

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee Room 3, Senedd, and Video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 10 July 2023	0300 200 6565
Meeting time: 12.30	SeneddLJC@senedd.wales

- 1 Introductions, apologies, substitutions and declarations of interest**
(12.30)

- 2 The Welsh Government’s Legislative Consent Memorandum on the Energy Bill: Scrutiny session with the Minister for Climate Change**
(12.30 – 13.00) (Pages 1 – 5)
Julie James MS, Minister for Climate Change

Attached Documents:
LJC(6)-22-23 – Paper 1 – Briefing paper
LJC(6)-22-23 – Paper 2 – Letter to the Minister for Climate Change, 3 July 2023

Break
(13.00 – 13.05)

- 3 Scrutiny session with the Counsel General and Minister for the Constitution**
(13.05 – 15.00) (Pages 6 – 37)
Mick Antoniw MS, Counsel General and Minister for the Constitution
Sophie Brighthouse, Deputy Director, Constitution and Welsh Tribunals, Welsh Government
James Gerard, Deputy Director, Justice Policy, Welsh Government

Dr Robert Parry, Deputy Director, European Transition, Welsh Government

Attached Documents:

LJC(6)-22-23 – Paper 3 – Briefing paper

Break

(15.00 – 15.10)

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

(15.10 – 15.15)

Made Negative Resolution Instruments

4.1 SL(6)366 – The Feed Additives (Form of Provisional Authorisations) (Cobalt(II) Compounds) (Wales) Regulations 2023

(Pages 38 – 39)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-22-23 – Paper 4 – Draft report

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

(15.15 – 15.20)

Made Negative Resolution Instruments

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

(Pages 40 – 42)

Attached Documents:

LJC(6)-22-23 – Paper 5 – Report

LJC(6)-22-23 – Paper 6 – Welsh Government response

6 Inter-Institutional Relations Agreement

(15.20 – 15.25)

6.1 Correspondence from the Minister for Finance and Local Government: Interministerial Standing Committee Meeting

(Pages 43 – 44)

Attached Documents:

LJC(6)-22-23 – Paper 7 – Letter from the Minister for Finance and Local Government, 6 July 2023

7 Papers to note

(15.25 – 15.30)

7.1 Correspondence from the Minister for Climate Change to the Climate Change, Environment and Infrastructure Committee: Infrastructure (Wales) Bill

(Pages 45 – 57)

Attached Documents:

LJC(6)-22-23 – Paper 8 – Letter from the Minister for Climate Change to the Climate Change, Environment and Infrastructure Committee enclosing letters to the Secretary of State for Levelling Up, Housing and Communities, 27 June 2023

7.2 Correspondence from the Minister for Climate Change to the Climate Change, Environment, and Infrastructure Committee: Environment (Air Quality and Soundscapes) (Wales) Bill

(Pages 58 – 59)

Attached Documents:

LJC(6)-22-23 – Paper 9 – Letter from the Minister for Climate Change to the Climate Change, Environment, and Infrastructure Committee, 28 June 2023

7.3 Correspondence from the Minister for Finance and Local Government: The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill

(Pages 60 – 63)

Attached Documents:

LJC(6)-22-23 – Paper 10 – Letter from the Minister for Finance and Local Government, 30 June 2023

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

(Pages 64 – 67)

Attached Documents:

LJC(6)-22-23 – Paper 11 – Letter from the Minister for Health and Social Services, 30 June 2023

7.5 Correspondence from the Minister for Social Justice and Chief Whip and the Counsel General and Minister for the Constitution to the Llywydd: UK Bill of Rights Bill

(Pages 68 – 69)

Attached Documents:

LJC(6)-22-23 – Paper 12 – Letter from the Minister for Social Justice and Chief Whip and the Counsel General and Minister for the Constitution to the Llywydd, 6 July 2023

7.6 Correspondence from the Minister for Economy: The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Online Safety Bill

(Page 70)

Attached Documents:

LJC(6)-22-23 – Paper 13 – Letter from the Minister for Economy, 6 July 2023

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

(15.30)

- 9 The Welsh Government's Legislative Consent Memorandum on the Energy Bill: Consideration of evidence**
(15.30 – 15.40)
- 10 Scrutiny session with the Counsel General and Minister for the Constitution: Consideration of evidence**
(15.40 – 16.10)
- 11 Environment (Air Quality and Soundscapes) (Wales) Bill: Draft report**
(16.10 – 16.40) (To Follow)
Attached Documents:
LJC(6)-22-23 – Paper 14 – Draft report
- 12 Legislative Consent Memoranda on the Data Protection and Digital Information (No. 2) Bill: Draft report**
(16.40 – 16.55) (To Follow)
Attached Documents:
LJC(6)-22-23 – Paper 15 – Draft report
- 13 Monitoring report**
(16.55 – 17.05) (Pages 71 – 87)
Attached Documents:
LJC(6)-22-23 – Paper 16 – Monitoring report
- 14 The House of Commons' Public Administration and Constitutional Affairs Committee inquiry into Devolution Capability in Whitehall: Call for evidence**
(17.05 – 17.15) (Pages 88 – 90)

Attached Documents:

LJC(6)-22-23 – Paper 17 – Draft submission points

15 International agreements

(17.15 – 17.25)

(Pages 91 – 102)

Attached Documents:

LJC(6)-22-23 – Paper 18 – Research briefing

LJC(6)-22-23 – Paper 19 – Draft report

16 The Committee's consideration of Consolidation Bills

(17.25 – 17.40)

(Pages 103 – 107)

Attached Documents:

LJC(6)-22-23 – Paper 20 – Briefing paper

Document is Restricted

Julie James MS
Minister for Climate Change

3 July 2023

Dear Julie

The Welsh Government's Legislative Consent Memorandum on the Energy Bill

At our meeting today we considered the Welsh Government's Legislative Consent Memorandum on the Energy Bill and your letter to the Llywydd of 29 June 2023.

We have serious concerns about the Welsh Government's approach to this Memorandum, not least because it has taken 51 weeks to lay the Memorandum and we understand you have recommended to the Business Committee that it sets a reporting deadline on the Memorandum of 15 September, giving the Senedd barely three working weeks to undertake its scrutiny.

We would like to invite you and your officials to attend our meeting next week, on Monday 10 July, so that we may discuss the Memorandum in detail. We suggest the options of either 12.30 to 1pm or 4.45 to 5.15pm. We would be grateful if your officials could respond to the Committee Clerk as a matter of urgency.

I am copying this letter to the Llywydd in her capacity as Chair of the Business Committee, and to the Counsel General.

Yours sincerely,



Alun Davies
Temporary Chair

Agenda Item 3

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

Document is Restricted

Agenda Item 4.1

SL(6)366 – The Feed Additives (Form of Provisional Authorisations) (Cobalt(II) Compounds) (Wales) Regulations 2023

Background and Purpose

The Feed Additives (Form of Provisional Authorisations) (Cobalt(II) Compounds) (Wales) Regulations 2023 (“the Regulations”) provisionally authorise four Cobalt(II) compounds for use as additives in animal nutrition, subject to the conditions set out in the Schedules.

The Regulations are made in exercise of the power to grant urgent authorisation in Article 15 of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition. The Welsh Ministers may exercise this power in specific cases where urgent authorisation is needed to ensure the protection of animal welfare.

A provisional authorisation may last for a maximum period of five years. The provisional authorisation period for each of the four Cobalt(II) compounds authorised by the Regulations runs from 15 July 2023 to the end of 14 July 2028.

Procedure

Negative

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

Technical Scrutiny

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

Merits Scrutiny

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

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

It is noted that the Explanatory Memorandum provides the following explanation for the use of the urgent authorisation power:



18. *These cobalt compounds have been on the market since 1970 and the FSA has no evidence that they are unsafe.*

19. *Feed additives authorisations are granted for 10-year periods but can be renewed by application. An application for renewal must be made one year prior to the expiration of the existing authorisation.*

20. *The existing authorisations for these four cobalt compounds will expire in GB on 15 July 2023. Due to industry oversight, no application for renewal was made by the statutory deadline of 14 July 2022. A new application for authorisation of all four cobalt compounds was submitted in November 2022. There is insufficient time to progress this application through the full regulated products assessment process and for legislation to come into force prior to the expiry of the existing authorisations.*

21. *Without action to undertake urgent provisional authorisation under the relevant available powers, the four cobalt compounds in question would no longer be lawfully available on the market in GB from 15 July 2023.*

22. *Following extensive engagement and consultation with stakeholders and industry, there is compelling evidence to conclude there is a serious risk that animal welfare will be negatively and severely impacted (almost immediately) if these cobalt compounds were to become unavailable in animal feed. There are currently no alternatives to these water-soluble compounds that could meet nutritional requirements.*

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

4 July 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 39

Agenda Item 5.1

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 "(iia)" and "(iib)" rather than "(ia)" and "(ib)" 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.

Committee Consideration

The Committee considered the instrument at its meeting on 3 July 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023

Technical Scrutiny points 1 & 2: The Government notes the two typographical errors identified and is currently liaising with the S.I. Registrar about the possibility of correcting them by way of a correction slip.



Our ref: RE-231-2023

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

06 July 2023

Dear Huw,

Further to my recent letter advising you of the Finance: Interministerial Standing Committee Meeting, on 22 June at Cathays Park, Cardiff, for which I was Chair, I would like to briefly report on the discussions. A communique was also published following the meeting: [Finance: Interministerial Standing Committee - 22 June 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/finance-interministerial-standing-committee-22-june-2023)

Joining me in attendance were The Rt Hon John Glen MP, Chief Secretary to the Treasury (CST), and Shona Robison MSP, Deputy First Minister of Scotland and Cabinet Secretary for Finance. Officials from the Northern Ireland Executive also attended virtually, to observe.

On EU funding, I reported back on the action from the last meeting. I outlined how discussions had provided an opportunity to seek clarity and air concerns and were useful to aid understanding of the varying assessments and where differences had occurred in our calculations of full replacement funding. To move forward, I stressed the importance of earlier engagement.

The first substantive part of the meeting focussed on public spending pressures and economic outlook where the cost of living crisis and inflation continued to be a focus of discussion. I requested the CST look at additional support for vulnerable energy consumers, those on Universal Credit, and debt advice services.

During the discussion on public sector pay, I urged the UK Government to provide additional funding for the NHS to support its vital work as it approaches its 75th Anniversary and pressed for clarity on whether there will be additional funding for the devolved governments as a result of pay offers in England for the NHS and the Civil Service. Building on previous discussions on budgetary flexibility, I was able to use the pay discussion as an illustrative example of the importance of the Welsh Government having this flexibility.

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

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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.

The second part of the meeting focused on energy security. I highlighted the importance of working together to address energy security and ensure the costs of achieving net zero are socialised and distributed fairly, so the poorest in our communities do not see the largest relative increases in the costs they incur.

I outlined innovative programmes in which we are investing, and recommended projects that the UK Government could consider investment. I also urged investment in Wales' electricity grid.

Finally, I sought agreement to officials reviewing the F:ISC Terms of Reference and the Operating Protocols, to ensure meetings are running as expected compared to when the documents were produced 18 months ago. Officials will report back to the F:ISC at the next meeting.

The UK Government will host the next meeting, in September.

Yours sincerely,

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

Rebecca Evans AS/MS

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

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

Ein cyf/Our ref: MA/JJ/0994/23

Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

27 June 2023

Dear Llyr,

The Infrastructure (Wales) Bill, introduced into the Senedd on 12 June, contains provisions which require the consent of the appropriate Minister under Schedule 7B to the Government of Wales Act 2006. Further provisions require consultation with the appropriate Minister. To assist consideration of the Bill by the CCEI Committee I attach my letter of 12 May 2023 to the Secretary of State for Levelling Up, Housing and Communities seeking these consents (Doc 1). Discussions between officials are currently ongoing on this matter.

I have also sought the transfer of legislative competence to Senedd Cymru for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone (an area roughly between 12 and 200 nautical miles (“nm”) off the shoreline) and to clarify the Senedd’s ability to legislate in respect of energy storage. I attach my letters of 7 January 2022 (Doc 2) and 11 January 2023 (Doc 3) to the Secretary of State for Levelling Up, Housing and Communities, for your information. I have not yet received a response to either letter.

I will keep the Committee informed of our progress on these matters during scrutiny of the Bill. I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,



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

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

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

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1182/23

The Rt. Hon. Michael Gove MP
Secretary of State for Levelling Up, Housing and Communities
Department for Levelling Up, Housing & Communities
2 Marsham Street
London
SW1P 4DF

12 May 2023

Dear Michael,

I am writing about the Infrastructure (Wales) Bill ("the Bill") I intend to introduce into the Senedd in June 2023.

The Bill will reform the law governing the development of significant infrastructure in Wales. The consenting process in the Bill and any subsequent legislation will:

- be a transparent, consistent and simple, yet rigorous, process which enables local communities to better understand how decisions affect them;
- be able to meet future challenges by being sufficiently flexible to capture the consenting arrangements for developing technologies and any further powers which may be devolved;
- streamline and unify the decision-making process, through enabling the developer to access a one-stop shop whereby as full a range as possible of existing consents, authorisations and licences are integrated into the process which is reflective of the consenting regime currently operational in England;
- improve current standards of service, by way of timescales and the integration of advanced case management technology into the decision-making process; and
- provide certainty in decision-making in being underpinned by a clear policy.

The Bill aims to address difficulties that have arisen for the developers in the existing consenting framework. It will take advantage of the full range of consenting functions within the Senedd's competence following the devolution of further responsibility for consenting of energy projects, overhead electric lines as well as ports and harbours by the Wales Act 2017. This will progress our shared ambitions in relation to decarbonisation and growing the green economy.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Correspondence.Mick.Antoniw@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 Bill and the consents being sought through this letter also provides a system which will address some of the issues raised by the Secretary of State for Wales in a letter to the First Minister of Wales dated 23 December 2022 (Ref 225MISC22) regarding the consenting for Floating Offshore Wind Projects, at least in so far as the Welsh territorial waters. As you may recall, I sought the cooperation of UK Government in transferring legislative competence to the Senedd for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone in two letters (MA-JJ-3582 -22 & MA-JJ-2523-22) in 2022. Transference of the requested legislative competence would clearly optimise our proposed new consenting arrangements.

The proposals for the Bill have been assessed against the legislative competence criteria in section 108A of the Government of Wales Act 2006 ("GoWA"). Some provisions within the Bill have been identified which require the consent of the appropriate Minister under the terms of Schedule 7B to GoWA. Details of the intended purpose and effect of these provisions are set out in the Annex to this letter. Further provisions require consultation with the appropriate Minister. Details are also included in the Annex 1.

I am drawing your attention to the narrowness of the powers we are seeking to help us legislate and consent projects effectively and to the fact the proposed provisions will allow recovery of costs for the bodies involved. This is explained in detail in the Annex 1.

My officials will be happy to discuss the details and share the provisions with your officials. The key contact is Neil Hemington at neil.hemington@gov.wales.

As I will be bringing forward the legislation shortly, I would welcome your support in obtaining the relevant consents at the earliest opportunity, with a view to having this agreed prior to introduction of the Bill. I am copying this letter to the Secretary State for Wales.

Yours sincerely,



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

Proposal subject to consent of the appropriate Minister of the Crown under Schedule 7B to the Government of Wales Act 2006

1. Access to evidence at a local inquiry

- 1.1. The Bill provides that evidence at a local inquiry must be heard in public and documentary evidence must be open to the public for inspection. The Bill takes the same approach as in existing planning legislation by allowing exceptions where evidence may pose a risk for reasons of national security. These provisions are based on sections 321 and 321A of the TCPA 1990, as modified by section 321B. The provisions in the Bill are sections 45 and 46.
- 1.2. The Bill allows a ministerial authority to direct the examining authority conducting an inquiry under the Bill that evidence of a kind specified in the direction is to be heard or open to inspection at that inquiry only by persons who are specified in the direction or of a kind specified in it. The conditions are that giving evidence of a particular description in public or making it available for public inspection would be likely to result in the disclosure of information about either national security or measures taken or to be taken to ensure the security of any land or other property, and that the public disclosure of the information would be against the national interest. “Ministerial authority” is defined as either the Welsh Ministers or the Secretary of State.
- 1.3. If a ministerial authority is considering giving a direction, the Counsel General may appoint a person (an appointed person) to represent the interests of any person who will be prevented from hearing or inspecting evidence. The Welsh Ministers may make regulations about the procedure to be followed by a ministerial authority before it gives a direction and about the functions of an appointed person.
- 1.4. The Bill also confers a direction making power on a ministerial authority to direct a responsible person to pay the fees and expenses of the appointed representative. If there is a dispute as to the amount of the fees and expenses, the amount must be decided by the ministerial authority that gave the direction, and any agreed amount must be certified by the ministerial authority and is then recoverable as a debt.
- 1.5. These provisions therefore confer a function on the Secretary of State. Consequently, Minister of the Crown consent is sought under paragraph 8(1)(a) and (c) of Schedule 7B to the Government of Wales Act 2006 (GoWA) to include these provisions in the Bill. In order to amend or revoke any procedural regulations made which confer or impose functions on the Secretary of State under these powers, paragraphs 10 and 11 of Schedule 7B are also engaged and consent under these provisions is also sought. The Minister of the Crown is also consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

2. Function to respond to consultation and notification

- 2.1. The Bill includes a function to consult and to respond to consultation in sections 30 and 126.

- 2.2. Section 30 makes provision for pre-application and publicity and sets out that a person who proposes to make an application for infrastructure consent must carry out consultation on the proposed application. Regulations may make provision for, or in connection with the consultation required including the persons or public authorities required to be consulted, , how those consulted must respond and the timescales in which consultation responses must be provided.. Regulations may also require a person consulted to prepare and publish a report about that person's compliance with these requirements.
- 2.3. Section 126 provides that the Welsh Ministers or an examining authority may consult a public authority specified in regulations about a valid application for infrastructure consent. The public authority must give a substantive response within specified timescales, which will be set out in regulations. Regulations may also require a person consulted to prepare and publish a report about that person's compliance with these requirements.
- 2.4. The Bill also makes provision in section 33 (2) requiring the Welsh Ministers to give notice of a valid application to parties including any persons or descriptions of person specified in regulations. Section 33(9) also provides that the Welsh Ministers may direct the applicant to notify a person or description of person of the application once it has been accepted as a valid application.
- 2.5. The public bodies to be consulted or notified may include bodies which are reserved authorities within the meaning of paragraph 8(3) of Schedule 7B to GoWA. It is likely the bodies to be included in regulations will be limited to those wanting to protect their interests in the context of developments to be consented through the new regime proposed in the Bill. They are likely to be similar to those listed in the Developments of National Significance (Procedure) (Wales) Order 2016, and in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. As such, examples of such bodies include regulations include the Coal Authority, the Canal and River Trust, the Maritime and Coastguard Agency, the Civil Aviation Authority, and the Gas and Electric Markets Authority.
- 2.6. It is vital that decisions on infrastructure projects are based on a sound and thorough evidence base, which includes receiving technical and specialist advice. If the regulations were unable to specify reserved authorities, this could be detrimental to the quality and breadth of evidence received and to ensure consistency in matters that span beyond the Welsh boundaries. This can include important matters of safety, for example in respect of navigational routes in the sea or air and any protection requirements associated with them.
- 2.7. It is of benefit to the bodies being consulted and notified to be able to engage effectively in the consenting process as they have specific interests that they will be keen to ensure are protected from any interference caused by infrastructure projects consented through this Bill. As set out in paragraphs 3.1 to 3.4 below, consent is also sought to enable the charging of fees to recover the costs of a reserved authority's engagement in the process, should this be a concern.

- 2.8. Receiving a substantive response to consultations in a timely manner from all bodies that need to be engaged in the consenting process is a very important part of the process in dealing with applications efficiently. It also reflects similar requirements for both existing consenting regimes of Development of National Significance (DNS) in Wales and Nationally Significant Infrastructure Projects (NSIP) in both England and Wales.
- 2.9. These provisions therefore confer power by subordinate legislation to confer or impose a function on a reserved authority within paragraph 8(1)(a), and confer power by subordinate legislation to confer or impose a function specifically exercisable in relation to a reserved authority within the meaning of paragraph 8(1)(c) of Schedule 7B to GoWA and therefore Minister of the Crown consent is required. In order to amend or revoke any regulations made which confer or impose functions on a reserved authority under these powers, paragraphs 10 and 11 of Schedule 7B are also engaged. Consequently, Minister of the Crown consent is sought under paragraph 8(1)(a) and (c), 10 and 11, and the Minister of the Crown is consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

3. Fees

- 3.1. The Bill includes at section 121(1) a regulation making power which may make provision for the charging of fees by a specified public authority for performing an infrastructure consent function or for an infrastructure consent service. An 'infrastructure consent function' means a function conferred by, under or by virtue of the Act, and an 'infrastructure consent service' means any advice, information or other assistance provided in connection with an application or other specified matter. This specifically includes a response to a consultation or participating in the examination of an application, for example by making a written submission or attending or giving evidence at an inquiry.
- 3.2. Such public authorities may include bodies which are reserved authorities within the meaning of paragraph 8(3) of Schedule 7B to GoWA. Examples of such bodies are the Civil Aviation Authority, the Coal Authority, the Marine Management Organisation and the Water Services Regulation Authority.
- 3.3. As reserved authorities could have a duty to respond to a consultation, and may participate in proceedings, we do not wish to disadvantage reserved authorities from potentially being able to charge a fee to recoup costs on the sole basis that they are reserved authorities. If the regulations were not able to include reserved authorities, it may also dissuade them from fully participating in the examination process which would be detrimental to the quality of evidence received and undermine the process.
- 3.4. As the regulations could be used to confer a function on a reserved authority to be able to charge a fee for certain services, we consider this to amount to conferring a function on a reserved authority and therefore seek the consent of the Minister of the Crown in accordance with paragraph 8(1)(a) and (c) of Schedule 7B. As above, in order to be able to amend or revoke any regulations in the future, consent is also sought under paragraphs 10 and 11 of Schedule 7B and the Minister of the Crown is

consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

4. Functions relating to Infrastructure Consent.

- 4.1. Section 60 of the Bill, along with Schedule 1 provides for the matters that can be provided for in an infrastructure consent order. Section 87 provides for the changing or revoking of such an order. This is similar in nature to a Development Consent Order (DCO) for NSIP under the Planning Act 2008.
- 4.2. The matters listed are comprehensive and may include conferring functions on bodies, for example to remove or relocate apparatus in relation to their undertaking or to approve plans or schemes as part of the development. Some of the bodies on which functions may be conferred are likely to be reserved authorities. For example, article 23 of the Swansea Bay Tidal Generating Station Order 2015 provides that no marine works comprised in the authorised development are to be commenced until a scheme to secure safety of navigation has been submitted to, and approved in writing, by the harbour authority for the Port of Swansea in consultation with Trinity House, the Maritime and Coastguard Agency, and others. The Maritime and Coastguard Agency is a reserved authority within the meaning of paragraph 8(3) of Schedule 7B to GoWA.
- 4.3. In the delivery of large-scale infrastructure projects, it is important that effective and appropriate functions linked to the infrastructure project can be included in the infrastructure consent order. Given the emphasis on offshore energy projects and the need for efficiency in providing consent in a timely manner we wish to avoid any potential delays in the process. It is also likely that any function conferred on, or in relation to a reserved authority will ensure they are able to use their expertise effectively and their interests are fully protected within the new infrastructure consenting process. There will be an opportunity to participate in the process resulting in the infrastructure consent order and therefore any functions can be influenced by the body affected.
- 4.4. We therefore seek the consent of the Minister of the Crown under paragraphs 8(1)(a) and (c) to enable the Bill to confer power by subordinate legislation to confer functions on reserved authorities and to modify or remove those functions in this context. In order to remove or modify any functions, if, for example, the infrastructure consent was amended, we also seek consent under paragraphs 10 and 11 and the Minister of the Crown is consulted under paragraph 11(2) of Schedule 7B to GoWA for the inclusion of these provisions in the Bill.

5. Regulations and Orders: Restrictions

- 5.1. It is intended that the Bill will contain provision in section 137 which sets out the restrictions on the exercise of the regulation and order making powers in the Bill as set out above. My officials will share the drafting of this provision.

Proposal Requiring Consultation with the Appropriate Minister of the Crown

6. Transport and Works Act 1992

- 6.1. The Bill provides that, to the extent that infrastructure consent is required for development, the development may not be authorised by an order under section 1 or 3 of the Transport and Works Act 1992 (section 20(2)(b)). The Bill also provides that, to the extent that provision for or relating to a matter may be included in an infrastructure consent order, an order under section 1 or 3 of the Transport and Works Act 1992 may not include provision of the same kind (section 60(8)(b)). Sections 1 and 3 of the Transport and Works Act 1992 deal with orders as to railways, tramways, inland waterways etc.
- 6.2. The Secretary of State retains the power to make Orders in relation to Wales, where a Transport for Works Act Order applies in England and Wales (e.g. cross border), under section 1 of the Transport for Works Act 1992 by virtue of the National Assembly for Wales Transfer of Functions Order 1999/672 ("TFO 1990"). Schedule 1 to the TFO 1990 transfers the powers to the then Assembly in relation to the Transport and Works Order 1992, except "the order-making function under sections 1 and 3 where any order made thereunder would have effect both in Wales and England...". Schedule 2 to the TFO 1990 states "The order, rule and regulation-making functions of the Secretary of State under sections 1, 3, 6, 7(4), 8, 10 and 15 shall be exercisable only with the agreement of the Assembly".
- 6.3. The Secretary of State will retain this power, it is only where the project meets the criteria of a significant infrastructure project under the Bill that infrastructure consent must be sought, rather than applicants being able to use the Transport and Works Act.
- 6.4. These provisions engage paragraph 11(2) of Schedule 7B to GoWA and so we are consulting the appropriate Minister about the provisions.



Ein cyf/Our ref MA-JJ-3582-JJ

Rt Hon Michael Gove MP
Secretary of State for Levelling up, Housing and Communities

By email: correspondence@communities.gov.uk

7 January 2022

Dear Michael

I am writing to you regarding two matters which have come to my attention relating to the consenting of energy generating stations. I am writing to seek your cooperation in transferring legislative competence for certain matters to Senedd Cymru (“the Senedd”), which would aid in the establishment of an effective and modern consenting regime which operates alongside those handled by the UK Government.

Specifically, I am requesting that the Senedd is transferred legislative competence:

- (a) For the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone (an area roughly between 12 and 200 nautical miles (“nm”) off the shoreline); and
- (b) Which clarifies the Senedd’s ability to legislate in respect of energy storage.

In relation to point (a), where it concerns the consenting of generating stations offshore, the Senedd currently has legislative competence in relation to Wales, up to the limits of the territorial sea, which is an area roughly 12nm from the shoreline. Beyond that (12-200nm), the Welsh Ministers have executive competence to consent such schemes, and are tied to consenting such schemes under section 36 of the Electricity Act 1989. This is an outdated process which has been superseded for the majority of offshore schemes in English waters.

The Welsh Government is seeking to deliver a unified infrastructure consenting process to place it on similar terms with those schemes in English waters consented under the Planning Act 2008, which extends to the edge of the English zone (0-200nm). At present, the Welsh Ministers cannot deliver a similar process as the Senedd is confined to legislating in relation to the territorial sea (0-12nm), which may cause operational difficulties for developers.

A similar issue has recently arisen in respect of the Senedd’s legislative competence relating to fishing and amendments have been made by section 45 of the Fisheries Act

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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.

2020 to section 108A, Schedule 7A and a range of other provisions in the Government of Wales Act 2006 to extend legislative competence where it relates to fishing, fisheries or fish health to the Welsh zone beyond the seaward limit of the territorial sea (0-200nm). This provides a useful precedent, where I would suggest similar amendments would also be appropriate in the context of the consenting of offshore energy generating stations by the Welsh Government.

In relation to point (b), as part of the agenda to remove barriers in relation to energy storage, a change was made in 2019 by the Welsh Ministers to remove energy storage (excluding pumped hydroelectric) from the calculation of the generating capacity of generating stations where the Welsh Ministers were the onshore consenting authority. A similar change was made in 2020 in respect of generating stations where the Secretary of State was the consenting authority under the Planning Act 2008 by way of the Infrastructure Planning (Electricity Storage Facilities) Order 2020 and the Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 (“the Orders”).

The Orders made by the Secretary of State to disregard energy storage (excluding pumped hydroelectric storage) from the calculation of generating capacity combined with changes made by the Wales Act 2017 to devolve further legislative competence has resulted in an anomaly between the operation of the two regimes which would benefit from alignment.

Currently the Senedd’s legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind). Therefore, the Senedd may only legislate for schemes up to 350MW. Were a scheme which either solely or mainly generates electricity from storage to exceed 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. However, as a consequence of the Orders made by the Secretary of State in 2020, the Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

It is essential the legislative competence set out in (a) and (b) is transferred to the Senedd to at least provide one point of contact and a more streamlined approach for developers of energy projects in Wales, particularly renewable energy. This administrative efficiency would be of benefit to the development industry.

I believe the transfer of competence for these matters will reduce regional disparities within the United Kingdom, and allow Wales to compete on the same footing as England where it concerns having an appropriate consenting process for on and offshore renewables, while also supporting the journey towards ‘net zero’.

I welcome further cooperation between our Governments on these matters to ensure this beneficial solution for all parties can be realised. I note provision could be contained in the upcoming Planning Bill, which was contained in the Queen’s speech in May 2021.

Yours sincerely



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

CC –

Secretary of State for Wales (correspondence@ukgovwales.gov.uk)

Secretary of State for Business, Energy and Industrial Strategy (enquiries@beis.gov.uk)



Ein cyf/Our ref MA-JJ-2523-22

Rt Hon Michael Gove MP
Secretary of State for Levelling up, Housing and Communities

correspondence@levellingup.gov.uk

11 January 2023

Dear Mr Gove

I am writing to you to request an urgent response to my previous correspondence to your predecessor dated 7 January 2022 regarding two matters relating to the consenting of energy generating stations. I am also writing further to correspondence dated 23 December 2022 from the Secretary of State for Wales to me regarding the need to progress floating offshore wind projects in the Celtic Sea. Both are attached for your information.

I seek your cooperation in transferring legislative competence for certain matters to Senedd Cymru ("the Senedd"), which would aid in the establishment of an effective and modern consenting regime which operates alongside those handled by the UK Government, which may consent, among other things, offshore renewables.

Specifically, I am asking for a response to my previous request that the Senedd is transferred legislative competence:

- (a) For the consenting of devolved energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone (an area roughly between 12 and 200 nautical miles off the shoreline); and
- (b) Which clarifies the Senedd's ability to legislate in respect of energy storage.

The Welsh Government is currently drafting legislation which introduces a unified infrastructure consenting process and it is essential the legislative competence set out in (a) and (b) is transferred to the Senedd to enable the scope of that process to be defined. Hence, this request has become urgent.

I believe the transfer of competence for these matters will reduce disparities within the United Kingdom, and allow Wales to compete on the same footing as England where it concerns having an appropriate consenting process for on and offshore renewables, while also supporting the journey towards 'net zero'. Furthermore, it would provide the development industry and the Welsh Government the administrative efficiency of having

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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.

one point of contact and a more streamlined approach for the consenting of infrastructure in Wales, particularly renewable energy. It will also help achieve the aims set out by the Secretary of State for Wales to make timely decisions on the anticipated pipeline of applications to deliver the planned 4GW of capacity in the Celtic Sea by 2035.

I welcome further cooperation between our Governments on this matter to ensure this beneficial solution for all parties can be realised urgently.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

CC –

Secretary of State for Wales (correspondence@ukgovwales.gov.uk)

Secretary of State for Business, Energy and Industrial Strategy (enquiries@beis.gov.uk)



Ein cyf/Our ref MA/JJ/1166/23

Llyr Gruffydd MS
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
Cardiff Bay
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CF99 1SN
SeneddClimate@senedd.wales

28 June 2023

Dear Llyr,

It has been brought to my attention that there is currently a discrepancy between the Explanatory Memorandum and provisions in the Environment (Air Quality and Soundscapes) (Wales) Bill relating to smoke control.

The Bill introduces civil monetary penalties to replace current criminal sanctions for the emission of smoke in a smoke control area. The Explanatory Memorandum states that we propose to remove the statutory defence of using of an exempt fireplace in a smoke control area. However, the Bill retains provisions giving the Welsh Ministers the power to exempt certain fireplaces from the new civil sanctions for the emission of smoke in a smoke control area.

Under a system of civil penalties, enforcement of smoke control should be easier for local authorities, but officials have considered other barriers to enforcement. The exemption for certain kinds of fuel in relation to the civil penalty has not been recreated in the Bill, but the exemption for certain appliances has. In this context, I now consider it inappropriate to maintain the power of the Welsh Ministers to exempt a class of fireplace from the civil penalty regime.

I will be proposing an amendment to the Bill at Stage 2 to clarify the position, alongside my rationale for removing this power. Overall, I want to ensure we have the appropriate mechanisms in place to enable local authorities to effectively enforce civil sanctions when needed. I will share a copy of the amendment in due course.

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

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

cc. SeneddLJC@senedd.wales
SeneddFinance@senedd.wales



Ein cyf/Our ref: MA/RE/0660/23(2)

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament
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Private.office@senedd.wales

30 June 2023

Dear Huw,

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

I am writing in response to the recommendations set out in the Legislation, Justice and Constitution Committee's report on the Non-Domestic Rating Bill (the Bill) Legislative Consent Memorandum. The Committee requested a response to Recommendation 2 within ten working days. I would like to take the opportunity to respond to the other recommendations of the Committee at the same time.

Recommendation 1: We consider that the clauses of the Bill and the Schedule to the Bill set out in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

I welcome the Committee's confirmation that it agrees with the Welsh Government's analysis of the provisions in the Bill which require the consent of the Senedd.

Recommendation 2: The Minister should clarify and provide further detail to the Senedd as to why the Welsh Government has reversed its position and is now content with the delegated powers in clause 13 and in paragraphs 49 and 50 of the Schedule to the Bill. The Minister should provide this clarity and detail within 10 working days of this report being published, or such information should be set out in the next supplementary legislative consent memorandum laid before the Senedd, whichever is earliest.

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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 would first like to clarify that the Welsh Government has not reversed its position. At the time that the Memorandum was published, we were considering our position, as noted in the Memorandum.

This is a complex matter, where a devolved policy area and the functions of a reserved authority are intentionally connected, in order to enable something new and innovative. Only HMRC can deliver the *Digitalising Business Rates* (DBR) programme for Wales, as it relies on the sharing and linking of information on non-devolved taxes held by HMRC, as well as information about non-domestic rates (NDR). As a consequence, any secondary legislation made under the powers delegated on the Commissioners of HMRC would directly affect the functions conferred by the Bill on HMRC, alongside altering the requirements placed on payers of non-domestic rates. This means that any of the options to enable the DBR programme to be delivered in Wales must involve compromise, in one way or another.

On balance, taking account of these competing considerations and the context for the specific provisions, I have concluded that the delegated powers and duty to consult Welsh Ministers are appropriate to facilitate the administration of the DBR system, which needs to operate in a consistent manner across England and Wales. These powers are limited and do not need to be exercised to enable the legislative framework set out in the Bill to operate. They will only be used where a relevant administrative change is considered necessary to ensure the effective operation of the DBR programme by HMRC.

There is no anticipated need or desire to legislate differently under the delegated powers in relation to Wales and the potential for an alternative approach would constitute a risk to the effective and consistent operation of the system. This approach will enable the aims of the DBR programme to be delivered and intended benefits to be realised in Wales.

Recommendation 3: The Minister should confirm whether the Welsh Government looked for options to use legislation introduced to the Senedd to seek to make the change to the scrutiny procedure for regulations made under paragraph 5(13A) in Schedule 7 to the Local Government Finance Act 1988.

I can confirm that, in determining the optimal approach, the Welsh Government identified that there was not a suitable Senedd legislative vehicle to address this matter within the same timescale, nor could one be created without disproportionately detrimental impacts on our wider legislative programme.

Recommendation 4: The Minister should set out in detail, using The Non-Domestic Rating (Multiplier) (Wales) Regulations 2022 and The Non-Domestic Rating (Multiplier) (Wales) Regulations 2023 as working examples, the practical challenges and negative impacts on Senedd scrutiny of the current procedure for making regulations under paragraph 5(13A) in Schedule 7 to the Local Government Finance Act 1988.

I would first like to confirm that the Committee is correct that the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) did not introduce or change this procedure, it preserved the already established procedure, which aligns with that applicable in England. The practical challenges and timing constraints have been highlighted since the development and introduction (on 18 November 2019) of the 2021 Act. It is also the case that the UK

Government's comparable power will no longer be subject to such constraints, following the Bill. This is relevant because decisions taken by the UK Government on the setting of the multiplier in its Autumn Statements, and any related consequential funding, have implications for the Welsh Government's policy and budgeting considerations. If we are subject to constraints in the exercise of this power that the UK Government is not, in the context of these interdependencies and a tight timescale for making regulations, this could compromise its effective use. In recent years, UK Government Autumn Statements have fallen quite late in the budget cycle: this has the potential to compress the time available to the Welsh Government to take decisions on the use of consequential funding and make regulations.

The existing timing constraints link regulations and calculations on the multiplier to the Senedd's consideration of the local government finance report for the year. Regulations are not effective unless they are approved by the Senedd *before* it approves the local government finance report for the year, or before 1 March (whichever is earlier). However, the final calculation of the multiplier by Welsh Ministers is not valid unless it is made *after* the Senedd has approved the local government finance report or after 1 March. This dependency on the timing of the Senedd's consideration of the local government finance reports constitutes a "moving target", in respect of the setting of the multiplier.

If the Senedd is scheduled to consider the local government finance report very soon after the UK Government Autumn Statement and Welsh Government Draft Budget (either because the budgets are later or the report is earlier than is typical), this leaves very little time for regulations to be prepared and risks shortening the time for scrutiny. The potential for this outcome was highlighted in respect of the regulations which affected the setting of the multiplier for 2020-21. On this occasion, the local government finance report was originally scheduled for consideration by the Senedd on 19 December 2019. These regulations are, therefore, a better example of how the specific issue referred to in this recommendation could arise. In December 2019, the 2021 Act had already been introduced in the Senedd. It should be noted that a UK Government Spending Review on 25 November 2019 led to the timings for Senedd scrutiny of the local government finance report and multiplier regulations both ultimately being delayed.

Alternatively, if the Senedd is scheduled to consider the local government finance report much closer to the beginning of the financial year to which it relates, this may allow ample time for the preparation and scrutiny of regulations before that date. However, as the final multiplier cannot be calculated until after that date (or 1 March if earlier), this results in an unnecessary delay to the provision of clarity for billing authorities and ratepayers in Wales. The specific regulations referred to in this recommendation were subject to this impact, as the Senedd considered the relevant local government finance reports on 1 March 2022 and 28 February 2023.

The proposed changes will ensure the Senedd has a consistent opportunity for scrutiny, before any regulations are made, and reduce the risk of delayed billing. Local authorities and ratepayers in Wales will be provided with clarity as early as possible and will not be disadvantaged compared to those in England.

I thank the Committee for its detailed consideration of the Memorandum and hope that my responses to the recommendations provide the additional clarity sought.

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

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

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



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee

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

Peredur Owen Griffiths MS
Chair, Finance Committee

30 June 2023

Dear Colleague,

The Health Service Procurement (Wales) Bill – Stage 2 and Stage 3 Senedd scrutiny

I am writing to update you on progress of the Health Service Procurement (Wales) Bill ("HSP Bill"), and to provide additional information to support a number of recommendations or amendments that have been raised by Committee Members when undertaking scrutiny of the Bill.

1. Progress of the Health Service Procurement (Wales) Bill and inter-relation with the UK Government's Procurement Bill.

Section 2 of the HSP Bill amends the Procurement Act 2023 (currently a Bill in the final stages of parliamentary scrutiny), by inserting a new section to enable the Welsh Ministers to disapply provisions of that Act which would otherwise apply to the procurement of services provided as part of the health service in Wales. Section 3 of the HSP Bill inserts a new section (10A) into the National Health Service (Wales) Act 2006 which allows for alternative provision to be made in respect of the procurement of NHS health services in Wales.

The UK Government's Procurement Bill is only now entering its final stage of scrutiny in the House of Commons and House of Lords. This is taking longer than was originally anticipated when we first sought to introduce the HSP Bill on a fast-tracked timeline back in February this year. Our timeline at that point was based on the original timetable for the Procurement Bill, which would have seen it complete its

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parliamentary scrutiny cycles and receive Royal Assent in late Spring of this year. Whilst there have been slippages, we remained hopeful that it would be completed before Senedd summer recess. However, this now looks highly unlikely and unfortunately this has a knock on effect to the timings and progress of the HSP Bill.

At this point, the final provisions and order of the Procurement Bill are not yet 'settled' and are still subject to changes prior to moving towards Royal Assent. These final stages could in practice take several more weeks and there is no pre-defined date for completion; meaning that a date for a finalised position on the Procurement Bill is as yet unknown.

The Procurement Bill needs to be settled to facilitate a small number of technical numerical amendments to the HSP Bill following changes in the Procurement Bill that have occurred since the introduction of the HSP Bill in February. These relate to the numbering of the disapplication power, as set out above, ensuring it follows immediately after the similar power for Ministers of the Crown in England; and to ensure other consequential amendments are inserted in the correct place and the cross-references are accurate.

Stage 3 proceedings for the HSP Bill are currently scheduled in the Senedd for the 11 July; meaning that the Procurement Bill needs to be settled prior to that date. As it is becoming increasingly unlikely that this will occur by 11 July, I am now proposing that Stage 3 and Stage 4 scrutiny of the HSP Bill are postponed until after the Senedd's summer recess. This will enable sufficient time for the Procurement Bill to be settled and therefore allow accurate reflection of numbering within the HSP Bill prior to any further Senedd scrutiny proceedings taking place.

I am mindful that Members may be disappointed, as am I, with the delayed progress of the HSP Bill particularly in light of agreeing to my request for a fast-track Bill at introduction stage. However, I am sure that they will understand the position and that it is out of our hands; but I maintain that this is the correct approach to ensure the HSP Bill is accurate, prior to completion of the Senedd's scrutiny process.

My officials and I will continue to closely monitor the progress of the Procurement Bill and I will liaise with the Llywydd and Business Committee to agree a revised date for Stage 3 and 4 proceedings after the summer recess.

In the interim, my officials will proceed with tabling the revised Explanatory Memorandum and Explanatory Notes in line with Standing Order 26.28, which requires the documentation to be laid at least 5 working days prior to stage 3 proceedings.

2. Additional information in response to recommendations or amendments raised by Committees.

During Senedd scrutiny of the Bill, I made a commitment to provide a written response to a number of matters raised by the scrutiny committees. This additional information is set out in **Annex A**.

Once again, I would like to take the opportunity to reiterate my thanks to all three Committees for their scrutiny of the Bill and its supporting documentation.

Yours sincerely,

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

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

ANNEX A

ADDITIONAL INFORMATION IN RESPONSE TO RECOMMENDATIONS OR AMENDMENTS - HEALTH SERVICE PROCUREMENT (WALES) BILL.

1. Recommendation 6 of the Health and Social Care Committee's stage 1 scrutiny report – in relation to ensuring that the implementation, and requirements, of the new health service procurement regime are communicated effectively and accessibly to all relevant stakeholders.

During the General Principles debate I indicated that I was happy to accept this recommendation. I committed to providing the Committee with further details of how we will achieve effective stakeholder engagement during the implementation of the proposed new health service procurement regime.

My officials will produce a comprehensive stakeholder engagement plan as part of the development of the future regulations, statutory guidance and implementation of the proposed new procurement regime. This plan will build upon the initial stakeholder engagement undertaken to date in the preparation of the Bill and will seek to proactively engage with relevant stakeholders, groups and individuals that will be affected by the implementation of the new health service procurement regime.

It is anticipated that in relation to the operational principles of the future regulations and supporting statutory guidance, the engagement will take the form of 1-2-1 meetings with appropriate stakeholder groups to raise awareness of the proposals. This proactive engagement will be supported by a formal 12-week public consultation on the operational principles following Welsh Government's established public consultation processes.

In relation to the communication of the implementation of the proposed new regime, my officials will work with the relevant authorities to deliver training on the operational requirements of the proposed new regime. It is anticipated that this will be undertaken in partnership with procurement teams in NHS Wales and Welsh local authorities, and rolled out over a number of months, prior to the new regime coming into force. In doing this, my officials are also mindful that there will be a requirement to align with planned training by the Department of Health and Social Care for their proposed Provider Selection Regime and training in relation to the wider procurement reforms under the UK Government's Procurement Bill that will be led by officials in the Welsh Government's Corporate Procurement Division, in partnership with the UK Government's Cabinet Office.

2. Recommendation 7 from the Health and Social Care Committee's stage 1 scrutiny report and Recommendation 4 from the Finance Committee's stage 1 scrutiny report - in relation to monitoring and reviewing the implementation of the Bill.

During the General Principles debate I indicated that I was happy to accept the above two recommendations in relation to reviewing the effectiveness of the future new procurement regime and committed to including provisions in the statutory guidance to monitor the effectiveness of the proposed new regime. I also committed to writing to the scrutiny Committees to set out our proposed approach.

At the stage 2 scrutiny committee proceedings, an amendment was brought forward from Gareth Davies MS in the form of Amendment 10 to review the effectiveness of the Act. Whilst I accepted the principle of the amendment proposed, I could not accept the amendment as drafted. The reason for this was twofold – firstly, the amendment as drafted would undertake a review of two provisions that amend two other pieces of legislation and would therefore not be particularly effective in monitoring the effectiveness of the Act. Secondly, we needed to be mindful that any proposed review period needs flexibility to tie in with review periods that the Department of Health and Social Care will implement for their proposed Provider Selection Regime.

Acknowledging the principle of the proposed amendment, during the stage 2 proceedings I offered to work with Gareth Davies MS to find an agreeable solution to include a review provision on the face of the Bill that can be included at Stage 3 scrutiny.

3. Involvement of service end users with procurement decisions

At the stage 2 scrutiny committee proceedings, an amendment was brought forward from Rhun ap Iorwerth MS in the form of Amendment 14 in relation to 'ensuring the involvement of persons whom the services or goods are intended to benefit'.

Whilst I recognise the importance of ensuring that health services meet the needs of service users, I could not accept this amendment as I believe that placing a provision on the face of the Bill to consult with service users (which could in theory extend to seeking service users opinions on the award of contracts to individual service providers) will be unworkable in practice and be overly onerous. Such a provision will also duplicate the role of the newly established independent body, Llais, and their role to gather the views and experiences of service users to shape health service delivery in Wales.

Furthermore, Section 15 the Health and Social Care (Quality and Engagement) (Wales) Act 2020 already makes provision to enable Llais (in its role as the Citizen Voice Body) to make representations to 'local authorities and NHS Wales bodies' in relation the provision of health and social care services. This would include representations as to how such services are procured.

Therefore, there is already a statutory mechanism in place to ensure that relevant authorities are made aware of service users' views and must have regard to those views. This is underpinned by the Statutory Guidance on Representations made by The Citizens Voice Body – link to which can be found [here](#).

As not to duplicate the statutory functions of Llais, I will ensure that there is suitable cross references to Llais in the statutory guidance that will accompany the future regulations and implementation of the proposed new health service procurement regime.

Agenda Item 7.5

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

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



Llywodraeth Cymru
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5 July 2023

Dear Elin,

[UK Bill of Rights Bill](#) ("the Bill") and laying of a Legislative Consent Memorandum

Further to our previous correspondence of 8 March [Attached]. At the time, the Bill had not progressed beyond first reading in the House of Commons and further to being introduced on 22 June 2022. We indicated that if the Bill proceeded to a second reading, then we would lay a Legislative Consent Memorandum before the Senedd.

On 27 June, Alex Chalk KC in his capacity as Lord Chancellor gave an update on the Bill to the Justice Committee. In response to a question, he said that having carefully considered its legislative programme, the UK Government will not be proceeding with the Bill. Officials have received confirmation of the position from their counterparts. There is therefore no reason to lay a Legislative Consent Memorandum.

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

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

As with previous correspondence, we are copying this letter to the First Minister, the Minister for Rural Affairs and North Wales, and Trefnydd, the Chair of the Equality and Social Justice Committee, the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Cross-Party Group on Human Rights.

Yours sincerely



Jane Hutt AS/MS

Gweinidog Cyfiawnder Cymdeithasol a'r
Prif Chwip
Minister for Social Justice and Chief Whip



Mick Antoniw AS/MS

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/VG/1101/23

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament
SeneddLJC@senedd.wales

06 July 2023

Dear Huw,

Many thanks to you and the Legislation, Justice and Constitution Committee members for considering the Supplementary Legislative Consent Memoranda (Memoranda No.5) in respect of the UK Government's Online Safety Bill.

I welcome the report published by the Committee on 23 June which notes that members agree with the Welsh Government's assessment. That is, that the new offence of encouraging or assisting serious self-harm of others, and the amendments to clause 166 and Schedule 14 of the Bill, fall within the legislative competence of the Senedd, as described in Standing Order 29.1(i), in so far as the new provisions are not related to electronic communications.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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Agenda Item 14

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