

Agenda – Legislation, Justice and Constitution Committee

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|---------------------------|--|
| Meeting Venue: | For further information contact: |
| Video conference via Zoom | P Gareth Williams |
| Meeting date: 3 July 2023 | Committee Clerk |
| Meeting time: 13.30 | 0300 200 6565 |
| | SeneddLJC@senedd.wales |

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 – 13.35)

Made Negative Resolution Instruments

2.1 SL(6)365 – The Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023

(Pages 1 – 2)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-21-23 – Paper 1 – Draft report

Affirmative Resolution Instruments

2.2 SL(6)363 – The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Pages 3 – 9)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)-21-23 – Paper 2 – Draft report

LJC(6)-21-23 – Paper 3 – Letter from the Minister for Climate Change, 12 June 2023

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

(13.35 – 13.40)

4 Inter-Institutional Relations Agreement

(13.40 – 13.50)

4.1 Correspondence from the Minister for Climate Change: The Transport and Works (Applications, Objections and Inquiries Procedure) (Amendment) (England and Wales) Rules 2023

(Pages 10 – 11)

Attached Documents:

LJC(6)-21-23 – Paper 4 – Letter from the Minister for Climate Change, 26 June 2023

4.2 Written Statement and correspondence from the Minister for Finance and Local Government: Inter-ministerial Group meeting for Housing, Communities & Local Government

(Pages 12 – 15)

Attached Documents:

LJC(6)-21-23 – Paper 5 – Letter from the Minister for Finance and Local Government, 26 June 2023

LJC(6)-21-23 – Paper 6 – Written Statement by the Minister for Finance and Local Government, 26 June 2023

4.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Persistent Organic Pollutants (Amendment) Regulations 2023

(Pages 16 – 17)

Attached Documents:

LJC(6)-21-23 – Paper 7 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 28 June 2023

5 Papers to note

(13.50 – 14.00)

5.1 Correspondence from the Economy, Trade and Rural Affairs Committee to the Minister for Economy: Ministerial Scrutiny

(Page 18)

Attached Documents:

LJC(6)-21-23 – Paper 8 – Letter from the Economy, Trade and Rural Affairs Committee to the Minister for Economy, 26 June 2023

5.2 Correspondence from the Minister for Climate Change: The Environmental Permitting (England and Wales) (Amendment) Regulations 2023

(Page 19)

Attached Documents:

LJC(6)-21-23 – Paper 9 – Letter from the Minister for Climate Change, 26 June 2023

5.3 Written Statement by the Counsel General and Minister for the Constitution: Keeping Welsh legislation up to date

(Page 20)

Attached Documents:

LJC(6)-21-23 – Paper 10 – Written Statement by the Counsel General and Minister for the Constitution, 26 June 2023

5.4 Correspondence from the Minister for Climate Change: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Levelling-up and Regeneration Bill

(Pages 21 – 23)

Attached Documents:

LJC(6)-21-23 – Paper 11 – Correspondence from the Minister for Climate Change, 27 June 2023

5.5 Correspondence from the Minister for Climate Change to the Minister of State for Housing and Planning: Renters (Reform) Bill

(Page 24)

Attached Documents:

LJC(6)-21-23 – Paper 12 – Letter from the Minister for Climate Change to the Minister of State for Housing and Planning, 27 June 2023

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

(14.00)

7 Supplementary Legislative Consent Memorandum (Memorandum No. 6) on the Procurement Bill

(14.00 – 14.15)

(Pages 25 – 32)

Attached Documents:

LJC(6)-21-23 – Paper 13 – Legal Advice Note

LJC(6)-21-23 – Paper 14 – Draft report [To follow]

8 Legislative Consent Memorandum on the Energy Bill

(14.15 – 14.25)

(Pages 33 – 70)

Attached Documents:

LJC(6)-21-23 – Paper 15 – Letter from the Minister for Climate Change to the Llywydd, 29 June 2023

LJC(6)-21-23 – Paper 16 – Legislative Consent Memorandum

SL(6)365 – The Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023

Background and Purpose

These Regulations amend various Regulations which make provision about, and in connection with, student finance.

Amendments are made—

- (a) to the name that certain British overseas territories are now known by to be consistent with the British Nationality Act 1981, and
- (b) to the immigration status of certain Afghan citizens as a result of changes made to the immigration rules.

Amendments are also made to the Education (Student Support) (Wales) Regulations 2017 and the Education (Student Support) (Wales) Regulations 2018 to disapply early termination of eligibility for certain categories of eligible students in circumstances where a person has become a British or Irish citizen.

Procedure

Negative.

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

Technical Scrutiny

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

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

In regulation 11, there is a minor difference between the English and Welsh texts. In the English text, the new paragraph (12G) is to be inserted after “paragraph (12F)” but in the Welsh text it is described as being inserted after “paragraff 12(F)” in regulation 110 of the Education (Student Support) (Wales) Regulations 2017.



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

In Regulation 22(b) there is uncertainty as to whether the description of the location of the amendment to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 is correct, or whether the new sub-paragraphs are incorrectly numbered. If the new sub-paragraphs are to be inserted after "sub-paragraph (ii)" by this amendment, they should have been numbered as sub-paragraphs "(ia)" and "(ib)" rather than "(i)" and "(ii)" as provided in Writing Laws for Wales paragraph 7.22(3) for the numbering of inserted text.

However, a parallel amendment in regulation 14(b) inserted new sub-paragraphs (ia) and (ib) after "sub-paragraph (i)" in paragraph 2ZA(4)(ea) of Schedule 2 to the Education (Student Support) (Wales) Regulations 2018.

Therefore, there is also doubt as to whether the intention was for regulation 22(b) to insert the new sub-paragraphs (ia) and (ib) after "sub-paragraph (i)" rather than "sub-paragraph (ii)" in paragraph 2A(4)(da) of Schedule 2 to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019. Further explanation is required as to the intention of the amendment.

Merits Scrutiny

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

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

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

"A consultation has not been carried as the amendments have not resulted from a change in policy but from a change in terminology or the immigration rules and to correct the student support regulations to remove a gap in provision as contained in legislation."

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

28th June 2023



SL(6)363– The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

Background and Purpose

These Regulations impose requirements on producers established in Wales to collect data on the packaging they supply to others. In some cases they will also need to report information to Natural Resources Wales (“NRW”).

Part 1 contains the interpretation and general provisions.

Part 2 sets out the obligations on producers. Schedule 1 identifies the information which producers are required to collect and report on.

Part 3 makes provision for registered schemes and exempts producers who are members of a registered scheme from their data reporting obligations under these Regulations, provided that they satisfy certain requirements. Registered schemes are required to make reports on behalf of each of their members, who satisfy these requirements. Part 3 also makes provision in relation to changes to the membership of a scheme in the middle of a relevant year.

Part 4 sets out the powers and duties of NRW under these Regulations.

Part 5 provides for a number of offences and penalties for breach of the requirements imposed by these Regulations. These Regulations are enforced by NRW.

This is the third version of these Regulations to be laid before the Senedd. Two previous versions of the Regulations have previously been withdrawn. The Chair of the Committee wrote to the Minister for Climate Change (the “Minister”) in a [letter dated 14 March 2023](#), requesting responses to matters raised in the Committee’s draft report. A [reply was received from the Minister on 23 March 2023](#), which contained responses to the matters raised in the draft report. These responses have been included in the commentary to the reporting points to which they relate, below.

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 five 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

In regulation 2(1), in the English text, the corresponding Welsh terms haven't been included in italics and brackets after the definitions of "the 2003 Act" and "branded packaging".

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

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

The Minister stated, on 23 March, in relation to this point:

"The Welsh Government consider that the definition of "household packaging" in regulation 7(1) is sufficiently clear on the point that "household packaging" is any primary or shipment packaging which is not supplied to a business as the final user of that packaging. This is further clarified by regulation 7(2). The overall packaging Extended Producer Responsibility ("EPR") scheme is being introduced across all four nations of the UK with mirroring data reporting regulations being laid in each of the legislatures. The definition used is consistent with that used in the regulations in England, Scotland and Northern Ireland as a common definition is vital to aid compliance by businesses and ensure consistency of data collection and reporting across the UK. An amendment to address this technical scrutiny point is not considered necessary."

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

The term "brand" has been defined in regulation 8(13) as bearing a meaning **in these Regulations** but it hasn't been signposted in the list of definitions found in regulation 2(1). Both of the other definitions found in regulation 8(13), "brand owner" and "branded packaging" have been signposted in regulation 2(1) so that the readers are aware that those terms have the same meaning throughout the Regulations. As a result, the readers may not be aware that "brand" is defined as a term in these Regulations as well, and it does appear to be an inconsistent approach compared with that taken to the other defined terms found in regulation 8(13).

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

In regulation 16(6), in the Welsh text, there is a significant difference between the English and Welsh texts as the word "data" is missing from the translation of the phrase "data



collection period”, in the first place it occurs in the third line of paragraph (6). It is a defined term in regulation 2(1) and therefore has been given a specific meaning in these Regulations.

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

In Schedule 1, in paragraph 15(1)(b), the reference is incorrectly described as “sub-paragraph (a)” but it should be referred to as “paragraph (a)” (paragraph 15/sub-paragraph (1)/paragraph (a)).

Merits Scrutiny

The following 8 points are identified for reporting under Standing Order 21.3 in respect of this instrument

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

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

We previously queried whether there is a more accessible way of legislating in this regard to enable a reader to see the provisions on the face of these Regulations.

We received a response from the Welsh Government on 23 March on this point which stated that: *“the Welsh Government considers that the legislation is accessible since the public will have access to the Waste Directive on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary”*.

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

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

Including these examples in a schedule to the Regulations would have improved accessibility, for what are already complex regulations.

In relation to a previous draft of the Regulations, the Minister stated (on 23 March) that:

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



“the legislation is accessible since the public will have access to the Packaging (Essential Requirements) Regulations 2015 on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary”.

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

Regulation 14 provides for situations where a producer dies, becomes bankrupt or incapacitated (the “first producer”). A person who carries on the activities of the first producer is required by Regulation 14(3) to inform NRW within 28 days of commencing those activities. This is a specific request, with a relatively short timescale depending on the circumstances. We queried (in relation to a previous draft of the Regulations) that it appeared to be unclear how this requirement will be highlighted/publicised, so as to enable those obliged to inform NRW to do so in good time. The Minister responded, on 23 March, by stating that the Welsh Government:

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

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

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

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



We do not believe that this is the most accessible means of drafting the regulations. On 23 March, in response to the Committee's prior query on this point, the Minister stated that the Welsh Government:

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

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

Regulation 19(2)(a) provides that paragraph 19(1) applies if a producer provides information the operator of a scheme requests within a "reasonable period of receiving such a request". However, there is no detail on the face of the Regulations as to what such a reasonable period might be. When the Committee previously raised this issue the Minister stated (on 23 March) that:

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

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

Regulation 22 requires NRW to publish lists of items collected for recycling. However, there is no specific requirement on the face of the Regulations to keep these lists up to date. It is therefore unclear if the intention is for the lists published in accordance with Regulation 22 to be kept updated. On 23 March, the Minister stated in reply to a previous query on this point that:

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



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

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

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

We wondered whether a provision granting deemed consent, in circumstances where NRW does not grant or refuse the application within the specified timescale, was considered and whether it would assist applicants. On 23 March, the Minister stated in response to our query that:

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

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

These Regulations were laid before the Senedd on 13 June 2023. A first draft of the Regulations was laid before the Senedd on 24 January 2023, before later being withdrawn. A second draft of the Regulations was laid before the Senedd on 14 February 2023, and was also later withdrawn. It is unclear why there has been a delay in laying these Regulations, given that limited changes have been made to the form of the Regulations when compared to the previous version laid.

Welsh Government response

A Welsh Government response is required to points 1, 3, 4, 5 and 13 above.

Legal Advisers

Legislation, Justice and Constitution Committee

27 June 2023



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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/1094/23

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

SeneddLJC@senedd.wales

12 June 2023

Dear Huw,

I am writing to inform you that The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

Agenda Item 4.1

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1672/23

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

26 June 2023

Dear Huw,

Following my correspondence of 16 May I am writing to inform the Committee I have received a letter from Rt Hon Jesse Norman MP, Minister of State, seeking formal agreement from the Welsh Ministers to make a Statutory Instrument ("SI"), "The Transport and Works (Applications, Objections and Inquiries Procedure) (Amendment) (England and Wales) Rules 2023" ("the 2023 Rules").

I have agreed to the UK Government laying and making the 2023 Rules. The UK Government's intention is the SI will be laid before Parliament on 14 July 2023, with a coming into force date of 11 August 2023.

As previously explained, the 2023 Rules would make changes to the process for submitting and processing applications for Orders under the Transport and Works Act 1992 ("the TWA"), as set out in the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the 2006 Rules") and the Transport and Works (Inquiries Procedure) Rules 2004 ("the 2004 Rules"), to remove reliance on paper documents and to enable the use of electronic methods of communication and submission.

The TWA is, in the main, an Act which enables the Secretary of State ("SofS") to make Orders relating to, or to matters ancillary to, the construction or operation of railways, tramways and other guided transport systems. It also enables the SofS to make Orders relating to works interfering with public rights of navigation.

The Welsh Ministers may exercise, among other things, the power to make Orders under the TWA in Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 ("the TFO").

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

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

The 2006 Rules

The functions of the SofS, namely the relevant rule-making powers under s.6, 7(4) and 10 of the TWA, under which the 2006 Rules are made, were not transferred by the TFO. Therefore, the Welsh Ministers do not have the ability to amend or make rules under the relevant rule-making powers.

Article 5 and Schedule 2 of the TFO provide that those functions of the SofS, so far as they are exercisable in relation to Wales, can be exercised only with the agreement of the Welsh Ministers. This includes the relevant rule-making powers under the TWA. So, the agreement of the Welsh Ministers is legally required before the changes to the 2006 Rules, as proposed in the 2023 Rules, can be made.

The 2004 Rules

The 2004 Rules are made under section 9 of the Tribunals and Inquiries Act 1992 (“the TIA”). Section 9(7) of the TIA provides that in the application of section 9 to inquiries held in Wales by or on behalf of the Welsh Ministers, the power in subsection (1) to make rules is exercisable by the Welsh Ministers (and not by the Lord Chancellor). Consequently, any amendments made to the 2004 Rules in respect of inquiries held in Wales by or on behalf of the Welsh Ministers will need to be made by the Welsh Ministers. At this stage the Welsh Government is not legislating to make amendments to the 2004 Rules.

The 2023 Rules amend both the 2006 Rules and 2004 Rules. However, for the reasons detailed above, the amendments to the 2004 Rules will apply to England only. The amendments to the 2006 Rules will apply in England and Wales.

The proposed minor changes to the 2006 Rules accord with the Welsh Government’s wider agenda to streamline consenting processes and would have environmental benefits by removing the need to provide paper documents for TWA applications.

The 2023 Rules do not have implications for the Programme for Government.

Yours sincerely,



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: RE-221-2023

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

SeneddLJC@senedd.wales

26 June 2023

Dear Huw,

Outcome of the Interministerial Group meeting for Housing, Communities & Local Government

In accordance with the inter-institutional relations agreement, the second meeting of the Interministerial Group (IMG) for Housing, Communities and Local Government was held on 10 May 2023. As lead Minister for this IMG, I asked the Minister for Climate Change to chair the meeting, as the agenda items fell within her portfolio. This meeting had originally been planned for 10 October 2022, but was postponed at the request of the UK Government.

The Minister for Climate Change, Julie James MS was unable to attend on the day and sent her apologies. The Welsh Government was represented by: Emma Williams, Director of Housing and Regeneration; Sarah Rhodes, Head of Homelessness Prevention; Andrea Street, Deputy Director, Housing Safety Regulations & Standards; and Jo Larnar, Head of Building Safety Programme.

The Minister for Housing, Paul McLennan MSP attended for the Scottish Government and stepped in to chair the meeting in the Minister for Climate Change's absence. Mark O'Donnell, Deputy Secretary of Housing, Urban Regeneration and Local Government; Paul Price, Director of Social Housing Policy and Kieran Devlin, Deputy Director of Housing Supply Policy represented the Northern Ireland Executive. From the UK Government, Parliamentary Under-Secretary of State for Housing and Rough Sleeping and for the Union and Constitution: Felicity Buchan MP, who was not present for the building safety item given her constituency link to Grenfell, and the Parliamentary Under-Secretary of State for Local Government and Building Safety: Lee Rowley MP.

Homelessness was the substantive item on the agenda and the group discussed the common priorities and challenges each government faces around tackling homelessness.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

Making the Private Rented Sector work to prevent homelessness and prioritising targeted prevention were key focus areas, while the impact of cost-of-living, the war in Ukraine and other humanitarian crises were shared concerns in the context of homelessness. There are also common challenges around LHA rates, workforce resilience and the number of people in temporary accommodation. The group also discussed progress made on building safety matters since the inaugural IMG meeting. They acknowledged the positive working relationship between officials in the areas of building safety and homelessness and agreed for this official level engagement to continue.

The group agreed the Scottish Government would host the next meeting, likely to take place in the autumn. Officials will now work together to identify a specific date and suitable agenda items.

Yours sincerely,

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

Rebecca Evans AS/MS
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Outcome of the second Interministerial Group meeting for Housing, Communities & Local Government

DATE 26 June 2023

BY Rebecca Evans, Minister for Finance and Local Government

In accordance with the inter-institutional relations agreement, the second meeting of the Interministerial Group (IMG) for Housing, Communities and Local Government was held on 10 May 2023. As lead Minister for this IMG, I asked the Minister for Climate Change to chair the meeting, as the agenda items fell within her portfolio. This meeting had originally been planned for 10 October 2022, but was postponed at the request of the UK Government.

The Minister for Climate Change, Julie James MS was unable to attend on the day and sent her apologies. The Welsh Government was represented by: Emma Williams, Director of Housing and Regeneration; Sarah Rhodes, Head of Homelessness Prevention; Andrea Street, Deputy Director, Housing Safety Regulations & Standards; and Jo Larnar, Head of Building Safety Programme.

The Minister for Housing, Paul McLennan MSP attended for the Scottish Government and stepped in to chair the meeting in the Minister Climate Change's absence. Mark O'Donnell, Deputy Secretary of Housing, Urban Regeneration and Local Government; Paul Price, Director of Social Housing Policy and Kieran Devlin, Deputy Director of Housing Supply Policy represented the Northern Ireland Executive. From the UK Government, Parliamentary Under-Secretary of State for Housing and Rough Sleeping and for the Union and Constitution: Felicity Buchan MP, who was not present for the building safety item given her constituency link to Grenfell, and the Parliamentary Under-Secretary of State for Local Government and Building Safety: Lee Rowley MP.

Homelessness was the substantive item on the agenda and the group discussed the common priorities and challenges each government faces around tackling homelessness. Making the Private Rented Sector work to prevent homelessness and prioritising targeted prevention were key focus areas, while the impact of cost-of-living, the war in Ukraine and other humanitarian crises were shared concerns in the context of homelessness. There are also common challenges around LHA rates, workforce resilience and the number of people in temporary accommodation. The group also discussed progress made on building safety matters since the inaugural IMG meeting.

They acknowledged the positive working relationship between officials in the areas of building safety and homelessness and agreed for this official level engagement to continue. The group agreed the Scottish Government would host the next meeting, likely to take place in the autumn. Officials will now work together to identify a specific date and suitable agenda items.

[The meeting Communique agreed by Ministers can be found here.](#)

Agenda Item 4.3

Lesley Griffiths AS/MS

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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

SeneddLJC@senedd.wales



Llywodraeth Cymru
Welsh Government

28 June 2023

Dear Huw

The Persistent Organic Pollutants (Amendment) Regulations 2023

I wish to inform the Committee of my intention to consent to the UK Government making and laying one Statutory Instrument (SI): The Persistent Organic Pollutants (Amendment) Regulations 2023 by 29 June 2023.

I have received a letter from the Minister of State for Biosecurity, Marine and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. Therefore, the provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland and Wales and a similar request for consent has been sent to Scottish Ministers.

This SI amends retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (the "POPs Regulation"). The amendment will extend the expiry date of a derogation for the manufacturing, placing on the market and use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds for textiles for oil and water-repellency for the protection of workers from dangerous liquids that comprise risks to their health and safety. The expiry date will be extended from 4 July 2023 to 3 December 2025.

The purpose of the Regulations is to allow for specific exemption to be applied for protective equipment used by UK Armed Forces personnel. The exemption will not apply to products or equipment used by non-military manufacturers or users. This is because a restriction on the use of PFOA for non-military purposes is contained in the UK REACH Regulation.

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Caerdydd • Cardiff
CF99 1SN

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

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.

This SI is being made under articles 2A, 15(1) and 18(1) of the POPs Regulation and is subject to the negative resolution procedure. It is proposed that the SI is made and laid before the UK Parliament on 29 June 2023, with a commencement date of 4 July 2023.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government on this matter. The POPs Regulation, which is being amended, is a GB-wide Regulation, so any amendments to it could not be made in the Welsh language.

Making these amendments through a GB-wide amending SI ensures a coherent and consistent statute book, with the regulations being accessible in a single instrument. It also ensures there will be no risk of legislative divergence in relation to the use of protective equipment by defence personnel. I consider that legislating separately for Wales would not be the most appropriate way to give effect to necessary changes nor a prudent use of Welsh Government resources given other important priorities.

Yours sincerely,

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

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

Agenda Item 5.1

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

**Economy, Trade and
Rural Affairs Committee**

Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN
SeneddEconomi @senedd.cymru
senedd.cymru/ SeneddEconomi
0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
SeneddEconomy@senedd.wales
senedd.wales/ SeneddEconomy
0300 200 6565

Vaughan Gething MS
Minister for Economy

26 June 2023

Dear Vaughan,

Thank you for attending the Committee on 21 June. We had intended to ask you a question regarding the Western Gateway Partnership hydrogen pathway, but were unable to do so due to time constraints. Could you please provide an update to the Committee on any work you are undertaking with the UK Government and the Western Gateway Partnership in relation to the plans outlined in their hydrogen opportunities and delivery pathway?

Members also discussed your letter regarding the Ministerial Forum for Trade on 23 May. We appreciate the update and welcome your offer to share information on the new departmental structures within the UK Government. The Committee would also like to request regular updates on the implementation of the Windsor Framework and the Border Control Point Target Operating Model.

I have copied this letter to Huw Irranca-Davies in his capacity as Chair of the Legislation, Justice and Constitution Committee.

Kind regards,



Paul Davies MS
Chair: Economy, Trade and Rural Affairs Committee

We welcome correspondence in Welsh or English

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

Agenda Item 5.2

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1498/23

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

26 June 2023

Dear Huw,

I am writing to inform you that The Environmental Permitting (England and Wales) (Amendment) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework.

Yours sincerely,



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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Keeping Welsh legislation up to date

DATE 26 June 2023

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

Last November, as part of my update on [The Future of Welsh Law](#) programme, I informed you that we'd taken a major step towards ensuring that users can access Welsh laws in up-to-date form in both languages on [legislation.gov.uk](#). I also promised to keep Members updated on our progress.

Our initial focus has been on bringing the Acts and Measures passed by the Senedd since 2007 fully up to date in both languages. I am pleased to report that nearly 80% of the English language texts, and just over 66% of the Welsh language texts, of primary legislation are now updated. This is significant progress, particularly in respect of the Welsh language texts as none of these had been updated before our project began.

There are over 6,000 Welsh Statutory Instruments, of which about 68% have not been amended and do not require updating. However, changes over many years to the remaining 32% still leaves a substantial amount of editorial work, and in recent weeks work has begun on applying the Welsh language amendments to these texts. We have already tackled about 5% of the amendments that need to be applied but I anticipate it will take a number of years to bring the backlog down.

Our approach to tackling that backlog will be to ensure that the most recently made instruments are kept up to date first, before we work backwards towards the oldest instruments. However, we are also working on the most frequently viewed items of legislation on [legislation.gov.uk](#) as well as discrete projects. As an example, updating all of the Acts and Statutory Instruments relating to the “renting homes” legislation is a priority.

I will continue to update Members on the progress of this work, including in the annual report on the programme to improve the accessibility of Welsh law, which will be laid before the Senedd later this year.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JJ/01758/23

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

SeneddLJC@senedd.wales

27 June 2023

Dear Huw

Thank you and the Legislation, Justice and Constitution Committee members for considering the Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the UK Government's Levelling-up and Regeneration Bill (the Bill).

I welcome the report and note the Committee's ongoing concern in relation to the last-minute approach to drafting by the UK Government. I share that frustration.

Recommendation 1. The Minister should state when the Welsh Government first became aware of amendments to clause 139 and explain more fully the delay in laying Memorandum No. 3, particularly when the matters it contains are relatively narrow in scope.

The Welsh Government's attention was drawn to UK Government's amendments to clause 139 through correspondence received on 27 March, having not been raised at the ministerial meeting on 22 March. The letter from the Department for Levelling Up, Housing and Communities asked for the Welsh Government's view on their assessment of whether a long list of amendments fell within scope of needing a Legislative Consent Motion. While the amendments to clause 139 requiring the consent of the Senedd was relatively narrow in scope, it was necessary to review each amendment to confirm whether any other amendments fell within the scope of Standing Order 29, hence the delay in tabling the supplementary consent memorandum.

Recommendation 2. The Minister should confirm whether or not the Welsh Government has undertaken a detailed assessment of the extent to which a Welsh Government Bill seeking to make provision in relation to planning data and environmental outcomes reports would engage reserved matters. If not, the Minister should explain why she has not done so.

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0300 0604400

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Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

I can confirm that consideration has been given by my policy officials to the extent to which a Welsh Government Bill seeking to make provision in relation to Planning Data and Environmental Outcome Reports (EOR) would engage reserved matters, in the context of assessing the provisions for the purposes of preparing the Legislative Consent Memorandum for this Bill only.

A replacement framework for Environmental Impact Assessment (EIA) is not currently a policy priority within the current Programme for Government. A separate detailed analysis of wider system change has therefore not been undertaken, as it has not been necessary.

Recommendation 3. The Minister should publish any assessment undertaken of the extent to which a Welsh Government Bill seeking to make provision in relation to planning data and environmental outcomes reports would engage reserved matters.

See my response to recommendation 2.

Recommendation 4. The Minister should address more fully recommendation 6 in our original report and, in addition, explain what the impact would be for the Welsh Ministers of not being able to reverse the provision in clause 128(2) of the Bill as introduced and what action the Minister would take as a consequence.

The provision in clause 128(2) is contingent on whether the EOR approach is taken forward in Wales. Discussions between officials to date have therefore focused on the substantive provisions and have not repeated our opposition to the removal of this clause.

If it becomes necessary to remove Secretary of State regulation making powers in devolved areas, I would seek the provision in clause 128(2) to apply to England only.

Section 71A of the Town and Country Planning Act 1990 provides some limited regulation making powers to address EIA for town and country planning, but it does not provide for amending the whole of the EIA process. This is because since the introduction of the section by the Planning and Compensation Act 1991 the EIA system has evolved beyond the limits of the clause through the use of powers in the European Communities Act 1972. The loss of section 71A would therefore impact the ability of the Welsh Ministers to make regulations for the initial part of town and country planning EIA procedures prior to planning permission being granted.

The loss of section 71A would mean, in the absence of EOR regulation making powers, that EIA procedures for town and country planning in Wales would remain static like the other devolved consent regimes subject to EIA. No legislative change would be proposed to rectify this in the short term due to other policy priorities.

Recommendation 5. The Minister should provide an immediate update on her negotiations with the UK Government including whether, and if so when, the draft text providing for equivalent powers offered on the 22 March 2023 was provided.

Since the offer of equivalent powers was made at the meeting of the Minister for Social Justice and the Parliamentary Under Secretary of State (Levelling Up) on 22 March 2023, we have not received draft amendments providing for equivalent powers. Officials did receive, on 31 May, draft clauses for Planning Data and Environmental Outcome Reports providing for a concurrent plus approach for those matters within the legislative competence of the Senedd, so that the Welsh Ministers and the UK Government can legislate in devolved areas, but only if the UK Government obtains the Welsh Ministers' prior consent. There is also a requirement for the UK Government to consult the Welsh

Ministers for those matters which are reserved but where the Welsh Ministers have executive competence.

Officials have submitted a detailed response to the UK Government, suggesting changes to the proposed amendments that would better reflect Welsh Government policy and legislation. We are awaiting a response. The proposed amendments have not been formally tabled.

Recommendation 6. The Minister should explain what action she will take if she is:
(i) unable to secure agreement on existing provisions relating to planning data and environmental outcomes reports, and unable to secure agreement on applying these provisions to England only;
(ii) able to secure agreement on applying existing provisions relating to planning data and environmental outcomes reports to England only.

Environmental Outcome Reports will indirectly affect Welsh consent regimes even if the Secretary of State does not make regulations for Wales. This is because devolved statutory bodies, the lead example being Natural Resources Wales, will have to respond to consultations on reserved consent regimes such as the Nationally Significant Infrastructure Projects (NSIPs) that will be subject to the EOR approach.

In both scenarios there will be a need to work with the UK Government to minimise the effect on devolved consent regimes of any Planning Data and EOR regulations made by the Secretary of State. This will particularly be needed where there are likely to be more cross jurisdictional projects such as in marine areas. In the scenario where the UK Government retains the ability to legislate for devolved consent regimes without consent, I would continue to oppose such regulations.

Where the Welsh Ministers do gain regulation making powers for Planning Data and EOR, I do not propose to rush through regulations without stakeholders in Wales having had ample opportunities to engage in the design of an EOR approach appropriate for Wales.

Yours sincerely



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

Agenda Item 5.5

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/1462/23

Rachel Maclean MP
Minister of State for Housing and Planning
2 Marsham Street
London
SW1P 4DF

27 June 2023

Dear Rachel,

Thank you for your letter of 17 May, in relation to the introduction to Parliament of the Renters (Reform) Bill.

Your letter outlines the areas where the Bill has an effect on Wales, and your view that the consent of the Senedd is required for the changes it makes to Part 7 of the Housing Act 1996. On face value it does appear that the saving by SI 2015/1272 of the homelessness regime outlined in Part 7 could mean that the Renters (Reform) Bill proposes provision within the legislative competence of the Senedd, and I am grateful to you for drawing this to my attention. However, more detailed consideration by my officials has concluded that, in particular as a consequence of the implementation of the Renting Homes (Wales) Act 2016 on 1 December 2022, which abolished assured tenancies in Wales, this is not the case.

I trust that you will accept my analysis of the devolved competence in this area, and that you will therefore update your Bill materials to reflect our revised position on this point.

Yours sincerely

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

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

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Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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Document is Restricted

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



Llywodraeth Cymru
Welsh Government

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

Llywydd@senedd.wales

29 June 2023

Dear Elin

The UK Government introduced the Energy Bill (the Bill) to the UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022 and is still expected to have a number of government amendments introduced at the final stages of the Bill's passage through Parliament.

The UK Government's stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing.

The Bill is broad in its scope, complex and introduces into legislation a number of significant regulatory regimes, particularly in the fields of carbon dioxide transport and storage and hydrogen. The Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK's energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK. The length and complexity of the Bill has resulted in the need for lengthy and in-depth analysis of the policy and constitutional position.

A large number of levers relating to energy policy are reserved. However, given the complexity in reserved and devolved powers, legislative consent will be required in a number of areas. Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers and that the UK Government should seek Welsh Ministers' consent to any secondary legislation which impacts devolved competence. The Welsh Government recommends withholding consent to the relevant clauses at this time and I laid the Legislative Consent Memorandum on 29 June 2023.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

I appreciate that we are well outside the normal two-week Standing Order 29 deadline for the laying of an LCM. This has been in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration. The LCM covers the Bill as introduced however, as noted above, we are aware of amendments subsequently made and expect further changes to the Bill from the UK Government as the Bill continues its consideration in the House of Commons. As such, a supplementary LCM will be required and this will be laid as soon as possible. The Bill is expected to move through the final stages of the UK Parliament with House of Commons Report Stage expected to take place no earlier than 13 July 2023.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS, the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS and the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely



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

LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

- 1) This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
- 2) The Energy Bill (“the Bill”) was introduced in the House of Lords on 6 July 2022. The Bill can be found at: [Energy Bill \[HL\] - Parliamentary Bills - UK Parliament](#). The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. The Bill is broad in its scope, complex and introduces into legislation a number of significant regulatory regimes, particularly in the fields of carbon dioxide transport and storage and hydrogen. This has resulted in the need for lengthy and in-depth analysis of the policy and constitutional position.

Policy Objective(s)

- 3) The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes¹. The UK Government’s stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK’s climate change commitments and reform the UK’s energy system while minimising costs to consumers and protecting them from unfair pricing.

Summary of the Bill

- 4) The Bill is sponsored by the Department for Energy Security and Net Zero.
- 5) The Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK’s energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK.
- 6) In respect of leveraging investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to ensure the development of a low carbon energy system, to reduce emissions from industry, transport and potentially heat, and provide low carbon power. These measures include:

¹ [Energy Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

- a) Establishing an economic regulation and licensing regime for CO₂ transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
 - b) Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
 - c) Enabling the establishment of a market-based mechanism for low-carbon heat.
 - d) Enabling the effective and safe delivery of a large village hydrogen heating trial.
 - e) Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965 (NIA 1965).
- 7) In respect of system reform and consumer protection, Parts 4 – 9 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:
- a) Establishing an Independent System Operator and Planner, an independent body acting as a trusted voice at the heart of the energy sector.
 - b) Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
 - c) Enabling competitive tenders in onshore electricity networks.
 - d) Enabling the Competition and Markets Authority (CMA) to investigate more effectively the impacts of mergers between energy companies.
 - e) Introducing a definition of multi-purpose interconnectors from which a new licensing and economic regime can be developed.
 - f) Maintaining the existing energy price cap beyond 2023.
 - g) Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
 - h) Removing obligation thresholds under the Energy Company Obligation scheme.
 - i) Driving the rollout of smart meters across Great Britain.
 - j) Regulating the heat network market.
 - k) Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
 - l) Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
 - m) Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.

- 8) In respect of the safety, security, and resilience of the UK energy system, Parts 10, 11 and 12 of the Bill include provisions related to a secure and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:
- a) Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
 - b) Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
 - c) Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
 - d) Granting the North Sea Transition Authority (also known as the Oil and Gas Authority or OGA) additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.
 - e) Make expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office for Nuclear Regulation (ONR).
 - f) Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.
 - g) Enhancing the UK's nuclear third party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the Nuclear Installations Act 1965.
 - h) Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other policy forces.
- 9) Welsh Government were not involved in the development of the Bill before its introduction. Some engagement occurred as a result of policy development, for instance through past consultations on several policies. Some clauses were shared in draft, however the full legal text was not available for review until hours before its introduction into the House of Lords.
- 10) A wide range of different pieces of legislation currently govern the UK's energy system and a number of these are amended by the Bill. These include the Energy Act 2008, The Gas Act 1986, The Electricity Act 1989, The Petroleum Act 1998 and The Climate Change Act 2008. Changes to legislation are included in the Explanatory Notes which can be found here: [Energy Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

Provisions in the Bill for which consent is required

- 11) I consider that consent is required in relation to provisions identified below in so far as they are “relevant provision” for the purposes of SO29. Please note all clause numbers relate to the Bill as introduced.
- 12) A large number of levers relating to energy policy are reserved. However, given the complexity in reserved and devolved powers, legislative consent will be required in a number of areas. Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers and that the UK Government should seek Welsh Ministers’ consent to any secondary legislation which impacts devolved competence. The Welsh Government recommends withholding consent to the relevant clauses at this time.
- 13) The Welsh Government will continue to work with the UK Government to secure an approach to the provisions which require amendments. The Welsh Government may bring forward a supplementary memorandum and motion later in the Bill’s passage through the UK Parliament.

Provisions for which the Welsh Government recommends consent

- 14) The provisions which the Welsh Government recommends that the Senedd **consent** to are summarised below.

a) Part 1: Licensing of Carbon Dioxide Transport and Storage

This Part establishes the duties and functions for Ofgem to act as economic regulator of CO₂ transport and storage and a framework for the economic licensing of CO₂ transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO₂ transport and storage networks are expected to cross territorial boundaries. It also sets out broad powers for the Secretary of State to make regulations, take decisions and provide direction to Ofgem with regard to its regulation of CO₂ transport and storage activities.

An LCM is required for the provisions referred to below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Chapter 1 – clauses 20 – 25

These clauses establish that a licence holder, or a transport and storage network user whose interests are materially affected by a decision by the economic regulator to modify a licence condition, has a right to appeal a licence modification decision to the Competition and

Markets Authority (CMA). It sets out the procedure and the power of the CMA.

This is intended to ensure due process and that there are sufficient safeguards for investors whose rights may be interfered with by a proposed licence modification during the term of the licence.

The Welsh Government has no concerns with these clauses, agrees they are required and recommends consent is granted.

b) Part 2: Carbon dioxide capture, storage etc. and hydrogen production

An LCM is required for the provisions listed below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Chapter 4 – Clauses 92 –95 and Schedule 5

These clauses introduce new ex-ante powers for the Oil and Gas Authority regarding the change of control of a company in relation to all Carbon Storage Licensees and makes it an offence to change control without prior consent of the Oil and Gas Authority.

There is overlap between their geographic scope and the territory over which the Senedd has competence under section 108A of the Government of Wales Act.

It is important that licences are not subject to undesirable change of control and consequently the Welsh Government recommend consent is granted.

Chapter 5 – Clause 97

Clause 97 makes provision for SoS to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating the transport and storage of CO₂, carbon capture facilities which operate in association with transport and storage, low carbon hydrogen production and transport and storage of hydrogen.

Financial support will be required to scale up the deployment of this technology. Therefore, the Welsh Government recommend consent is granted.

c) Part 3: New technology

An LCM is required for the provision listed below as they concern the matters of environmental protection and waste, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Clause 111

This clause alters the definition of “UK removals” in section 29(1)(b) of the Climate Change Act 2008 so that in relation to greenhouse gas it means “removals of that gas from the atmosphere due to processes, mechanisms or activities”.

The previous definition of “UK removals” in the Climate Change Act 2008 referenced only removals of greenhouse gases from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom. By altering the definition through this Bill, engineered removals will also fall within the definition.

The Welsh Government consider this appropriate and recommend consent is granted.

d) Part 7: Heat Networks

Clause 168(1)(b) and (2); and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(1)(b)

This provision enables the Secretary of State to make provision by regulations for the purposes of conferring powers in relation to the development or maintenance of relevant heat networks.

Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of “Production, distribution and supply of heat and cooling”. However, it also provides for an exception to that reservation, in respect of “Heat and cooling networks, but not the regulation of them”. The provision (s. 168(1)(b)) falls within the exception to the reservation, relating as it does to the development and maintenance of heat and cooling networks.

Clause 168(2) and paragraphs 33(1) and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(2) provides that Schedule 15 contains further provision about the powers to make regulations under clause 168.

Paragraphs 33(1) and (3)(a) and (d), taken together, require the Secretary of State to set out in such regulations the rights relating to land that are capable of being conferred on a person by an installation and maintenance license, which may include a right to apply to the

Secretary of State to make a compulsory acquisition of an easement or other right over land by the creation of a new right for the purpose of installing or maintaining works and apparatus relating to a heat network; and a right to undertake works of a specified description without being required to obtain planning permission.

Paragraph 184 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in relation to “Planning...”, but one which is limited to certain matters, none of which is relevant. The provision is therefore within the Senedd’s competence in respect of planning more broadly.

The Welsh Government are content that the rights and powers are appropriate and is consistent with other energy infrastructure. Therefore, we recommend consent is granted.

Provisions for which the Welsh Government recommends the Senedd withhold consent

- 15) The provisions to which the Welsh Government recommends the Senedd **withhold consent** are summarised below.

| Clauses – Brief description | Why an LCM is required | Consent recommended / not recommended and why |
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| Part 1: Licensing of carbon dioxide transport and storage | | |
| <p>This Part establishes the duties and functions for Ofgem to act as economic regulator of CO2 transport and storage and a framework for the economic licensing of CO2 transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO2 transport and storage networks are expected to cross territorial boundaries.</p> | | |
| <p>Chapter 1 – Licensing of activities</p> <p>Chapter 1 relates to the licensing of activities including the operation of carbon dioxide storage and transportation of CO2. It establishes Ofgem as the economic regulator for CO2 transport and storage, prohibits transportation of CO2 by pipeline or operating a site for the geological storage of CO2 without a licence and enables the Secretary of State (SoS) to regulate other means of CO2 transport in the future.</p> | <p>LCM required for clauses 1-19, 26-35 and Schedule 1.</p> <p>An LCM is required for these provisions as they legislate in the devolved area of carbon dioxide storage.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 1 sets the principal objectives and general duties</p> | <p>The Welsh Government recommends withholding consent for clauses 1-19, 26- 35 and Schedule 1 as amendments or clarifications are recommended.</p> <p>The Welsh Government are requesting amendments as follows:</p> <p>Clause 1 – An amendment to include contributing to UK and Devolved Governments’ climate targets as a principal objective of the economic regulator..</p> <p>Clauses 2 and 3 – As clause 2(3)(b) gives the Secretary of State powers to make regulations specifying other means of transportation of gas which are to be a “licensable means of transportation”, request that the requirement in clause 3 for the Secretary of State to give notice to the Welsh Ministers if the regulations contain provision that would be within devolved competence be strengthened to a requirement to obtain the consent of Welsh Ministers. Furthermore, clause 2(7) provides for the SoS to also modify and/or repeal provision of this Act or other enactments, and thereby modify licence model clauses. This broad power could result in the SoS creating economic licence conditions that conflict with</p> |

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| | <p>of the Secretary of State and economic regulator.</p> <p>Clauses 2 - 6 relate to licensable activities: Clause 2 introduces an offence for unlicensed activities. Clause 3 relates to the requirements for the SoS to consult on proposals for additional activities to become licensable Clause 4 sets out the territorial scope of prohibition Clause 5 provides for the Secretary of State to regulate to grant exemption from the prohibition. Clause 6 provides for the Secretary of State to revoke regulations by which an exemption from the prohibition was granted.</p> <p>Clauses 7 – 16 relate to the granting of licences and licence conditions: Clause 7 allows for the economic regulator to grant licenses for the transport and storage of CO2</p> | <p>Welsh Government licensing and environmental executive functions. The Welsh Government request amendments to clarify the extent of these powers.</p> <p>Clause 5 – Request that when the Secretary of State is granting exemptions from the prohibition on carrying out activity in clause 2(1) without a licence, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 6 – Request that when the Secretary of State is revoking or withdrawing an exemption, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 7 – request that an amendment be introduced to require the economic regulator have due regard to the climate change targets of the Welsh Government and the associated statutory plans.</p> <p>Clause 8 – Request that when the Secretary of State is making regulations providing for different types of licence in respect of the different activities set out in clause 2(1), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>Clause 9 – Request that when the Secretary of State (or the economic regulator with the approval of the SoS) make regulations about how licences are applied for and the fee, the requirement to consult Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 10 – Request that when the Secretary of State is making regulations for determinations on competitive basis for awarding licences, the requirement to consult Welsh</p> |
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| | <p>Clause 8 allows for the Secretary of State to regulate to provide for difference types of licence in respect of different activities.</p> <p>Clause 9 gives the Secretary of State powers to regulate for the procedure for licence applications. There is provision to extend some of these powers to the economic regulator with the approval of the Secretary of State.</p> <p>Clause 10 provides for the Secretary of State to make regulations to introduce competition into the tenders for licences.</p> <p>Clause 11-15 contains provisions for the Secretary of State to determine conditions of licences, including general and standard conditions and the modification of conditions.</p> <p>Clause 16 and Schedule 1 make provisions about the powers of the Secretary of State to grant licenses during an interim period.</p> <p>Clauses 17 – sets out the responsibilities of the economic</p> | <p>Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 11 – The revenue calculations will consider decommissioning costs. Certain emissions in the Welsh Territorial Waters are the responsibility of the Welsh Ministers. Therefore, consideration of decommissioning costs must consider fully the Welsh Ministers’ views on what would comprise an adequate decommission.</p> <p>Clauses 12-15 – An amendment so that the requirement to consult Welsh Ministers is changed to a requirement for consent of Welsh Ministers. It is important that the consent of Welsh Ministers is given to all licence clauses where such licences are within the Welsh Land or Territorial Waters. This is especially important as the revenue generated will be linked to decommissioning, which is arguably an environmental concern.</p> <p>Clause 16 – there should be a limit or timescale within which the SoS must transfer its powers to grant licences to the economic regulator. The SoS should notify the Welsh Ministers of this transfer in any scenario.</p> <p>Schedule 1 – there is provision to notify the Welsh Ministers of the issuing of a licence during the interim period. We request this be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 17 – An amendment to give Welsh Ministers input into licence termination decisions where they impact areas of devolved powers (as the current requirement is for notification only).</p> |
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| | <p>regulator with regard to the termination of licences.</p> <p>Clauses 18 and 19 establish that licences can be transferred and the consent required prior to transfer.</p> <p>Clause 26-29 make provision for information sharing. Clause 26 allows the economic regulator to request and provide information from or to relevant persons, including Welsh Ministers and Natural Resources Wales. Clause 27 gives power to the Secretary of State to request information directly from a licence holder as required for the purpose of the Secretary of State's functions. Clause 28 places an obligation on the economic regulator to monitor the state of the market, and to share the information it gathers with the Secretary of State or the CMA as requested. Clause 29 provides for the economic regulator to request</p> | <p>Clauses 18 & 19 – An amendment to ensure Welsh Ministers are notified where any transfer involves a licence on Welsh land or in Welsh territorial waters.</p> <p>Clause 32 – Request that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>The Welsh Government also request clarifications as follows:</p> <p>General clarification - The Economic Licence, and therefore the Economic Regulator and SoS would have executive functions on Welsh Land and Welsh Territorial Waters where the Welsh Ministers are the CCS Licensing Authority under the Energy Act 2008 (i.e. Welsh Ministers license the geological storage of CO2, but SoS and Economic Regulator licence economic issues). This could cause conflicting executive functions should the Welsh Ministers look to amend the current Energy Act 2008 Model Clauses. Further clarity is needed on how the new economic licensing regime will sit alongside and interact with the licensing regime of the Energy Act 2008 under which the Welsh Ministers are the licensing authority.</p> <p>Clause 4 – clarity is required on the territorial extent of these provisions in this Bill as compared to the territorial scope of licensing powers in the Energy Act 2008.</p> |
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| | <p>relevant information from licence holders in order to allow it to monitor the market. It also establishes an offence where the licence holder does not comply with a request for relevant information.</p> <p>Clause 30 places a duty on the economic regulator to carry out an impact assessment where it is minded to pursue a proposal which could have a significant impact.</p> <p>Clause 31 requires the Secretary of State or the economic regulator to give reasons for their decisions and determinations in relation to the revocation or modification of a licence, the giving of any directions or consent in pursuance of a condition included in a licence, the determination of a question referred in pursuance of a condition included in a licence and the making of a final order, the making or confirmation of a provisional 5 order or the</p> | <p>Clause 5 & 6 - Further clarification required on the parameters within which exceptions will be granted.</p> <p>Clause 26 – The information sharing requirement is broad. Further details on when and why this would apply are needed.</p> <p>Clause 30 – the Welsh Government are requesting information on how the impact assessment would be conducted, with specific regards to devolved environmental issues and the role of Welsh Ministers.</p> |
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| | <p>revocation of a final order or of a provisional order which has been confirmed.</p> <p>Clauses 32 – 35 relate to enforcement: Clause 32 provide for the Secretary of State to regulate for the enforcement of licence conditions and other requirements imposed on licence holders. Clause 33 makes it an offense to give false statements in relation to any provision in this Part. Clause 34 sets out the liability of officers or entities. Clause 35 sets out the criminal proceedings in relation to the offences.</p> | |
| <p>Chapter 3 – Reporting requirements</p> | <p>LCM required for clauses 39 - 41.</p> | <p>The Welsh Government recommends withholding consent as amendments are requested.</p> |

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| <p>Requires the economic regulator to provide an annual report which the SoS must lay before the Houses of Parliament and the Welsh Ministers must also lay before the Senedd.</p> | <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 41 imposes functions on the Welsh Ministers. The Welsh Ministers must lay a copy of the SoS' annual report in the Senedd.</p> | <p>The Welsh Government are requesting amendments as follows: Clause 39 – amendment for Welsh Ministers to be consulted on draft programmes. Clause 40 – amendment for the work programme of the economic regulator to have due regard to the policies of the devolved Governments. Clause 41 – The annual report should include a requirement to report on progress in Wales (if not already included).</p> |
| <p>Chapter 4 – Special administration regime</p> <p>Provides for the application of a Special Administration Regime (SAR) in the event of a CO2 transport and storage company insolvency</p> | <p>LCM required for clause 46.</p> <p>Whilst chapter 4 relates mainly to insolvency, clause 46 provides that the Secretary of State may amend licences. Welsh Ministers are the licensing authority for some licenses within the potential scope of this clause.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not</p> | <p>The Welsh Government recommends withholding consent for clause 46 in case further amendments or clarifications are identified following further review.</p> <p>Clause 46 itself recognises that the powers used could be within the legislative competence of the Senedd. Subsections (3) and (6) provide that if provision making the modification would be within the legislative competence of the Senedd if it were contained in an Act of the Senedd then there is a requirement for consultation.</p> |

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| | not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. | |
| <p>Chapter 5 – Transfer Schemes</p> <p>This Chapter provides for the transfer of property, rights or liabilities when a licence is terminated. This may be required to allow the network to continue operating, or to ensure the safety and security of a network if it ceases operation.</p> | <p>Clauses 50-52 and Schedule 3 These clauses provide for the Secretary of State to make a statutory transfer scheme under which certain property, rights or liabilities of a licence holder can be transferred either to an appropriate body or to the Secretary of State. It includes provisions regarding consultation and conduct.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> | <p>The Welsh Government recommends withholding consent for clauses 50-52 and Schedule 3 and we request amendments are made to ensure Welsh Ministers consent to the transfer for licences.</p> |
| <p>Chapter 6 – Miscellaneous and general</p> | <p>LCM required for clauses 53 – 54 and Schedule 4</p> | <p>The Welsh Government recommends withholding consent for clauses 53-54 and Schedule 4.</p> |

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| | <p>The provision concerns the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 53 Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Welsh Ministers in some instances.</p> <p>Clause 54 and Schedule 4 set out the consequential amendments to existing legislation related to this Part.</p> <p>Co-operation and information sharing requirements apply to Welsh Ministers.</p> | <p>Welsh Government seek an amendment requiring the economic regulator to share relevant information with a licensing authority i.e. a reciprocal arrangement to that currently provided for.</p> |
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Part 2: Carbon dioxide capture storage etc. and hydrogen production

This Part establishes a mechanism for providing revenue support and other financial assistance to CO2 transport and storage companies, low carbon hydrogen producers and carbon capture entities. It also includes powers to establish and administer a levy on electricity suppliers, gas suppliers, and/or gas shippers for the purpose of providing support for low carbon hydrogen production.

A UK-wide approach is being taken to support the contribution of these low carbon technologies to decarbonisation across the UK and to mitigate the specific risks faced by infrastructure developers during technology commercialisation and roll-out and secure investor confidence.

Chapter 1 - Revenue Support Contracts

The provisions contained in Chapter 1 provide delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon entities, CO2 transport and storage companies, and low carbon hydrogen producers and an allocation body for future competitive allocation processes.

LCM required for clauses 56-60, 63-64 and 68-81 in so far as they relate to carbon dioxide capture, transport and storage.

The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Clauses 56 – provides the meanings and definitions of various terms used in Chapter 1

The Welsh Government recommends withholding consent for clauses 56-60, 63-64 and 68-81 as amendments are requested.

The Welsh Government is requesting amendments as follows:

Clause 57 – According to subsection (7), revenue support regulations may confer any function on any person. Amend language to narrow the scope of this.

Clauses 57, 71, 72, 73, 74 and 78 – As these clauses give power to the Secretary of State to make regulations about revenue support contracts, request that the requirement to consult Welsh Ministers be amended to require the consent of Welsh Ministers.

Clause 68 – Request that when the Secretary of State is making regulations under this section (e.g. to appoint a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts, and a person to carry out functions in connection with the allocation of carbon capture revenue support contracts), consent from

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| | <p>Clause 57 gives power to the Secretary of State to regulate for revenue support contracts.</p> <p>Clause 58 sets out the duties of the revenue support counterparty.</p> <p>Clause 59 provides for the Secretary of State to designate a counterparty for CO2 transport and storage revenue support contracts.</p> <p>Clause 60 provides for the Secretary of State to direct a transport and storage counterparty to offer to contract with an eligible person (a licence holder).</p> <p>Clause 63 provides for the Secretary of State to designate a counterparty for Carbon Capture.</p> <p>Clause 64 provides for the Secretary of State to direct a Carbon Capture counterparty to offer to contract with an eligible person.</p> <p>Clauses 68 – 74 relate to the allocation of contracts:</p> <p>Clause 68 provides for the Secretary of State, through</p> | <p>Welsh Ministers should be required if the regulations contain provision that would be within devolved competence.</p> <p>Clause 69 – Request that consent from Welsh Ministers should be a requirement.</p> |
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| | <p>regulation, to appoint a person to allocate contracts. Clause 69 provides for the Secretary of State to issue standard terms and conditions of contracts. Clause 70 relates to allocation notifications. Clause 71 allows for regulations to set out how the allocation of contracts will be determined. Clause 72 sets a duty to offer a contract following allocation and allows for terms and conditions on offers. Section 73 allows for the modification of standard terms and clause 74 contains supplementary provisions.</p> <p>Clauses 75 - 76 contain provisions about counterparties.</p> <p>Clause 75 allows for the Secretary of State to revoke a counterparty designation notice. Clause 76 relates to provisions for the apportioning of sums to revenue support counterparties</p> | |
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| | <p>where liabilities under the contract are not fully met.</p> <p>Clauses 77 sets out that revenue support regulations may make provisions about information and advice.</p> <p>Clause 78 requires the Secretary of State to undertake consultation, including with Welsh Ministers, before making revenue support regulations.</p> <p>Clause 79 gives power to the Secretary of State to make schemes for the transfer of designated property, rights or liabilities including in relation to revenue support counterparties and allocation parties.</p> <p>Clause 80 provides for the modification of transfer schemes.</p> <p>Clause 81 contains general provisions in relation to chapter 1.</p> | |
| <p>Chapter 2 – Decommissioning of carbon storage installations</p> | <p>LCM required for clauses 82-84</p> <p>Chapter 2 relates to decommissioning of carbon</p> | <p>The Welsh Government recommends withholding consent for clauses 82-84 for which amendments are recommended.</p> |

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| <p>Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.</p> | <p>storage installations, including the power to make regulations about financial support for the costs of decommissioning. The clauses are therefore legislating in a devolved area.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 82 and 83 gives the Secretary of State power to make regulations about the financing of decommissioning and legacy costs incurred in relation to carbon storage installations.</p> <p>Clause 84 applies Part 4 of the Petroleum Act 1998 in relation to the abandonment of carbon storage installations.</p> | <p>The Welsh Government is requesting amendments as follows:</p> <p>Clause 82 – There should be a requirement to require consent from Welsh Ministers on any secondary regulations arising from this Bill and in any instances in this Part where consultation of Welsh Ministers is the current proposal.</p> <p>Clauses 82 and 83 – Request that when the Secretary of State is making regulations under this section, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>The Welsh Government recommends withholding consent for all of the above clauses for which amendments are sought.</p> |
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| <p>Chapter 3 – Strategy and Policy Statement</p> <p>Enables the SoS to designate a strategy and policy statement for CCUS that would need to be considered by the SoS and economic regulator when carrying out Part 1 (Licensing of carbon dioxide transport and storage) functions, and set out the process and timeframes for preparing and reviewing this statement.</p> | <p>LCM required for clauses 88-91</p> <p>This statement on policy is for the whole of the UK. Chapter 3 relates to the requirement of the SoS to publish a CCUS strategy and policy statement. This statement on policy is for the whole of the UK, i.e. including Wales. There is a requirement to consult the Welsh Ministers, but Welsh Government recommend that this should be the need for consent of the Welsh Ministers insofar as the policy relates to Wales</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> | <p>The Welsh Government recommends withholding consent for clauses 88-91 for which amendments or clarifications are recommended. The Welsh Government is requesting amendments as follows: Clause 90 & 91 – Request that the requirement to consult Welsh Ministers is changed to a requirement to obtain the consent of Welsh Ministers. Clause 91 – Request that there is a requirement to consult publicly on a draft policy statement.</p> <p>The Welsh Government also recommends withholding consent for clause 88 in case further amendments or clarifications are identified following further review.</p> |

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| <p>Chapter 5 – General</p> <p>Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes.</p> | <p>LCM required for: clause 96</p> <p>Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes. This is likely to impact on the devolved area of carbon dioxide storage. There is the duty to consult the Welsh Ministers, but this should be the need for consent.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 96 enables the SoS to make regulations regarding access to CO2 transport and storage infrastructure.</p> | <p>The Welsh Government recommends withholding consent for clause 96 as an amendment is requested.</p> <p>The Welsh Government are requesting amendments as follows:</p> <p>Clause 96 – Request that when the Secretary of State is making regulations under this section (e.g. about the acquisition of rights for infrastructure), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> |

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| Part 3 – New Technology | | |
| <p>Chapter 1 – Low Carbon Heat Schemes</p> <p>Clauses 98-107 The clauses enable an obligation on, for example, gas and oil heating appliance manufacturers to increase sales of low-carbon appliances such as heat pumps.</p> | <p>LCM is required for clauses 98-107</p> <p>Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of “Production, distribution and supply of heat and cooling”. It also provides for an exception to that reservation, “Schemes providing incentives to generate or produce, or to facilitate the generation of production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel”.</p> <p>These clauses are squarely within that exception, and as such within the legislative competence of the Senedd.</p> | <p>The Welsh Government recommends withholding consent to clauses 98-107 as amendments have been requested.</p> <p>The Welsh Government request changes to the clauses to reflect the following: A requirement for Welsh Ministers to consent to any regulations relating to matters within the devolved legislative competence of the Senedd. That the Welsh Ministers are provided powers to alter and/or revoke aspects, or proposed aspects, of the functioning of the scheme in Wales on a case by case basis, where this is within devolved competence. A requirement that the Secretary of State must appoint the Welsh Ministers as scheme administrators following receipt of a request from the Welsh Ministers, within the timeframe requested by the Welsh Ministers. Until a request is made, the Secretary of State would retain the power to appoint the administrator on a UK-wide basis.</p> |

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| | <p>Clause 98 establishes that the Secretary of State may by regulations make provision for the establishment and operation of one or more low-carbon heat schemes.</p> <p>Clause 99 establishes the scope of the regulations.</p> <p>Clause 100 provides for a low-carbon heat target to be set.</p> <p>Clause 101 contains further provisions about scheme regulation including monitoring and compliance.</p> <p>Clause 102 provides for the regulations to appoint an administrator.</p> <p>Clause 103 relates to enforcement, penalties and offences.</p> <p>Clause 104 provides for regulations to make provisions in relation to payments.</p> <p>Clause 105 relates to appeals.</p> <p>Clause 106 relates to scheme regulations including procedures.</p> <p>Clause 107 contains definitions related to this chapter.</p> | |
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| Part 4 – Independent System Operator and Planner (ISOP) | | |
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| <p>This Part provides for the establishment of a new body – the Independent System Operator and Planner (ISOP).</p> <p>The ISOP is to be a public sector body with responsibilities for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system.</p> <p>Many of the functions that the ISOP will undertake are currently carried out by licensed operators owned by National Grid plc and provision is made for the transfer of the whole or parts of these operators out of their current ownership, as part of the establishment of the ISOP</p> | <p>LCM required for clause 125 and paragraph 9 of Schedule 6</p> <p>The provisions referred to below concern a devolved tax, which is within the exception to the reservation in paragraph 15 of Schedule 7A to the Government of Wales Act 2006, and do not relate to any reservation in that Schedule.</p> <p><u>Clause 125 and paragraph 9 of Schedule 6</u> Clause 125 introduced Schedule 6, which provides the Secretary of State with the power to make one or more schemes for the transfer of property, rights or liabilities from one person to another person in preparation for or in connection with the designation of a person or for the purpose of enabling the Independent System Operator and Planner to carry out any of its functions.</p> | <p>The Welsh Government recommend withholding consent as the Bill seeks to give a power to HM Treasury to vary the way that land transaction tax operates.</p> <p>It is not appropriate for the power to make changes to rest with UK Ministers and the UK Parliament. The Welsh Ministers and Senedd should determine such matters.</p> <p>The Welsh Government request the removal of land transaction tax from the list of taxes.</p> |

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| | <p>Paragraph 9 of that Schedule confers a power on HM Treasury to make regulations varying the effect of a relevant tax has effect in relation to a transfer scheme. The Treasury may exercise that power to make provision for a tax provision to apply, or to apply with modifications, in relation to anything being transferred; or for anything being transferred to be treated in a specified way for the purposes of a tax provision.</p> <p>A "relevant tax" includes land transaction tax, which is a devolved tax within the meaning of the Government of Wales Act 2006.</p> | |
| <p>Part 11 – Oil and Gas</p> | | |
| <p>Environmental Protection</p> <p>This is placing into domestic law powers that were previously derived through EU Law and the 1972 Act</p> | <p>LCM required for clauses 225 – 226</p> <p>Clause 225 enables the Secretary of State to make regulations requiring a person</p> | <p>The Welsh Government recommend withholding consent while it seeks clarification regarding interaction with existing systems for notifying and reacting to marine pollution incidents.</p> |

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| <p>which were used to enable the making of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention Regulations 1998 (OPRC)). The powers are wider and allow coverage of carbon dioxide storage and gas unloading and storage as well as hydrogen production and storage.</p> <p>To enable primary powers which would ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation.</p> | <p>responsible for certain specified infrastructure to have emergency plan arrangements for responding to marine oil pollution.</p> <p>Clause 226 enables the Secretary of State to make provision, by regulations, requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function which relates to offshore oil and gas activities or offshore production or storage of gas.</p> <p>These provisions are concerned with environmental protection, pollution control etc., over which the Senedd has competence. They do not relate to any reservation in Schedule 7A to the Government of Wales Act 2006.</p> | <p>We will confirm our final advice when discussions with the UK Government have concluded.</p> |
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| <p>Offshore oil and gas decommissioning: charging schemes</p> <p>Creates powers to establish a charging scheme for the recovery of costs related to regulatory functions associated with the decommissioning of offshore oil and gas and carbon storage infrastructure.</p> | <p>LCM required for clause 227</p> <p>Clause 227 amends the Petroleum Act 1998 and makes consequential amendments elsewhere to enable the Secretary of State to make a scheme providing for payment to the Secretary of State in connection with the exercise of the Secretary of State's functions under Part 4 of that Act.</p> <p>Part 4 of that Act is concerned with the abandonment and decommissioning of offshore installations and submarine pipelines.</p> <p>Offshore installations and submarine pipelines (defined in section 44 of that Act) are, broadly are broadly installations and pipelines concerned with the conveyance, etc. of gas (including carbon dioxide) and oil within certain seaward geographic parameters.</p> | <p>The Welsh Government recommend withholding consent while it seeks clarification regarding the extent to which the provision would apply in Welsh territorial waters.</p> <p>We will confirm our final advice when these discussions have concluded.</p> |
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| | <p>The Welsh Government consider an LCM is required so far as it is concerned with carbon. The Senedd has competence in relation to environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage</p> | |
| Part 13 - General | | |
| <p>Clause 238 gives the Secretary of State powers to make regulations in connection with the Act or in connection with any provisions made under the Act.</p> <p>The power includes the power to amend, repeal or revoke Acts or Measures of Senedd Cymru.</p> | <p>LCM required for clause 238</p> <p>Clause 238 gives broad powers for the Secretary of State to make regulations and, to the extent that provisions of the Bill relate to devolved matters, this power also relates to devolved matters.</p> | <p>The Welsh Government recommends withholding consent.</p> <p>The Welsh Government are requesting a requirement be introduced for the Secretary of State to require the consent of Welsh Ministers to regulations relating to devolved matters.</p> |

UK Government view on the need for consent

- 19) The UK Government agrees that consent is required. Specifically, the UK Government have concluded that:
- a) For Part 1 on Licensing of Carbon Dioxide Transport and Storage, provisions across the Part engage the LCM process. However, there are some provisions related to reserved matters, notably those dealing with functions under competition law and insolvency processes.
 - b) For Part 2 on Carbon Dioxide Capture, Storage etc and Hydrogen Production, provisions across the Part engage the LCM process in so far as carbon capture and the transport and storage of CO₂ are matters that are generally within devolved competence. However, they have concluded that provisions in respect of hydrogen are reserved by virtue of the D2 Oil and Gas reservation in the Government of Wales Act 2006 and are therefore outside devolved competence. Where clauses relate to the hydrogen levy and its administration, the UK Government deem such provision is a reserved matter as relating to a tax for the purposes of the A1 reservation and the LCM process is not engaged. Likewise, provision as to the designation of a carbon capture usage and storage strategy and policy statement by the Secretary of State is outside devolved competence since it concerns only policy for the United Kingdom.
 - c) For Part 3 on New Technology, the LCM process is engaged in Wales as schemes “providing incentives to generate or produce, or to facilitate the generation or production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel” are an exception to the reservation for heat policy.
 - d) For Part 7 on Heat Networks, the UK Government have deemed that the LCM is engaged as certain rights and powers granted through the proposed licensing regime fall within the scope of devolved competence so far as they relate to planning and on the basis that they do not fall within the planning reservation in the Government of Wales Act 2006.
 - e) For Part 11 on Oil and Gas, the LCM process will be engaged for the following reasons. For arrangements for responding to marine oil pollution (clause 225) and reducing effects of offshore oil or gas activities (clause 226), the LCM process will be engaged given that, in relation to the territorial seas adjacent to Wales, there is a mixed picture on legislative competence depending on the activity in question. For Offshore oil and gas and carbon dioxide storage decommissioning - cost recovery (clause 227) the LCM process is engaged within the territorial seas as there is a mixed picture on legislative competence depending on the activity on question, with oil and gas being reserved and CO₂ storage being devolved.

Welsh Government position on the Energy Bill

- 20) In my view it is appropriate to deal with these provisions in this UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriate introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.
- 21) Energy policy is a complex mix of reserved and devolved matters, and the Energy Bill provides a vehicle for a coherent approach to delivery.
- 22) However, there are a significant number of matters of concern which will need to be resolved urgently before consent can be recommended. My key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. There are a number of other amendments suggested, as outlined in the table in paragraph 15.

Financial implications

- 23) There may be some financial implications for the Welsh Government which may need to be considered. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

- 24) Whilst delivery of these provisions in a UK Bill could be an appropriate way to legislate, unless and until the matters of concern have been resolved, I do not recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
29 June 2023