK's EU position post-1999 are an effective benchmark against which to analyse the post-Brexit arrangements for sub-state governments to influence UK-EU governance, particularly the nature of the principles on which relations were established, including their conception of devolved interests, and the consistency of the nature of opportunities to influence the UK's EU positions.
- The UK's withdrawal from the EU has had a fundamental impact on devolved government's ability to influence the UK Government's position in relation to the EU. Whilst the different arrangements inevitably influence Welsh devolved matters, overall, devolved government influence is more limited and variable, and seems unstructured and inconsistent. A key element in these shifts is a narrower interpretation of what is considered to be a devolved interest in relation to the EU which may have more significant long-term implications.
- Ways of strengthening devolved government input into UK-EU governance arrangements include greater clarity regarding the status of the various statements of principles with respect devolved governments in the UK-EU governance arrangements, increased formalisation and consistency of devolved government representation and greater involvement of devolved legislatures in scrutinising intergovernmental relations.
- Recent developments underline that their flexible and non-binding status provides the UK Government with the potential to constrain sub-state external relations, thus pointing to the value of considering firmer and more robust arrangements, including arrangements established on a legal basis.

¹ See Royles, E. 'Sub-state diplomacy: Understanding the international opportunity structures'. *Regional & Federal Studies*, 27,4 (2017); Royles, E. (2016). 'Substate Diplomacy, Culture, and Wales: Investigating a Historical Institutionalist Approach' *Publius: The Journal of Federalism*, 46, 2 (2016); Minto, R., Rowe, C., Royles E. 'Sub-states in transition: changing patterns of EU paradiplomacy in Scotland and Wales, 1992–2021' *Territory, Politics, Governance* (2023). Current research in this area, 'Assessing the UK's new intergovernmental relations architecture post-Brexit' Carolyn Rowe, Rachel Minto and Elin Royles, supported by the James Madison Trust.

2.0 Post-1999 arrangements

Though EU relations is a reserved matter, arrangements for devolved government engagement with the UK in the EU context post-1999 were well developed. The arrangements contrasted with a broader context of wide variation in the nature of inter-governmental relations, and it is an illustrative example of where there was confidence in the process of inter-governmental relations.

2.1 The Memorandum of Understanding (MoU) underpinning intergovernmental relations included a Concordat on Co-ordination of European Union Policy Issues that established principles for relations between central and devolved governments. Moreover, in recognising the interest of devolved governments in European policy-making in relation to devolved matters, it committed to 'involve the Welsh Ministers as directly and as fully as possible in decision-making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance to Wales).'²

2.2 At ministerial level, the intention of involving Welsh Ministers in decision-making on EU matters was to be operationalised via a Joint Ministerial Committee (Europe). In practice, devolved Ministers sought to influence UK negotiating positions and were able to participate in UK Council of Ministers delegations, were sometimes lead minister, with the requirement to adhere to a single UK position. As regards official-level relations, devolved government Brussels officials were granted diplomatic status. At that point, full accreditation of sub-state officials was only extended in the Belgian and UK cases.³ With UKREP as the main coordination point, devolved officials attended Committee of the Permanent Representation working group meetings.

2.3 Overall, there were limitations to these IGR mechanisms as they were not constitutionally entrenched, depended on tools of soft governance and vulnerable to party political influences. However, the inter-governmental structures enabled devolved administrations to influence the formation of the UK's EU negotiating positions on issues affecting devolved competence and they were also able to undertake their own activities in Brussels. These arrangements were considered in hindsight as 'a model of clarity and cooperation between the Welsh Government and the UK Government and then between the UK Government and the European Union.'⁴

3.0 Current arrangements for devolved governments to influence the UK Government's position in relation to the EU

The UK's withdrawal from the EU has had a fundamental impact on devolved government's ability to influence the UK Government's position in relation to the EU. The EU Withdrawal Agreement and the Trade and Cooperation Agreement (TCA), the two main agreements establishing UK-EU relations, and the Common Frameworks are inevitably associated with devolved matters in a whole host of policy areas and in practice have implications for every Welsh Government department. For instance, the Welsh Government and Senedd are responsible for implementation and compliance with significant parts of TCA in devolved areas and they clearly influence policy-making and regulatory frameworks in Wales.⁵

² UK Government, *Devolution: Memorandum of Understanding and Supplementary Agreements* (2013) p. 25.

³ Tatham, M. 'Paradiplomats against the state: Explaining conflict in state and sub-state interest representation in Brussels', *Comparative Political Studies* 46,1 (2013) p.66.

⁴ Interview cited in Minto, Rowe and Royles (2023).

⁵ see Moran, S., Wilkes, J. 'UK-EU relations: the responsibilities of new Welsh Ministers' Senedd Research, Welsh Parliament (2021).

3.1 EU Withdrawal Agreement arrangements

There is no Welsh Government representation on the 8 UK-EU forums established with respect to the Withdrawal Agreement nor are the Welsh or Scottish Governments invited to attend the Withdrawal Agreement Joint Committee (WAJC).

3.1.2 With regards to Welsh Government input into Trade Agreements, the UK Government provides some opportunities to input by sharing parts of texts that the UK Government considers to be relevant to devolved areas with the Welsh Government. In practice, they have not been willing to share the texts in their entirety, for instance on issues that have direct implications to devolved areas.⁶ This contrasts with practices highlighted above in relation to the EU in the post-1999 that recognised that devolved interests encompassed non-devolved matters which impact on devolved areas.

3.2 Trade and Cooperation Agreement arrangements

The main document guiding decisions on devolved governments' input into the TCA arrangements, seems to be a letter by Lord Frost in May 2021. It stated 'where items of devolved competence are on the agenda for the Partnership Council or the Specialised Committees, we expect to facilitate attendance by Devolved Administrations at the appropriate level... However, final discretion in any specific instance as regards attendance would be held by the UK co-chair of the body concerned, depending on the nature of the discussion.'⁷

3.2.1 In practice, therefore, the Welsh Government's role on the UK-EU Partnership Council (PC), the main TCA oversight body, is limited. Welsh Government officials and Welsh ministers have attended some of these meetings, but this has been inconsistent. In contrast to the post-1999 arrangements, devolved Ministers have observer status, have no formal role in decision-making, and no role in any decision-making that occurs between meetings.⁸ The Welsh Government have advocated for being full / active participants where issues related to devolved competences are discussed.⁹ A Minister called for developing joint positions across the four governments of the UK in areas of devolved competence or in areas affecting devolved competence and advocating these joint UK positions to the EU.¹⁰ They also directly referred to the EU Council of Ministers input as a proven model of how to more actively engage the devolved governments and as a 'valuable exercise of ministerial time'.¹¹

3.2.2 As regards the Trade Partnership Committees and Specialised Committees, the Welsh Government's role is again limited and ad hoc. Regarding composition, 'UK and EU co-chairs of each TCA Committee and Working Group determine their respective delegations to each meeting. Numbers in each delegation will vary between meetings, depending on what agenda items are scheduled for

⁶ For instance, in relation to the UK-Australia Free Trade Agreement, the Minister for Economy stated ' Although we have engaged with the UK Government throughout the negotiations and have had the opportunity to feed in our views on the potential opportunities and risk for Wales, we have yet to see the exact details of what will be included in the agreement.' Welsh Government, 'Written Statement UK-Australia Free Trade Agreement' (2021).

⁷ Lord Frost, 'Letter from Lord Frost on engagement regarding EU matters' (UK Government, Cabinet Office, 2021).

⁸ UK Parliament, 'Welsh Parliament Legislation, Justice and Constitution Committee: Submission to the House of Lords, European Affairs Committee' (2022).

⁹ This is expressed most strongly in Vaughan Gething's letter to Lord Frost, Gething, V, Letter to Lord Frost following Partnership Council (Welsh Government, 2021).

¹⁰ Gething, V, Letter to Lord Frost following Partnership Council (Welsh Government, 2021).

¹¹ Welsh Parliament, 'The Record, Plenary 1 February 2022, 6. Statement by the Minister for Economy: Wales and Europe - managing a new relationship' (2022a).

discussion'.¹² Therefore, the expectation is that when devolved matters are considered, their attendance should be facilitated at an appropriate level.

3.2.3 In practice, there is evidence that the Welsh Government is 'not routinely invited to all meetings and its request to join others has been rejected'.¹³ Evidence suggests that there are examples of 'good' official level engagement in working groups and specialised committees with Welsh Government officials included in delegations where there is a devolved interest. They have been involved in preparations for particular committees, working level pre-meetings, and attended as observers. However, if there is no agreement on a UK position, the UK Government reserves the right to decide on the UK's approach.¹⁴

3.2.4 At the same time, it is difficult to fully appreciate the Welsh Government's level of engagement with these committees. Whilst this is partly as a result of the ad hoc nature of the degree to which they are invited to attend, it can also be attributed to a lack of communication by the Welsh Government, including articulation of their priorities in relation to the trade and specialised committees.

3.2.5 Overall, whilst Lord Frost suggested that the Cabinet Office's EU Secretariat would have a role in supporting the coordination of preparation,¹⁵ the TCA arrangements for devolved government input seem unstructured. They seem to operate in a segmented way led by individual UK government departments with no clear overall coordination, in contrast to the post-1999 arrangements.

3.3 Common Frameworks

Twenty-six of the UK Common Frameworks impact on areas devolved to Wales. Whereas the function of the UK Common Frameworks is to 'ensure a common approach is taken where powers have returned from the EU which intersect with policy areas of devolved competence',¹⁶ there are clear issues in how they facilitate coordination between central and devolved governments. For instance, the House of Lords Common Frameworks Scrutiny and Welsh Senedd committee investigation into Common Frameworks called for clear terms of reference for working groups and a means of understanding relationships between them.¹⁷

3.4 Intergovernmental arrangements introduced after the UK Government's review of intergovernmental relations

The review of intergovernmental relations establishes five principles to guide relations between the UK and devolved governments:

- a. Maintaining positive, constructive, and respectful relationships.
- b. Building and maintaining trust.
- c. Allowing information sharing, including confidential information.
- d. Increasing understanding of intergovernmental activities.

¹² UK Parliament, 'Procurement: UK-EU Trade and Cooperation Agreement: Questions for Cabinet Office, UIN 25876, tabled on 1 July 2021' (2021).

¹³ Moran, S., Wilkes, J., Lugonia, B., 'The room where it happens: Wales in UK-EU relations, Senedd Research, Welsh Parliament (2022).

¹⁴ Drakeford, M. 'Letter from the First Minister to the Legislation, Justice and Constitution Committee 18 January 2022' (Cardiff, Welsh Government, 2022).

¹⁵ Lord Frost, 'Letter from Lord Frost on engagement regarding EU matters' (UK Government, Cabinet Office, 2021).

¹⁶ UK Government, 'UK Common Frameworks' (2023).

¹⁷ Welsh Parliament, 'Economy, Trade and Rural Affairs Committee, Common Frameworks, December 2022' (2022b).

e. Implementing a mutually agreed process for dispute resolution.¹⁸

3.4.1 Despite the potential of these structures, based on the early stage of their implementation, it is difficult to be wholly positive regarding these arrangements.

3.4.2 First, in addition to problems in terms of slow progress in implementing these structures, there were initial questions as to the extent to which the UK Government took these structures seriously. The first scheduled meeting of the IMG on UK-EU Relations was postponed. The Welsh Government Minister for Economy, Vaughan Gething, then missed the rescheduled first meeting because it was called with two hours' notice, which he described as 'not an acceptable way to conduct intergovernmental relations.'¹⁹ It is understandable that under such circumstances it was only possible to arrange for a senior Welsh Government official to attend as an observer. The Welsh Government has also called for the IMG to meet regularly, for instance before Partnership Council and the Withdrawal Agreement's Joint Committee.

3.4.3 Second, whereas the UK Government publishes documents and communiques regarding the operation of a number of IMGs in line with the commitment to greater transparency regarding intergovernmental relations, the IMG on UK-EU Relations is not included on the list and no information is currently issued from the UK Government.²⁰

3.4.4 Third, the Welsh Government anticipated that the IMG on UK-EU Relations would be a forum to raise concerns and call for strengthening devolved government engagement, for instance calling for 'full and active opportunity to participate' in the TCA Partnership Council.²¹ They have also raised issues such as lack of engagement with devolved Governments before introducing the Northern Ireland Protocol Bill (July 2022).²² It is not clear that the UK Government has responded to these points and there has been no change in the extent of devolved government representation.

3.5 Reflections and recommendations

Despite their potential, the new intergovernmental structures established in the UK since 2022 raise the following concerns.

3.5.1 In contrast to the clarity and relative consistency of UK-EU intergovernmental relations arrangements between the UK and devolved governments post-1999, as illustrated, current intergovernmental arrangements in this area vary widely in the extent to which devolved governments are represented and can influence decision-making. Their decreased influence in many of these decision-making structures contributes to the lack of trust in intergovernmental relations.

3.5.2 Relatedly, there is little coherence to the influence of devolved governments across the intergovernmental structures in relation to the EU, the TCA, Common Frameworks and revised intergovernmental relations arrangements. Your committee was very clear on this 'inconsistent

¹⁸ UK Government, 'Policy Paper, Review of Intergovernmental Relations' (2022).

¹⁹ Welsh Government, 'Cabinet Statement: Written Statement: Meeting of the UK-EU Relations Interministerial Group, 17 February 2022' (2022).

²⁰ UK Government, 'Collection: Intergovernmental relations. Documents relating to engagement between the UK Government and the devolved administrations' (2023).

²¹ Drakeford, M. 'Letter from the First Minister to the Legislation, Justice and Constitution Committee, 10 March 2022' (Cardiff, Welsh Government, 2022).

²² Welsh Government, 'Cabinet Statement: Written Statement: Meeting of the UK-EU Relations Interministerial Group, 14 July 2022' (2022).

approach to how the structures and processes established within them will engage with other governance structures on UK-EU relations such as the IMG and UK-EU governance structures'.²³

3.5.3 Alongside this, a shift has taken place in the foundational basis of devolved government representation, including what is considered to be a devolved interest in relation to the EU. As previously outlined, under the post-1999 arrangements, the Concordat on Co-ordination of European Union Policy Issues established a relatively all-encompassing interpretation of an interest in devolved matters and in 'non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance to Wales'. Currently, the arrangements seem to have departed significantly from this position to one where individual UK Government departments on a case by case basis develop their own narrower interpretation of what is relevant to devolved matters. In this particularly ad hoc set up there seems to be no clear attempt to take into account the way in which non-devolved policy areas can have a significant impact on devolved matters.

3.5.4 Ways of strengthening devolved government input into UK-EU governance arrangements include:

- Greater clarity regarding the guiding principles driving intergovernmental relations and the status of devolved governments within the arrangements. It is important to clarify the status of the Memorandum of Understanding which includes the Concordat on Co-ordination of European Union Policy Issues as this is currently unclear. Relatedly, there is a lack of clarity regarding the concordat's relationship to the latest principles for intergovernmental relations established by the Review of Intergovernmental Relations and the status of those principles in the context of EU related issues vis a vis the direction provided by Lord Frost's 2021 letter.
- Increased consistency and formalisation of devolved government representation across the intergovernmental arrangements in line with their status within the post-1999 arrangements.
- Greater involvement of devolved legislatures in scrutinising intergovernmental relations would also be beneficial. This is a general point also important to more specific repercussions in the context of devolved input into the UK's relations with the EU. The treaty text only refers to the UK Parliament as regards the UK-EU Parliamentary Partnership Assembly (PPA). The role of UK devolved legislatures could be formalised and strengthened beyond the current provision of attending meetings as observers who lack speaking and voting rights during the plenary sessions. It is positive that Senedd elected members have been invited to attend PPA meetings and there is potential to evolve these arrangements to formalise enabling devolved legislature representatives to more actively participate in the meetings, e.g. contribution to work in groups and specific items on devolved legislature engagement on the agenda.

3.6 Wales' external relations with the EU

Post-1999, the EU Concordat enabled devolved governments to able set up Brussels offices and were considered as part of the UKRep organisational structure. The arrangements enabled the Welsh Government to develop its own relationships with EU institutions, membership and activity in EU inter-regional networks and other European network alongside the access and engagement via UK structures.

²³ UK Parliament, 'Welsh Parliament Legislation, Justice and Constitution Committee: Submission to the House of Lords, European Affairs Committee' (2022), p. 4.

3.6.1 Post-Brexit, the Welsh Government has set out an agenda of seeking to maintain its engagement with these structures in Brussels, including expanding its network of offices in Europe.²⁴ It faces an additional requirement that devolved governments keep the UK Government informed of ministerial or senior official level contact with EU institutions or member states to ensure a coordinated response as stipulated in Lord Frost's letter.²⁵

3.6.2 The UK Government can potentially constrain the external activities of UK devolved governments. A recent development is that the UK Government is keeping the overseas activity of the SNP Scottish Government 'under close review'²⁶ and issued guidance to Heads of UK Missions on 'Working with the Scottish Government internationally'. A particular focus is devolved ministerial visits overseas. Revised requirements are indicated to include the need for greater information gathering and sharing within the UK Government on Scottish ministerial visits, requiring host governments to coordinate requests for devolved ministerial visits via FCDO, and UK diplomats to explain the reserved and devolved powers distinction to host governments.²⁷

3.6.3 The steps taken reflect the extent of UK Government concerns that Scottish Government international engagement is being used to pursue its independence agenda. Accusations include Scottish Government activities internationally overstepping the boundary into reserved matters, particularly the constitution, and undermining UK Government policy positions. It is viewed by the Scottish Government as damaging and limit its international activity.²⁸

3.6.4 This example is somewhat exceptional, reflecting the extent of strained relations between the UK Conservative Government and Scottish SNP Government. However, whilst the degree to which the latest guidance impacts upon Welsh Government ministerial activity internationally and in relation to the EU and European governments is unclear, it is instructive of the UK Government's potential to constrain the external relations of the UK's sub-state governments.

3.6.4 Overall, this recent development reminds us that the flexibility of the arrangements provides the potential for central government to take steps place additional requirements on devolved governments and to constrain sub-state external relations activity under particular circumstances. This underlines the vulnerability of current sub-state external relations arrangements and the repercussions of their non-binding status. It points to the value of considering a firmer basis for these arrangements.

²⁴ See Minto, R., Rowe, C., Royles E. 'Sub-states in transition: changing patterns of EU paradiplomacy in Scotland and Wales, 1992–2021' *Territory, Politics, Governance* (2023).

²⁵ Lord Frost, 'Letter from Lord Frost on engagement regarding EU matters' (UK Government, Cabinet Office, 27 May 2021).

²⁶ UK Parliament, 'Hansard: Scottish Government Ultra Vires Expenditure, Volume 828: debated on Thursday 9 March 2023' (2023), Lord Offord of Garvel.

²⁸ Scottish Government, 'Correspondence: Protecting Scotland's interests: letter to the UK Foreign Secretary, 1 May 2023' (2023).

Agenda Item 4.1

SL(6)364 – The Animal By-Products, Pet Passport and Animal Health (Fees) (Wales) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend the Animal By-Products and Pet Passport (Fees) (Wales) Regulations 2018 (“the Animal By-Products Regulations”) and the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 (“the Animal Health Regulations”) (together, “the 2018 Regulations”). The amendments modify the fees payable to the Welsh Ministers under the 2018 Regulations for services provided in the field of animal health by the Animal and Plant Health Agency to reflect full cost recovery of those services.

Regulation 2(4) amends the Animal By-Products Regulations to revoke the fees payable to the Welsh Ministers for blank identification documents and services carried out in relation to the provision of pet passport identification documents.

Regulation 2(5) amends the Animal By-Products Regulations to modify the fees payable to the Welsh Ministers for services carried out in relation to animal by-products. The fees, where increased, are increased by the medium average uplift of 41% from the current fees in two steps: the first increase applies on or after 5 July 2023, the second increase applies on or after 1 July 2024.

Regulation 3(6) amends the Animal Health Regulations to modify the fees payable to the Welsh Ministers for services carried out in relation to salmonella controls. The fees, where increased, are increased by the medium average uplift of 53% from the current fees in two steps: the first increase applies on or after 5 July 2023, the second increase applies on or after 1 July 2024.

Regulation 3(7) amends the Animal Health Regulations to modify the fees payable to the Welsh Ministers for services carried out in relation to the poultry health scheme. The fees are increased by the medium average uplift of 21% from the current fees. Regulation 3(7)(a) increases certain poultry health scheme fees in two steps: the first increase applies on or after 5 July 2023, the second increase applies on or after 1 July 2024. Regulation 3(7)(b) increases the remainder of the specified poultry health scheme fees in a single step, and the increase applies on or after 5 July 2023.

Regulation 3(8) to (10) amend the Animal Health Regulations to modify the fees payable to the Welsh Ministers for services carried out in relation to artificial breeding controls. The fees are increased by the medium average uplift of 65% from the current fees in two steps: the first increase applies on or after 5 July 2023, the second increase applies on or after 1 July 2024.



Regulation 3(11) amends the Animal Health Regulations to modify the fees payable to the Welsh Ministers for services carried out in relation to border control posts. The fees are increased by the medium average uplift of 34% from the current fees in a single step, and the increase applies on or after 5 July 2023.

These Regulations also make minor and consequential amendments to the 2018 Regulations.

Procedure

Draft affirmative.

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

Technical Scrutiny

The following 5 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 3(2)(a) introduces an amendment to the definition of "border inspection post" in the Animal Health Regulations. As a result of this amendment, in the Welsh language text, the new definition of "safle rheoli ar y ffin" will no longer appear in the correct alphabetical position in regulation 2 of the Animal Health Regulations.

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

In the preamble, at the end of the first paragraph on page 3, "the Animal Health and Welfare Act 1984" is defined as "the 1984 Act", however the definition is not used elsewhere in the Regulations.

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

Regulation 2(5)(a) and (b)(iii) substitute new columns 2 and 3 in Tables 1 and 2 in the Schedule to the the Animal By-Products Regulations. The original columns 2 and 3 included "Column 2" and "Column 3" at the head of the columns in the first row, but they have not been included in the new columns 2 and 3. Also to note, the new columns, as inserted by these Regulations are formatted differently to the original Tables and the original columns 1, which remain. The new columns have been separated by lines whereas the original Tables do not include such lines.



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

Regulation 3(8)(a)(iii)(aa) amends the Table in Schedule 3 to the Animal Health Regulations. In the English language text, the words "an EC" appear twice in the sixth row of Column 1, therefore the description in regulation 3(8)(a)(iii)(aa) doesn't allow for differentiation between both instances, without including additional text.

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

Regulation 3(11)(c) amends Table 2 in Schedule 6 to the Animal Health Regulations. Table note (2) is not part of Column 2, it is a note for the whole of Table 2, therefore this note should not have been included in the substitution for Column 2. It may have been more appropriate to amend table note (2) in a separate provision. The punctuation is also incorrect as the closing quotation marks appear after the final words of Column 2, which suggests only the text in Column 2 is being amended and there is no punctuation for the new table note (2).

Merits Scrutiny

The following 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

6. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

The Regulations make modifications to the fees payable to the Welsh Ministers in relation to services delivered by the Animal Health and Plant Health Agency, under the 2018 Regulations.

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

In the preamble, section 10 of the Animal Health and Welfare Act 1984 is cited as one of the enabling powers. The powers in section 10 are varied, therefore specifying the relevant subsections would better assist the reader. For example, the Animal Health Regulations identify section 10(1) and (3)(c) of the Animal Health and Welfare Act 1984.

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

The preamble to the Regulations state that they are subject to the draft affirmative procedure in accordance with paragraph 1(8) of Schedule 7 of the European Union (Withdrawal) Act 2018 ("the 2018 Act"). Paragraph 1(8) relates to regulations under Part 1 of



Schedule 2 to the 2018 Act. These Regulations are made under Schedule 4 to the 2018 Act. The relevance of paragraph 1(8) of Schedule 7 to the 2018 Act to these Regulations does not become apparent unless read in conjunction with paragraph 12 of Schedule 7 to the 2018 Act. A reference to paragraph 12 of Schedule 7 to the 2018 Act, in a footnote or otherwise, would improve the accessibility of the law.

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

The Explanatory Memorandum states the following under the heading 'Consultation':

*APHA initial communications were published on GOV.UK on 18 August 2022.
Further information was issued on 10 March 2023.*

Can the Welsh Government please confirm whether or not there has been a consultation on these Regulations.

We were unable to locate the further information dated 10 March 2023. The communication of 18 August 2022 is not easily accessible on gov.uk, providing links in the Explanatory Memorandum would assist the reader.

Welsh Government response

A Welsh Government response is required to reporting points 1 to 5 and 7 to 9.

Legal Advisers

Legislation, Justice and Constitution Committee

21 June 2023



Agenda Item 5.1

SL(6)362 – The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend Schedule 19 to the Equality Act 2010 (“the 2010 Act”). Schedule 19 sets out the public authorities which are subject to the public sector equality duty under section 149 of the 2010 Act, which provides that a public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Regulations amend Part 2 of Schedule 19 to the 2010 Act to replace the Higher Education Funding Council for Wales (“HEFCW”) with the new Commission for Tertiary Education and Research (“CTER”), following the passing of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”). The Regulations will come into force on 4 September 2023 but until section 23 of the 2022 Act comes into force, the reference to CTER in the 2010 Act will be read as including HEFCW.

Procedure

Draft affirmative.

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

Technical Scrutiny

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

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

There are two points to note in the headnote to the Regulations:-

- a) the English text does not use the standard headnote for draft affirmative statutory instruments. As a result, the words “for approval” appear twice within the sentence; and



b) there is a difference between the English and Welsh text in both headnotes as the words “for approval by resolution of Senedd Cymru” are missing from the Welsh version.

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

Regulation 2(b) fails to identify with certainty where the new entry should be included in Part 2 of Schedule 19 to the Equality Act 2010.

Describing an insertion as being made at “the appropriate place” is only appropriate when the entries are all listed in alphabetical order, so that it is clear where the new entry should be inserted. However, the previous amendments to the same list of other educational bodies have inserted their new entries at the end of the list. As a result, the entries in the existing list are not all in alphabetical order so there could be uncertainty as to where to insert the new entry at the beginning of the list or at the end of the list.

Previous amendments made to Part 2 of Schedule 19 have all described more precisely the location of the insertion by stating “Under the sub-heading “Other educational bodies”....”;

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

Regulation 3 amends Part 2 of Schedule 19, but it does not state that this is Part 2 of Schedule 19 to the 2010 Act. Regulation 3 does refer to the 2022 Act and it is therefore possible that a person reading regulation 3 in isolation would be confused as to its meaning. Reference to the 2010 Act is also missing in the heading to regulation 2.

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.

The Committee notes that these Regulations come into force on 4 September 2023, yet CTER was established on 15 December 2022. The Welsh Government is asked to confirm why these Regulations are being made to take effect on 4 September 2023 rather than 15 December 2022 or in April 2024, which is when the Explanatory Memorandum states that section 23 of the 2022 Act will come into force.

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

Paragraph 2 of the Explanatory Memorandum refers to the public sector equality duty as:

...the “due regard” duty to ensure that advancement of equality of opportunity and elimination of discrimination...



This description omits the third strand of the public sector equality duty, namely to have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. If a provision of an Act is to be described in an Explanatory Memorandum it is important that this is done accurately to avoid any misunderstanding. The Welsh Government is therefore asked to explain why it only refers to two strands of the duty and not the third.

Welsh Government response

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

Committee Consideration

The Committee considered the instrument at its meeting on 19 June 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

Technical Scrutiny point 1: We are grateful to the Committee for bringing this to our attention. We acknowledge that the headnotes do not follow the standard wording and will endeavour to ensure this does not occur again. However, in this case, they do both make clear the nature of the instrument and the Senedd procedure to be followed, and the headnotes will be removed prior to making.

Technical Scrutiny point 2: We agree that, ideally, the provision would have set out more detail as to the placement of the insertion. However, “in the appropriate place”, in conjunction with the title of the body to be inserted (the Commission for Tertiary Education and Research), makes it clear that it should be placed under the sub-heading of “Other educational bodies”. The original list in that sub-heading was alphabetical, but we acknowledge that previous amendments to that list have not been made alphabetically. However, it is clear that the term is to be inserted to Schedule 19 and within the “Other educational bodies” sub-heading; the term’s position at the start or end of the list at that sub-heading will have no effect on the legal meaning of the provision and on that basis, we do not propose amending this provision.

Technical Scrutiny point 3: Given that the only amendments made by this SI are to Part 2 of Schedule 19 to the Equality Act 2010, we do not consider there is any risk that a person reading regulation 3 would be misled (incidentally, there is no Schedule 19 to the Tertiary Education and Research (Wales) Act 2022). However, we agree that an explicit reference to the Equality Act 2010 would improve the clarity of the provision, and we would propose to make that amendment prior to making.

Merit Scrutiny point 4: The Commission for Tertiary Education and Research was established as a legal entity on 15th December 2022 to enable the appointment of the Chair and Deputy Chair, at that point neither the Chief Executive Officer nor the minimum number of ordinary members had been appointed (as required by paragraph 2 of Schedule 1 to the Tertiary Education and Research (Wales) Act 2022). As the Commission was not fully constituted on 15 December 2022 it was not able to exercise any functions.

The Commission will be fully established on 4th September 2023 when the CEO and at least four ordinary members take up their posts; it is at this point that the Commission will, subject to the making of a second commencement order over the summer, be able to exercise certain functions.

These Regulations are being brought into force in September 2023, rather than April 2024 to ensure the Commission is subject to the Public Sector Equality Duty from the point at which it is able to exercise any of its functions.

Merit Scrutiny point 5: We are grateful to the Committee for bringing this to our attention. The Explanatory Memorandum will be withdrawn and re-laid with the necessary amendments.



Ein cyf/Our ref: MA/CG/1651/21

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
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22nd June 2023

Dear Huw,

Thank you for your letter of 12 May and the work the Legislation, Justice and Constitution (LJC) Committee has undertaken to produce the report on cross-cutting issues affecting the Common Frameworks programme.

Common Frameworks have the potential to be enduring, flexible and increasingly significant governance mechanisms for the policy areas previously governed by EU law. They can help facilitate policy alignment and manage regulatory divergence amongst the four governments. Effective monitoring of long-term and emerging programme-level issues affecting the programme is integral to ensuring that Common Frameworks become a model for good intergovernmental collaboration.

In February, I chaired the Interministerial Standing Committee meeting where Ministers (and the Head of the Northern Ireland Civil Service) agreed on the importance of continuing to review emerging issues affecting frameworks. Officials are closely monitoring, and trying to mitigate, the impact of any issues affecting the programme and will continue to report back to the IMSC. At the February meeting, the IMSC also agreed to a model for future reporting to committees of legislatures following finalisation of the frameworks.

As you will be aware from previous correspondence, I am not able to respond formally to committee recommendations until scrutiny has been completed by all four UK legislatures. This position has been adopted by the four UK governments. It accords with the spirit of four-nation working and the consensus that embodies the Common Frameworks programme. I will write to you again once the recommendations have been received from all

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

UK legislatures and the four governments have reached agreement on the changes to be made to the frameworks in response to these.

I would like to reiterate my thanks to the Committee for its continued role in providing oversight of the Common Frameworks. I look forward to the debate on frameworks on 12 July.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

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

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Inter-Ministerial Standing Committee

DATE 20 June 2023

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

I represented the Welsh Government at the fourth meeting of the Inter-Ministerial Standing Committee (IMSC) on 17 May.

A joint [communique](#) was published following the meeting, which contains full details of other attendees. The agenda covered: Introductions; Investment Zones; The current UK Government legislative programme including the Retained EU Law Bill; and Common Frameworks.

As referred to in the communique, the Committee noted the cross-government analytical work to identify drivers for individuals' economic inactivity and differences across the UK, and collaboration across Interministerial Groups on cost of living pressures. I highlighted that the cost of living is a critically important issue for all governments. We need to make sure that necessary further actions are identified and brought forward for decision swiftly so that they can make a real difference to households and businesses, which continue to face severe pressures due to inflation and challenging broader economic conditions. The development of the work in this area has emphasised that there is a gap in the jointly agreed Intergovernmental Relations (IGR) structures, given the lack of a formal Interministerial Group relating to the portfolio of the Department for Work and Pensions. I requested that we consider collectively how we can address that gap.

Concerning Investment Zones, I made clear that, as with Freeports in Wales, progress on the Investment Zones agenda must complement our existing objectives and priorities, and the overall direction set out in our Economic Mission.

On the Retained EU Law Bill, I recognised that the UK Government's amendments to the Bill, which put an end to the automatic sunseting of retained EU law at the end of the year, are a step in the right direction. The changes will prevent important legislation in fields such as employment, the environment and consumer protection potentially disappearing inadvertently and without any scrutiny by legislatures. But I reiterated our concerns around

the UK Government's approach regarding concurrent powers currently contained in the Bill, which would allow UK Government to legislate in devolved areas without the consent of Welsh Ministers or the Senedd. As I have made consistently clear, if there are to be any powers which are exercisable by UK Government Ministers in devolved areas, then this should, as a minimum, be subject to an affirmative consent requirement of the Welsh Ministers in advance, and this should be addressed on the face of the Bill.

Concerning the Levelling Up and Regeneration Bill, I raised that the provision for the setting of levelling-up missions, associated metrics and targets and reporting on progress in Part 1 of that Bill represents an inappropriate intrusion into the legislative competence of the Senedd. We remain willing to work with UK Government on Part 6 of the Bill, but this can only be achieved if they commit to change the current approach which involves the inclusion of concurrent powers for UK Government Ministers which can be exercised without the consent of Welsh Ministers.

I reiterated the Strikes (Minimum Service Levels) Bill is an unnecessary and unjustified attack on workers' rights and trade unions. It is rushed and ill-conceived, lacking in detail, will not resolve industrial disputes and may sour industrial relations in all parts of Great Britain. I confirmed that the Senedd has refused consent to a Bill that deliberately bypasses our Welsh Parliament and the Welsh Government. There is no justification for the UK Government to impose this Bill on devolved public service employers and workers.

On the Sewel Convention, I raised that the UK Government potentially breaching the Sewel Convention multiple times in the current year alone illustrates the fundamentally disrespectful and destructive approach of the UKG to the Sewel Convention, to devolution, and to the Union. There is simply no justification for this and absolutely no way this could be described as 'not normally' legislating without consent. Where the Senedd does not consent to a UK Government Bill, the UK Government needs to rediscover its respect for devolution and reverse the position whereby breaches of the Sewel Convention have become the default.

Concerning Common Frameworks, I noted they demonstrate that good intergovernmental working is possible and that coherence and divergence can be managed through constructive dialogue and collaboration. However, the mechanisms they provide for early engagement need to be used more consistently. I requested that UK Government, at Ministerial and senior official level, positively reinforce that point with colleagues.

Ministers also discussed international engagement, including concerns around the recent FCDO guidance issued to its overseas offices on Devolved Government Ministerial visits to those countries. I confirmed we could not agree that a UK Government senior official should be present at all meetings with foreign government ministers as a matter of course. It was agreed to invite the FCDO to a future IMSC to discuss this issue.

The next IMSC will be chaired by the Scottish Government, in line with rotating chair arrangements.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/214/2023

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

20 June 2023

Inter-Institutional Relations Agreement: Inter-Ministerial Standing Committee

Further to my letter of 17 May, I have issued a **Written Ministerial Statement** summarising discussions at the most recent meeting of the Inter-Ministerial Standing Committee ('IMSC').

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

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

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

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

Ein cyf/Our ref:

Huw Irranca-Davies MS
Chair
Legislation, Justice & Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

21 June 2023

Dear Huw,

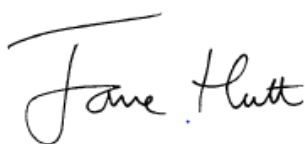
**Inter-Institutional Relations Agreement: Safety, Security and Migration
Interministerial Group**

I am writing in accordance with the Inter-Institutional Relations Agreement to inform you that a meeting of the Interministerial Group for Safety, Security and Migration will be held on Tuesday 11 July from 11am to 12.15pm. It will be chaired by the Home Secretary, the Rt Hon. Suella Braverman KC MP. I will be joining the meeting virtually.

It has been agreed that the meeting will focus on safe and legal migration routes, specifically discussing the UK Government's Illegal Migration Bill and asylum dispersal. There will also be a presentation given by Border Force on its ongoing work to target drugs and a discussion on the UK Government's plans to implement the Integrated Review Refresh 2023 of UK Security.

A communique will be published after the meeting, and I will notify you of this in due course.

I am copying this letter to Jenny Rathbone MS, Chair of the Equality and Social Justice Committee.



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

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Agenda Item 8.1



Department for Business & Trade

The Rt Hon Kemi Badenoch MP
Secretary of State for Business & Trade
President of the Board of Trade
Minister for Women & Equalities
Department for Business and Trade
Old Admiralty Building
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16 June 2023

Dear Huw,

Letter in response to the report on the Welsh Government's Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill

I would like to thank the Legislation, Justice and Constitution Committee for your letter of 22 February which accompanies the Report on the Welsh Government's Legislative Consent Memorandum on the Retained EU Law (Revocation and Reform) 'REUL' Bill. I am responding as Secretary of State for Business and Trade. My sincere apologies for the delay in my response.

As you may be aware, the Government tabled a set of amendments to the REUL Bill for Lords Report stage on 10 May. Most notably, these included an amendment to clause 1 of the Bill and amendments to the consequential power and the power to make transitional, transitory and savings provision under clauses 19 and 22 respectively.

The amendment to clause 1 sets out in a Schedule a full list of the retained EU law (REUL) which will be revoked on 31 December 2023. The amendments to clauses 19 and 22 extend the powers within these clauses on the devolved authorities. Further detail on these amendments can be found on the UK Parliament website.

This letter responds to the Committee's conclusions and recommendations regarding the REUL Bill as set out in the LCM report as well as clarifying points of detail regarding the government amendments in relation to the Committee's concerns.

REUL Dashboard

The Committee expressed concerns regarding the potential impact of the Bill on legislation within areas of Welsh competence. In particular, concerns that the REUL dashboard does not indicate the devolution status of REUL.

The dashboard presents an authoritative catalogue of REUL. The REUL dashboard has identified over 4,800 pieces of REUL across 16 departments. It is not intended to provide a comprehensive account of REUL in general, nor of REUL that sits with the competence of the devolved governments, although it may contain individual pieces of REUL which do sit in devolved areas. The devolved

governments remain responsible for identifying REUL within their respective areas of devolved competence.

Devolved REUL

I support the Committee's recommendation to encourage the Welsh Government to undertake the necessary work required and share a list of devolved Welsh REUL with the UK Government.

Furthermore, we recognise the importance of identifying the split of reserved and devolved REUL to ensure that we have a consistent understanding across the UK Government and devolved governments. The UK Government is committed to working with the devolved governments as we update the dashboard. That is why, we have established regular intergovernmental meetings, intended to support devolved government counterparts with the identification of which REUL is devolved or reserved, as part of the REUL reform programme.

Legislative consent

I would like to highlight that this Government is committed to respecting the devolution settlements and the Sewel Convention. As you will be aware, we sought legislative consent for the provisions in the Bill that engage the LCM process from the Senedd. Despite our close work with the Welsh Government, the Senedd decided to withhold legislative consent for the REUL Bill. While we regret this decision, we will continue to work with Welsh Government colleagues at ministerial and official levels. This Bill is vital for the whole of the UK to be able to fully take advantage of the benefits of Brexit.

DA engagement

The Committee raised concerns that the UK Government has not sufficiently engaged with the devolved governments on the Bill. I would like to reiterate that we have been proactively engaging with the devolved governments on the progress of the Bill and the wider REUL reform programme. The Government has made use of the structures created by the Review of Intergovernmental Relations to engage with devolved Ministers on the Bill. For example, the Bill has been discussed at meetings of the Interministerial Standing Committee. Most recently, Minister Ghani attended a meeting of that Committee on 17 May to discuss the REUL Bill with devolved Ministers.

We are committed to sustained engagement with the devolved governments. In addition to this, I consider that the government amendments tabled at Lords Report stage, and agreed to by the House of Commons on 24 May, further demonstrate that we have actively listened and sought to make meaningful changes which address the devolved governments' concerns regarding the Bill.

Concurrent powers

We note the Committee's concerns regarding the delegated powers in the Bill. With a revocation Schedule in place, the UK Government and the devolved governments will still retain the powers in the Bill that will allow us to continue to amend REUL and assimilated law.

The powers in the Bill will be conferred concurrently on the devolved governments. This will enable the Welsh Government to make active decisions regarding REUL within its devolved competence.

The concurrent nature of the powers is not intended to influence decision making in devolved governments. Rather, it is intended to reduce additional resource pressure by enabling the UK Government to legislate on behalf of a devolved government where they do not intend to take a different position. Furthermore, we remain committed to continuing discussions with the devolved governments over the exercise of concurrent powers in the Bill.

As I indicated above, the Government has tabled amendments to extend the consequential power (clause 19) and the power to make transitional, transitory and savings provision (clause 22) on the devolved authorities. The powers will be conferred concurrently in the same way as the other delegated powers within the Bill. This will enable the Welsh Government and other devolved governments to make any necessary consequential, transitional and savings provisions arising from the operation of the Bill. This decision has been made in response to concerns raised by the devolved governments. I hope the Committee will recognise this as a meaningful change that demonstrates our commitment to working collaboratively and constructively with the devolved governments on the REUL Bill and wider REUL reform.

Sunset

As I have set out above, the Government tabled an amendment to clause 1 in the Bill at Lords Report stage. This amendment replaced the original sunset with a list of specified pieces of REUL to be revoked at the end of 2023. The revocation Schedule will provide greater certainty on which REUL will be revoked by the end of the year. It will enable the UK Government and the devolved governments to prioritise more ambitious and complex reform of former REUL which remains on the statute book at the end of 2023. As a result of this amendment, clauses 2 and 3 have been removed from the Bill, as they are no longer required.

However, the Bill still includes a limited preservation power that will be conferred concurrently on the devolved governments. Where devolved governments wish to disapply the revocation of REUL presently listed on the Schedule, they will be able to exercise the preservation power in respect of the relevant REUL within their areas of devolved competence. The preservation power will expire on 31 October 2023 and it will be subject to the affirmative procedure.

I hope you will agree that the amendment we have tabled is a meaningful change to the Bill which addresses many of the concerns raised in your letter regarding the sunset. It is my view that the greater certainty provided by the revocation Schedule will allow the UK Government and the devolved governments to continue to make meaningful reforms, for the benefit of citizens and business across all parts of the UK.

Extension power

As outlined above, as a result of the Government's amendment to replace the original sunset under clause 1 with a revocation Schedule, the extension power under clause 2 no longer forms part of the Bill.

Parliamentary scrutiny

We would support the Committee's recommendation to establish a new relevant committee once the Seventh Senedd is in place. We recognise the significant role Parliament has played in scrutinising instruments subject to sifting procedures previously and are committed to ensuring the appropriate scrutiny under the delegated powers in this Bill. We have sought to ensure robust scrutiny measures are included in the Bill. This includes ensuring there is appropriate scrutiny for any repeals or reforms of REUL that are made using the powers contained in the Bill, whilst ensuring the most effective use of Parliamentary time.

International obligations

In response to recommendation 10, as you will be aware, Minister Ghani made a commitment at Report Stage in the House of Commons that the Government will ensure that the provisions within the Bill will ensure the continued implementation of our international obligations, including the Northern Ireland Protocol (and now in the Windsor Framework), the Trade and Cooperation Agreement and the Withdrawal Agreement. Furthermore, the Schedule amendment removes the requirement for such legislation to be explicitly preserved, given that REUL will no longer

automatically sunset. However, the sentiment in this commitment remains unchanged and, as such no REUL that is required to uphold international commitments is included in the Schedule.

REUL reform

I would support the Committee's conclusion for the Welsh Government to progress its delivery plans for REUL reform. It will be important to work with the devolved governments in order to understand their plans for REUL reform and how best to work jointly on the use of concurrent powers and other measures within the Bill. We remain committed to continuing discussions with the devolved governments over the use of concurrent powers in the Bill to ensure the provisions work for all parts of the UK.

Intra-UK divergence

As you will be aware, Common Frameworks and the UK Internal Market (UKIM) Act are some of the existing mechanisms which have been developed with the devolved governments to enable joint working in devolved areas. The UK Government and the devolved governments agree where Common Frameworks are operating that they are the right mechanism for discussing REUL reform in the areas that they cover. The Government will continue to work closely with the devolved governments to manage intra-UK divergence through these existing structures.

I would like to reiterate that my officials have been working together with devolved counterparts to address any concerns and to ensure the Bill works for all parts of the UK. It is right that people across all parts of the UK should benefit from the ability to reform and amend REUL so that the opportunities of Brexit can be further seized.

Best wishes,

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

THE RT HON KEMI BADENOCH MP

Secretary of State for Business & Trade and President of the Board of Trade
Minister for Women & Equalities



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **White Paper – A New Tribunal System for Wales**

DATE **19 June 2023**

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

Today, I am publishing a White Paper entitled [“A New Tribunal System for Wales”](#) to consult on proposals for a modern system for Wales’ devolved tribunals.

The White Paper sets out a suite of proposals to create a unified tribunal structure that is flexible by design and capable of absorbing new jurisdictions with relatively little disruption. The new tribunal system will not only better meet the present needs of tribunal justice but will also be adaptable to meet the future needs of Wales going forward.

The White Paper takes forward and builds on the recommendations of the Commission on Justice in Wales and the Law Commission’s project on the devolved tribunals in Wales, which was published in December 2021.

The main proposals include:

- the creation of a First-tier Tribunal for Wales with a chamber structure;
- the creation of an Appeal Tribunal for Wales;
- simplified and coherent approaches to the appointment of tribunal members and complaints across the new tribunal system;
- the creation of a new structurally independent arms-length body to administer the First-tier Tribunal for Wales and the Appeal Tribunal for Wales; and
- the creation of a tribunals’ rules committee for Wales.

Our objective in implementing reform is twofold. First, to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently, and expeditiously. Second, to lay the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

A copy of the White Paper along with the Draft Integrated Impact Assessment and Draft Regulatory Impact Assessment, providing an outline of costs and impacts of the legislative proposals, can be accessed from the Welsh Government's website.

The consultation on the White Paper will close on 2 October 2023. The responses, along with all other relevant matters including ongoing engagement with stakeholders and the continued development of our evidence base, will be used to inform our ongoing approach to the development of policy and legislation.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/187/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
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seneddLJC@senedd.wales

19 June 2023

Dear Huw,

I am writing to inform you that I have today published a White Paper entitled “A New Tribunal System for Wales” (available at [“A New Tribunal System for Wales”](#)).

The White Paper builds on the recommendations made by the Commission on Justice in Wales and the Law Commission and seeks views on a suite of reforms which will create a unified tribunal structure that is flexible by design and capable of absorbing new jurisdictions to enable it to meet the needs of Wales in the future.

Reform of our devolved tribunals is of course a matter in which the Legislation, Justice and Constitution Committee has taken a close interest, and so I am sure the Committee will be interested in the White Paper consultation, which closes on 2 October. I very much look forward to working with you as we take forward these important reforms.

Yours sincerely,

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

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Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
Cardiff Bay
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CF99 1NA

21 June 2023

Dear Jayne

Tertiary Education and Research (Wales) Act 2022

Following my statement to the Senedd yesterday I wanted to take the opportunity to provide the Committee with further details of the steps being taken to support the implementation of the Tertiary Education and Research (Wales) Act 2022 ('TERA') and the resultant establishment of the Commission for Tertiary Education and Research ('the Commission').

As I stated when I previously wrote to the Committee, I am adopting a phased approach to the implementation of the Act on the basis of the following principles:

- Ensuring continuity of provision for the sector with no discernible disruption for providers or learners during the establishment of the Commission,
- Avoiding undue burden on providers during the implementation phase, for example managing and synchronising the volume and timing of engagement and formal consultation,
- The strategic duties, as set out in Part 1 of the Act, to form the core foundation for the Commission's work from the outset, including the preparation and publication of the Welsh Ministers' statement of priorities.

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

Establishment of the Commission

In line with the high level implementation timeline I set out in my previous letter, the Commission will be established in September following Simon Pirotte taking up his post as CEO and the ordinary Board members taking up their posts.

During the summer recess period I shall be making the second commencement Order in respect of the Act, which will enable the Commission to exercise certain functions between September 2023 and April 2024, we are referring to this period as the establishment period.

The functions the Commission will be able to exercise during this time will be either corporate or operational in nature, such as those in Schedule 1 to the Act in relation to, for example, the appointment of staff or the establishment of committees, or be functions partially commenced for the purpose of enabling the Commission to start developing certain deliverables required to support the implementation of key reforms.

I will write to the Committee once the commencement Order is made setting out the provisions of TERA I am bringing into force and how the Commission may choose to exercise those functions during the establishment period.

During this time HEFCW will retain responsibility for the funding, quality and regulation of higher education, whilst the Welsh Government will retain responsibility for further education, apprenticeships, sixth forms etc. The Commission is then intended to become operational in April 2024 following the dissolution of HEFCW.

Subordinate legislation

As I stated during scrutiny, the implementation of TERA will require the making of a range of subordinate legislation; the first of which, the Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023, I laid before the Senedd earlier this month.

Annex A sets out the statutory instruments I intend to consult on, and subsequently make, over the coming months, with the policy intention in respect of these largely remaining as set out in the statement of policy intent, which was published alongside the Act when it was introduced to the Senedd.

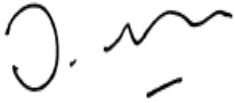
Annex A also summarises the intended purpose of each statutory instrument, although this is of course subject to our consideration of any responses received to the relevant consultations.

In addition to the substantive subordinate legislation set out in Annex A, it will also be necessary to make Regulations to reflect the required consequential amendments to existing legislation, alongside the making of the necessary commencement Orders.

The implementation of TERA is a significant undertaking, which, in line with the principle of avoiding undue burden on providers, I anticipate will continue through to the end of this Senedd term; I will continue to provide updates to the Commission as the work progresses.

If you, or the members of your Committee have any specific questions in the meantime I will be pleased to provide additional information where possible.

I have copied this letter to the Legislation, Justice and Constitution Committee and will be sharing with our stakeholders for information.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AS/MS

Gweinidog y Gymraeg ac Addysg

Minister for Education and Welsh Language

Annex A – TERA Implementation – Subordinate Legislation

Statutory Instrument	Purpose	Anticipated timeframe for consulting on the draft SI	Anticipated timeframe for making the SI
Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations	<p>Intended to make provision in respect of the registration of tertiary education providers in Wales, in relation to:</p> <ul style="list-style-type: none"> • Categories of registration • Specifying the category to which the fee limit condition applies • A limited number of additional initial and ongoing conditions of registration • Specifying which category a provider must be registered in to be eligible for funding for higher education or research & innovation 	<p style="text-align: center;">Autumn 2023</p> <p style="text-align: center;"><i>A combined consultation on each of these SIs and the policy intention in respect of the future SIs necessary to complete the implementation of the registration system</i></p>	<p style="text-align: center;">Spring 2024</p>
Commission for Tertiary Education and Research (Designation of Providers) (Wales) Regulations	Intended to make provision about the Welsh Ministers' power to designate a provider of tertiary education as an institution under section 83(4) of TERA		
Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations	Intended to make provision in relation to reviews of decisions made by the Commission under sections 45 and 78 of TERA		
Regulations to be made under section 56 of the Digital Economy Act to amend Schedule 8 to that Act	Intended to provide for the removal of HEFCW and addition of the Commission to the list of persons who may share information for the purposes of taking action to combat fraud against the public sector	<p style="text-align: center;">Autumn 2023</p>	<p style="text-align: center;">February 2024</p>

Statutory Instrument	Purpose	Anticipated timeframe for consulting on the draft SI	Anticipated timeframe for making the SI
Regulations to be made under section 57(4) of TERA	Intended to replace the Inspection of Education and Training (Wales) Regulations 2001 (as amended), as the enabling power under which those Regulations were made is being repealed as part of the implementation of the TER Act.	Autumn / Winter 2023	February 2024
Official Statistics (Wales) (Amendment) Order	Provides for the Commission to be an official statistical body	It is not intended to issue the draft SI for formal consultation as the proposal the Commission be designated an official statistical body was set out in the EM-RIA which accompanied the Bill. However, the intention is to consult the UK Statistics Authority prior to making the Amendment Order.	March 2024
Regulations to be made under section 94 of TERA	Intended to specify 'relevant education and training' for the purpose of the Commission's duty to secure the provision of proper facilities in Wales for relevant education and training for eligible persons over 19	Early 2024	Late summer 2024

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

Ein cyf/Our ref: JJ/PO/185/2023

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
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15 June 2023

Dear Huw,

Thank you for your letter of 25 May which set out a number of questions posed by the Legislation, Justice and Constitution Committee in relation to The Environment (Air Quality and Soundscapes) (Wales) Bill.

The responses to the questions are set out in the Annex to this letter. I hope the Committee finds the responses helpful.

Yours sincerely,



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

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

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

Annex

Response to Questions posed in Legislation Justice and Constitution Committee Letter of May 25 2023 to the Minister for Climate Change on the Environment (Air Quality and Soundscapes) (Wales) Bill

Accessibility

1. In September 2021, we recommended in our report on the Welsh Government's Legislative Consent Memorandum for the Environment Bill that a future environmental Bill introduced by the Welsh Government should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders. You accepted this recommendation in principle. Please can you advise if the Bill contains matters relevant to that UK Bill and if so, how it addresses the recommendation in our report?

There is a complex framework of Environmental law, some of which pre-dates devolution. Through our actions on this Bill, and more generally, we have taken steps to secure the best possible outcomes for Wales. I am aware of the recommendation in the September 2021 Report and our agreement to accept it in principle. That has not changed.

Preparation and planning for the Bill has been ongoing for a long time, and pre-dates September 2021. The Bill aims to fulfil air quality policy commitments in our Programme for Government and Clean Air Plan for Wales. The Bill also takes forward many proposals outlined in the White Paper on the Clean Air Bill which went out to consultation in January 2021.

Our Bill does amend a limited number of provisions inserted into the Environment Act 1995 by the Environment Act 2021. This includes the amendment to give Welsh Ministers a regulation making power to amend the review period for the National Air Quality Strategy, so we do keep Welsh legislation in UK Acts under constant review. However, to incorporate the provisions for which we gave legislative consent in the Environment Act 2021 into our Bill would risk a very fragmented approach.

2. In the evidence session the following comments were made by you and your officials:

“it's a Bill that's intended to fit into other legislation—the attempt to do that in this Bill would have caused ripples across the other legislation in a way that was less than helpful and might actually make the Bill less accessible. So, I understand the sentiment of what you're saying entirely, but, as I understand it, you'd then have to look at the interaction between this and various environment Acts and so on, and then the ripples of that would start to go out and you'd start to be looking at a very different Bill.” [RoP 37].

“in this case, the Bill has got a particular focus, and to carve out parts of the body of environmental law and put them elsewhere—our view is that that results in a partial retelling of the story about air quality, for legislation about air quality. You mentioned the Clean Air Act 1993; taking out Part 3 of that takes it out of its context with other Parts of that Act that are about air quality. So, yes, overall, the view was that it wouldn't improve accessibility of law in this instance to just take them out.” [RoP 38]

“the environment Act ... is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated. I defer to the lawyers, and, actually, I'm in awe of who on earth worked their way through this.” [RoP 46]

“It didn't seem necessary or optimal in any way to transfer the entire framework, only to say, 'It's exactly the same, apart from these little bits', really. So, it's part of the same conversation. We've been trying to limit the Bill that this committee is now scrutinising, and, obviously, the policy committees have scrutinised as well, to its own parameters. We've been very clear that it's not an all-encompassing Bill, and a lot of what you're talking about would stretch it back out into starting to take in a whole pile of other things. So, I'm afraid it's part of the same issue, isn't it? And then, for me, there's a big issue about implementation, so do we have to spend the next two years doing consequential amendments before the thing is implementable? I didn't want to get into that. And also, you start to have what should be a fairly straightforward Bill taking up two thirds of the legal resource of the Welsh Government.” [RoP 54]

- A. How are the comments about accessibility consistent with the fact that legislation on air quality will now be set out in one Welsh Act and two Acts covering England and Wales?**

We have made some standalone provision, but many of the aims of the Bill could be achieved via amendments to existing legislation.

This Bill has a particular focus. In considering how to approach drafting we took the view that consolidating the legislation the Bill amends and supplements would result in a partial retelling of the story about air quality. This could be detrimental to accessibility of law.

In some cases, for example in relation to local air quality management provisions, the amendments being made by this Bill are relatively minor. To restate a large portion of the legislation while making such amendments could lead to confusion.

Producing a Bill to consolidate all air quality legislation that relates to Wales would have been a lengthy process and a balance has to be struck between the need for consolidation and the need to implement the provisions of this Bill as quickly as possible.

- B. We are unclear why the opportunity was not taken to use the Bill to update, improve and simplify elements of the Environment Act 1995 related to air quality in order to make the legislation more accessible. For example, air quality is covered in the Environment Act 1995 in 11 sections (Part 4 of the Bill). Why couldn't these self-contained provisions be transposed into this Bill and updated where necessary?**

As noted above, our view is that restating a large portion of legislation while also making specific and relatively discreet amendments could be confusing and would amount to a partial retelling of the story of air quality.

C. Was the decision not to consolidate air quality law into one Bill influenced by the capacity and resource constraints you refer to?

As was made clear during the Committee session, resourcing implications do have to be considered when embarking on a Bill process. However, the decision was borne out of an assessment of the existing provisions and the nature of the amendments we were seeking to make.

3. Given that regulations under sections 1 and 2 of the Bill may not be laid until the Seventh Senedd, why was a more all-encompassing, comprehensive environmental Bill on air quality not introduced until later in the Sixth Senedd, which could potentially have delivered better outcomes through primary legislation and be consistent with the Welsh Government's objective to improve the accessibility of Welsh law?

The Bill is comprehensive. Its provisions, when implemented, will result in demonstrable improvements in the air environment, both in terms of air quality and soundscapes. We are in a climate and nature emergency. Consequently, the Bill was prioritised for introduction early in this Senedd term, so its provisions could be scrutinised and the Bill, hopefully, passed to enable us to proceed with implementation. Delayed introduction would result in delayed implementation, which I do not think any of our stakeholders have advocated.

Also, delaying the Bill's introduction would not impact upon its provisions. For reasons I have outlined, targets are not to be set on the face of the Bill. They need to be set in regulations, so we have the flexibility to amend and keep them up to date in accordance with scientific evidence and advice.

We are prioritising work to set a target for PM 2.5 which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target, which will be subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

Air Quality – National Targets

4. Please can you summarise the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set?

The air quality legislative framework in Wales and the UK is currently derived from a mixture of domestic and international legislation and consists of three main strands:

1. Legislation regulating concentrations of pollutants in ambient air – the Air Quality Standards (Wales) Regulations 2010. Welsh Ministers are responsible for reporting on and complying with a range of pollutant target types. For example, pollutants with targets include nitrogen dioxide, particulate matter, sulphur dioxide, ground level ozone and heavy metals. The targets were based on analysis and negotiation at an EU level, and economic analysis of the costs and benefits in the UK was undertaken by UK Government.
2. Legislation regulating total national emissions of five air pollutants (nitrogen oxides, sulphur dioxide, non-methane volatile organic compounds, fine particulate matter and ammonia) – the National Emission Ceilings Regulations 2018 and the Gothenburg Protocol to the UNECE Convention on Long-range Transboundary Air Pollution. The Secretary of State is responsible for reporting and compliance on targets agreed at a UK wide level; and
3. Legislation regulating emissions from specific sources, such as industrial emissions to air and domestic burning, including the Environmental Permitting (England and Wales) Regulations 2016 and the Clean Air Act 1993.

Under the Environment Act 1995, which predated the EU Directives from which much of the above legislation stemmed, Welsh Ministers have broad powers in relation to air quality. Under the Act, local authorities are required to tackle air quality issues at a local scale through the Local Air Quality Management process (LAQM). LAQM requires local authorities to review and assess air quality, producing action plans where air quality is found to be poor and at risk of breaching air quality objectives. The standards (levels) were based on the work of the UK Government's Expert Panel of Air Quality Standards (EPAQS) and other expert groups.

Separate to this legislation, local authorities have duties to investigate nuisance smoke, fumes, odours and dust complaints made by members of the public under the Environmental Protection Act 1990.

5. What does this Bill enable you to achieve on air quality targets that you cannot achieve within the existing air quality legislative framework?

The Bill builds on a very broad regulation making power in Section 87 of the Environment Act 1995, which enables the Welsh Ministers to make provision in relation to air quality which could include setting long or short-term targets in relation to air quality.

The provisions in the Bill build on this by providing specific, rather than general, powers to set long-term targets and a duty to set a target in relation to PM2.5 as well as placing a duty on the Welsh Ministers to ensure the targets are met.

The Bill establishes a framework for producing targets and specific duties require the Welsh Ministers to obtain and publish air quality data that they consider necessary to monitor the progress being made towards meeting these targets. Targets must also be reviewed and reported on.

Therefore, with the Bill, we have taken the opportunity to introduce measures that both strengthen and complement the existing legislative framework; placing duties on Welsh Ministers where none currently exist.

The provisions in the Bill will ensure not only that targets are set but that the current and future Welsh Governments are held to account for these targets.

6. How will Part IV, Air Quality of the Environment Act 1995 interact and work with Part 1 of the Bill? Specifically how will sections 1 and 2 of the Bill interact with section 87 of the 1995 Act (Regulations for the purposes of Part IV)?

Section 87 contains a broad regulation making power that applies to regulations made under Part IV of the Environment Act 1995.

Section 87 provides Welsh Ministers with power to make regulations relating to air quality.

Section 87 will complement Part 1 of the Bill, in particular the new, enhanced powers and duties we have taken in sections 1 and 2. There is potential for future regulations relating to air quality to be made using powers in both section 87 and sections 1 and/or 2 of the Bill.

As set out above in relation to question 5, the provisions in Part 1 of the Bill go beyond the provisions in Part IV of the Environment Act 1995. Therefore, the legislative framework has been strengthened by taking these new powers and duties.

7. Section 1 gives the Welsh Ministers a general regulation-making power to set long-term targets in respect of any matter relating to air quality in Wales. Why is such a broad power needed?

It is part of a framework setting the Welsh Ministers' powers to make long term targets. It is supplemented by the additional duties set out in section 3 (which sets the target setting process), section 4 (the effect of targets), section 5 (reporting), section 6 (review) and section 7 which places a new duty on Welsh Ministers to make arrangements for collecting data about air quality to monitor the progress towards meeting targets set under the Bill.

As set out above in the response to question 5, the powers and duties in Part 1 of the Bill go beyond and complement the existing powers and duties placed on Welsh Ministers in existing legislation relating to air quality.

The power in section 1, and more broadly in Part 1 reflects the nature of Welsh Ministers' ambitions in this area.

8. Why is there no definition of air quality on the face of the Bill?

Air quality is not defined in primary legislation. For example, there is no definition of air quality in Part IV of the Environment Act 1995. Similarly, it is not defined in the Environment Act 2021. The expression is intended to have its ordinary meaning and so a definition is not required.

9. If air quality is to have its ordinary meaning, what do you understand that ordinary meaning to be?

Air quality is a term used to describe how polluted the air we breathe is. When air quality is poor, pollutants in the air may be hazardous to the environment and to people, particularly those with lung or heart conditions. Pollutants may be emitted from man-made or natural sources.

10. In order to understand how the regulation-making power in section 1 could be used, we would be grateful if you could address the following:

- A. Are there any matters in the Clean Air Plan for Wales that would not be covered by the regulation-making power?**
- B. What matters, if any, outside of the Clean Air Plan for Wales could be addressed by the regulation-making power?**
- C. Are there any industries, bodies or premises that could not be subject to regulations made under section 1?**
- D. Could regulations under section 1 be used to control matters related to air quality such as, for example, public nuisance or odours?**

The power in section 1 allows Welsh Ministers to make regulations to set long term targets in respect of any matter relating to air quality in Wales.

The purpose of any new air quality targets is to reduce the harm caused by exposure to poor air quality to human health, nature and the environment. Alongside providing a 'minimum' level of air quality across Wales, we also want targets to drive long-term continuous improvement to reduce exposure to pollution whilst maximising the associated benefits.

The Clean Air Plan for Wales covers a range of actions, which go beyond the setting of regulations. For example, promotion of cultural change to deliver air quality improvements through means such as raising public awareness about air pollution. Therefore, there are actions in the Plan which are beyond the scope of a regulation making power. However, the purpose of the air quality targets that may be set under section 1 is wholly consistent with the overarching aim of the Plan, which is to improve air quality in Wales.

In terms of industries, bodies or premises that could not be subject to regulations made under section 1, it is Welsh Ministers who would be subject to regulations made under section 1. It is the Welsh Ministers who must ensure (in accordance with section 4(1)(a)) that targets set under sections 1 and 2 of the Bill are met. Regulations under section 1 will set targets relating to air quality in Wales. They will not be source specific i.e. they will not specify particular industries, bodies or premises. It is actions taken outside the regulations that will enable the targets to be achieved.

The regulation making power was not developed to control matters relating to public nuisance and odour. It will set long term targets (to be achieved at least 10 years after the date the target is set) for improving air quality. There is existing legislation that covers nuisance for matters including emissions of smoke, dust, gases and odours, set out for example in the Environmental Protection Act 1990.

11. When will regulations under section 1 be first laid, and why is there no end period by which the first set of regulations must be laid (as there is for regulations under section 2)?

We intend for regulations setting a target for fine particulate matter (PM_{2.5}) to be laid within 36 months of the Act receiving Royal Assent. However, this is a time limit to allow for the completion of the important groundwork to get it right, not an aim.

We have existing air quality standards which continue to have effect in Wales, providing continuity and ensuring standards are maintained.

The Welsh Government is considering the range of updated WHO air quality guidelines in developing new target proposals, alongside independent expert advice, evidence and analysis on a diversity of factors.

As set out in relation to question 3 above, we are prioritising work to set a target for PM_{2.5} which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target that has been subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

We want targets to be ambitious, credible, cost-effective and supported by society. It is therefore critical that specialists and stakeholders' input into this process to ensure that relevant evidence is properly gathered, scrutinised and tested.

12. Section 2(4) says that regulations setting a PM_{2.5} air quality target may make provision defining "ambient air". Why is this definition only relevant to PM_{2.5} air quality targets and why is it to be defined in regulations rather than appearing on the face of the Bill?

Section 1 creates a general power to set long term targets in respect of air quality. It may not always be the case that these targets will be set in relation to the level of particular pollutants in ambient air. For example, targets could be set for total emissions of an air pollutant in Wales. Therefore, the concept of "ambient air" may or may not be relevant for these purposes and as the term is not used in section 1 there is no need for a definition of this term to be applied to section 1.

By contrast section 2 contains a power to create a very specific type of target in relation to the levels of particulate matter in the ambient air. It is therefore necessary to define what is meant by "ambient air". This definition is left to regulations to enable the Welsh Ministers to have sufficient flexibility to set an appropriate target, and indeed to be able to set more than one target if required.

Data Quality

13. In the Explanatory Memorandum you state the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data (paragraph 3.82).

A. What delivery plans are you referring to and what is their statutory basis?

We have proposed to implement the promoting awareness duty by developing a delivery plan with stakeholders.

The purpose of the delivery plan is to ensure that Welsh Ministers are proactively discharging our duty under this provision.

The explanatory memorandum set out possible actions that could be included in the plan. For example, this may include improvements to the way existing air quality data is presented and ensuring it is easy to understand. But it may also include initiatives that actively engage communities in air quality improvement, such as citizen science or anti-idling activities.

It is important to develop the plan collaboratively with stakeholders to ensure it is effective. However, we have provided example actions to indicate the broad range of activities we could take in implementing this duty.

B. Why is there no statutory duty to collect data and / or improve its quality? How will data collection and quality be improved under the Bill as drafted?

The Bill does strengthen data collection requirements. Section 7 places a new duty on Welsh Ministers to make arrangements for obtaining such data about air quality in Wales as they consider appropriate to monitor progress towards meeting targets set under sections 1 and/or 2 of the Bill. All data obtained must be published. This will undoubtedly improve the quality and quantity and transparency of air quality data in Wales.

The existing air quality monitoring networks are kept under regular review to ensure they meet robust data quality and assessment criteria set out in legislation. National air quality monitoring is also supplemented with air quality modelling to provide spatial coverage and an estimate of the contributing pollution sources.

Local authorities manage air quality at a local level through the Local Air Quality Management process to tackle local hotspots. This involves reviewing air quality by taking account of statutory policy and technical guidance provided by the Welsh Government. Where risks are identified, air quality monitoring may be used to help understand local levels of pollution, the sources, and compliance with local air quality objectives.

The majority of local authority monitoring does not form part of the national monitoring network as they fulfil a different purpose, focusing on hotspots, and because they may not meet the strict data quality and location criteria of national networks.

Julie James MS
Minister for Climate Change

25 May 2023

Dear Julie

The Environment (Air Quality and Soundscapes) (Wales) Bill

Thank you for appearing before the Committee on 15 May for an evidence session on the Environment (Air Quality and Soundscapes) (Wales) Bill.

In order to inform fully our consideration of the Bill before we report to the Senedd, I would be grateful if you would respond to the questions in the Annex to this letter by 15 June.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Accessibility

Question 1: In September 2021, we recommended in our report on the Welsh Government's Legislative Consent Memorandum for the Environment Bill that a future environmental Bill introduced by the Welsh Government should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders. You accepted this recommendation in principle. Please can you advise if the Bill contains matters relevant to that UK Bill and if so, how it addresses the recommendation in our report?

Question 2: In the evidence session the following comments were made by you and your officials:

"it's a Bill that's intended to fit into other legislation—the attempt to do that in this Bill would have caused ripples across the other legislation in a way that was less than helpful and might actually make the Bill less accessible. So, I understand the sentiment of what you're saying entirely, but, as I understand it, you'd then have to look at the interaction between this and various environment Acts and so on, and then the ripples of that would start to go out and you'd start to be looking at a very different Bill." [RoP 37].

"in this case, the Bill has got a particular focus, and to carve out parts of the body of environmental law and put them elsewhere—our view is that that results in a partial retelling of the story about air quality, for legislation about air quality. You mentioned the Clean Air Act 1993; taking out Part 3 of that takes it out of its context with other Parts of that Act that are about air quality. So, yes, overall, the view was that it wouldn't improve accessibility of law in this instance to just take those bits out." [RoP 38]

"the environment Act ... is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated. I defer to the lawyers, and, actually, I'm in awe of who on earth worked their way through this." [RoP 46]

"It didn't seem necessary or optimal in any way to transfer the entire framework, only to say, 'It's exactly the same, apart from these little bits', really. So, it's part of the same conversation. We've been trying to limit the Bill that this committee is now scrutinising, and, obviously, the policy committees have scrutinised as well, to its own parameters. We've been very clear that it's not an all-encompassing Bill, and a lot of what you're talking about would stretch it back out into starting to take in a whole pile of other things. So, I'm afraid it's part of the same issue, isn't it?

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- a. How are the comments about accessibility consistent with the fact that legislation on air quality will now be set out in one Welsh Act and two Acts covering England and Wales?
- b. We are unclear why the opportunity was not taken to use the Bill to update, improve and simplify elements of the *Environment Act 1995* related to air quality in order to make the legislation more accessible. For example, air quality is covered in the *Environment Act 1995* in 11 sections (Part 4 of the Bill). Why couldn't these self-contained provisions be transposed into this Bill and updated where necessary?
- c. Was the decision not to consolidate air quality law into one Bill influenced by the capacity and resource constraints you refer to?

Question 3: Given that regulations under sections 1 and 2 of the Bill may not be laid until the Seventh Senedd, why was a more all-encompassing, comprehensive environmental Bill on air quality not introduced until later in the Sixth Senedd, which could potentially have delivered better outcomes through primary legislation and be consistent with the Welsh Government's objective to improve the accessibility of Welsh law?

Air quality – national targets

Question 4: Please can you summarise the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set?

Question 5: What does this Bill enable you to achieve on air quality targets that you cannot achieve within the existing air quality legislative framework?

Question 6: How will Part IV, Air Quality of the *Environment Act 1995* interact and work with Part 1 of the Bill? Specifically how will sections 1 and 2 of the Bill interact with section 87 of the 1995 Act (Regulations for the purposes of Part IV)?

Question 7: Section 1 gives the Welsh Ministers a general regulation-making power to set long-term targets in respect of *any matter* relating to air quality in Wales. Why is such a broad power needed?

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Question 11: When will regulations under section 1 be first laid, and why is there no end period by which the first set of regulations must be laid (as there is for regulations under section 2)?

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Data quality

Question 13: In the Explanatory Memorandum you state the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data (paragraph 3.82).

- a. What delivery plans are you referring to and what is their statutory basis?
- b. Why is there no statutory duty to collect data and / or improve its quality? How will data collection and quality be improved under the Bill as drafted?