

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee Room 3, Senedd and videoconference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 2 May 2023	0300 200 6565
Meeting time: 09.00	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(09.00)

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

(09.00 – 09.05)

Made Negative Resolution Instruments

2.1 SL(6)349 – The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023

(Pages 1 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-13-23 – Paper 1 – Draft report

3 Instruments that raise no reporting issues under Standing Order 21.7

(09.05 – 09.10)

(Page 4)

Attached Documents:

LJC(6)-13-23 – Paper 2 – Draft report



3.1 SL(6)347 – The Citizen Voice Body for Health and Social Care (Transfer of Staff, Property, Rights and Liabilities) (Wales) Scheme 2023

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

(09.10 – 09.15)

4.1 SL(6)344 – The Curriculum for Wales – Statements of What Matters Code

(Pages 5 – 6)

[Code](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-13-23 – Paper 3 – Draft report

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

(09.15 – 09.20)

6 Inter-Institutional Relations Agreement

(09.20 – 09.25)

6.1 Correspondence from the Minister for Health and Social Services: Healthcare (International Arrangements) (EU Exit) Regulations 2023

(Pages 7 – 9)

Attached Documents:

LJC(6)-13-23 – Paper 4 – Letter from the Minister for Health and Social Services, 25 April 2023

7 Papers to note

(09.25 – 09.30)

7.1 Written Statement by the Counsel General and Minister for the Constitution and Minister for Social Justice: Preparing for devolution of justice

(Pages 10 – 11)

Attached Documents:

LJC(6)-13-23 – Paper 5 – Written Statement by the Counsel General and Minister for the Constitution and Minister for Social Justice, 25 April 2023

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

(09.30)

9 Food (Wales) Bill: Draft report

(09.30 – 09.45)

(Pages 12 – 55)

Attached Documents:

LJC(6)-13-23 – Paper 6 – Draft report

10 Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill

(09.45 – 09.50)

(Pages 56 – 61)

Attached Documents:

LJC(6)-13-23 – Paper 7 – Legal advice note

11 Common frameworks cross-cutting issues: Draft report

(09.50 – 10.00)

(Pages 62 – 83)

Attached Documents:

LJC(6)-13-23 – Paper 8 – Draft report

12 Forward Work Planning

(10.00 – 10.20)

(Pages 84 – 100)

Attached Documents:

LJC(6)-13-23 – Paper 9 – Forward Work Planning paper

LJC(6)-13-23 – Paper 10 – Letter from the First Minister, 19 April 2023

LJC(6)-13-23 – Paper 11 – Letter to the First Minister, 11 April 2023

LJC(6)-13-23 – Paper 12 – Letter from the Office for the Internal Market, 25 April 2023

LJC(6)-13-23 – Paper 13 – Letter to the Office for the Internal Market, 11 April 2023

SL(6)349 – The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”). The 2005 Regulations prescribe matters relating to appeals brought under sections 94 and 95 of the School Standards and Framework Act 1998 (“the 1998 Act”) as amended by the Education Act 2002.

The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”) made temporary amendments to the 2005 Regulations to allow, in certain circumstances relating to the incidence or transmission of coronavirus—

- (a) appeal panels of two members;
- (b) appeal panels to hold hearings by remote access or to decide appeals on the basis of written information.

Regulation 2(2) of the 2020 Regulations provided that those amendments ceased to have effect on 31 January 2021, but that was subject to saving provisions in regulation 3 of the 2020 Regulations. That date was amended to 30 September 2021 by the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2020 (“the further 2020 Regulations”). The date was further amended to 30 September 2022 by the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021 (“the 2021 Regulations”).

Regulation 2 of these Regulations revokes the 2020 Regulations, the further 2020 Regulations and the 2021 Regulations. The effect is that the 2005 Regulations continue in effect unamended by the 2020 Regulations, the further 2020 Regulations and the 2021 Regulations.

Regulation 3 of these Regulations makes a number of amendments to the 2005 Regulations. Regulation 3(5)(a) of these Regulations inserts a new paragraph A1 into Schedule 2 to the 2005 Regulations. Paragraph A1 allows admission authorities to decide in certain circumstances whether an appeal hearing is to be held in person, by remote access (“a remote appeal”) or partly in person and partly by remote access (“a hybrid appeal”) (paragraph A1(1) of Schedule 2 to the 2005 Regulations as inserted by these Regulations). If the admission authority decides to have a remote appeal or a hybrid appeal it must make all necessary arrangements for the appeal panel to have access to the necessary remote access



equipment (paragraph A1(3) of Schedule 2 to the 2005 Regulations as inserted by these Regulations).

Regulation 3 of these Regulations further amends the 2005 Regulations to allow the admission authority to decide that an appeal may be decided on the basis of written information in certain circumstances (paragraph A1(5) of Schedule 2 to the 2005 Regulations as inserted by these Regulations).

Further provision in relation to admission appeals arrangements is made in a code under section 84 of the 1998 Act.

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 point is 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

Paragraphs (3) and (4) of regulation 3 amend regulations 3 and 5 of the 2005 Regulations by inserting the words "Schedule 1" and "Schedule 2" at the end of the respective regulations. The Explanatory Notes to these Regulations state:

Regulation 2 of these Regulations revokes the 2020 Regulations, the further 2020 Regulations and the 2021 Regulations. The effect is that the 2005 Regulations continue in effect unamended by the 2020 Regulations, the further 2020 Regulations and the 2021 Regulations.

If the effect is that the 2005 Regulations continue in effect unamended, why are the above amendments necessary? The words "Schedule 1" and "Schedule 2" already appear in the 2005 Regulations.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

26 April 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 3

Statutory Instruments with Clear Reports 02 May 2023

SL(6)347 – The Citizen Voice Body for Health and Social Care (Transfer of Staff, Property, Rights and Liabilities) (Wales) Scheme 2023

Procedure: No Procedure

Community Health Councils (“CHCs”) were independent bodies established to monitor what individuals and the community had to say about health services in Wales with regard to quality, accessibility, and the appropriateness of the services provided.

They were abolished on 1 April 2023 by the commencement of section 23(1) of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (the “2020 Act”).

In their place, the Citizen Voice Body for Health and Social Care, Wales (“CVB”) was established as a body corporate under section 12(1) of the 2020 Act. The Welsh Government’s website states that the CVB will:

- listen to the views of the public, in all parts of Wales, about health and social care services;
- help ensure that people’s lived experiences shape the design and improvement of services – influencing local, regional and national plans and policy; and
- help build greater connections between health and social care services, individuals and communities – promoting a truly representative citizen voice.

This Transfer Scheme makes provision relating to the transfer of staff, property, rights and liabilities from CHCs to the CVB.

Parent Act: The Health and Social Care (Quality and Engagement) (Wales) Act 2020

Date Made: 30 March 2023

Date Laid: 31 March 2023

Coming into force date: 01 April 2023



SL(6)344 – The Curriculum for Wales – Statements of What Matters Code

Background and Purpose

The Curriculum for Wales – Statements of What Matters Code (the “Code”) places a statutory duty on maintained schools and funded settings to ensure their design and planning of a curriculum under the Curriculum for Wales Framework includes, and draws from, the key concepts (or “statements of what matters”) set out in the Code. It updates and replaces the original version of the Code published on 15 November 2021 (the “Original Code”).

The Curriculum and Assessment (Wales) Act 2021 (the “2021 Act”) sets out the six areas of learning and experience on which maintained schools and funded settings must base their curriculum, namely expressive arts; health and well-being; humanities; languages, literacy and communication; mathematics and numeracy; and science and technology. The Code sets out 27 statements of what matters across those six areas. A curriculum designed or adopted by maintained schools and funded settings, and the associated learning and teaching, must encompass the statements of what matters in order to meet the requirements of the 2021 Act.

Procedure

Draft Negative.

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

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

Scrutiny under Standing Order 21.7

The following point is identified for reporting under Standing Order 21.7(i) in respect of the Code.

1. The Explanatory Memorandum confirms (at paragraph 2.3) that the Welsh Government is currently updating the online Curriculum for Wales Framework Guidance in line with the revised draft Code. The guidance was originally published on 28 January 2020 incorporating the 27 statements of what matters as set out in the Original Code.

The Memorandum notes that the Government is updating the guidance now *“to allow schools and settings greater time to draw on that advice to inform their curriculum design and planning through the 2022/23 academic year”*.



Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

25 April 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

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Legislation, Justice and Constitution Committee

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

SeneddLJC@senedd.wales

25 April 2023

Dear Huw

I am writing to inform the Committee of the UK Government's intent to make and lay the Healthcare (International Arrangements) (EU Exit) Regulations 2023 ("the HIA Regulations").

I have received a letter from Will Quince MP, Minister of State for Health and Secondary Care regarding the HIA Regulations, which the UK Government intends to lay in Spring 2023. UK Government officials have further advised that they are seeking to lay the Regulations in early June.

The HIA Regulations will extend to the whole UK. They will be made in exercise of powers conferred on the Secretary of State by the Healthcare (International Arrangements) Act 2019 ("the Act") (formerly titled the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 but to be renamed by section 162 of the Health and Care Act 2022). When section 162 is brought into force, it will commence the main enabling power for the HIA Regulations. The main enabling power will be contained in section 2 of the Act. Under section 2A of the Act, the Welsh Ministers may also make certain provision by regulations equivalent to that which the Secretary of State can make using section 2, although not all provision and only where the provision is within devolved competence.

The HIA Regulations will replace the UK legal framework for implementing healthcare arrangements provided for in existing regulations, the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 ("HEEASA Regulations"), which are made in relation to the provision of reciprocal healthcare in EEA states and Switzerland, including the making of payments. The HEEASA Regulations also place duties on public authorities in Wales to give effect to reciprocal healthcare arrangements with the European Union (EU), European Economic Area Countries and Switzerland.

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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.

The HIA Regulations are to a large extent similar to the HEEASA Regulations, but broaden the scope of the legal framework to healthcare agreements between the UK Government and Rest of the World countries. The HIA Regulations:

- enable payments to be made pursuant to a reciprocal healthcare agreement by the Secretary of State on a UK wide basis;
- enable payments to be made by the Secretary of State in exceptional circumstances on a UK wide basis;
- impose a requirement to give effect to obligations and commitments of the UK under relevant healthcare agreements, including the processing of maternity planned treatment functions, on UK NHS Business Services Authority (NHS BSA);
- impose information and advice functions on NHS BSA;
- list Rest of World Countries party to international healthcare agreements with the UK;
- impose S2 planned treatment functions on NHS England, Welsh Local Health Boards and Scottish health boards (i.e. to carry out clinical determination of applications and to establish and publish procedures for the determination of S2 applications, which include provision for a review process).

Some aspects of the HIA Regulations could be made all or in part by provision contained in regulations made by the Welsh Ministers under section 2A of the Act.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, I have considered it appropriate for the Secretary of State to legislate in relation to Wales.

The competence position in this area is complex. Whilst the Welsh Ministers have some power to make regulations in this area in relation to Wales, the legal framework in place for the provision of reciprocal healthcare is also intertwined with aspects outside of devolved competence. Therefore, separate UK Government and Wales-only regulations would be interdependent. As this area is so intertwined, I consider it prudent to have the legal framework in Wales established in one set of regulations, rather than split this between Wales only regulations and UK Regulations. This also makes the legislation more accessible, in line with good law principles.

The replacement legislative provision made by the HIA Regulations in relation to the UK's regime for reciprocal healthcare broadly retains the status quo under the current HEEASA Regulations. This means that provision which the Secretary of State would make in the HIA Regulations in relation to Wales and in devolved areas would be equivalent to the provision we would make in Wales only regulations. Therefore, having the UK Government make this provision for Wales would not be detrimental to the policy position in this area. This approach also does not preclude the Welsh Ministers from making Wales only regulations under section 2A of the Act in future.

Countries covered by International Healthcare Agreements are listed in a Schedule to the HIA Regulations. Given the UK Government is seeking agreements with a number of countries in the coming years and that each time countries are listed in the Schedule will need to be amended by affirmative procedure, I regard it as more pragmatic and efficient to have UK Government carry out this work on our behalf.

The approach within the HIA Regulations as drafted is not in conflict with either the Programme for Government or the Co-operation agreement.

These Regulations do not have implications for the Programme for Government.

I have written similarly to Russell George MS, the Chair of the Health and Social Care Committee.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Preparing for devolution of justice**

DATE **25 April 2023**

BY **Mick Antoniw, Counsel General and Minister for the Constitution
and Jane Hutt, Minister for Social Justice**

Today we wish to provide Members with an update on some steps the Welsh Government is taking to prepare for the potential devolution of justice to Wales.

We are commissioning a range of work in the spheres of youth justice and probation to understand how the devolution of these areas could happen in practice and how we could maximise the positive impact of devolving these services to Wales.

On youth justice, we have commissioned Dr Jonathan Evans, recently retired Professor of Youth Justice Policy and Practice at the University of South Wales, to lead an informal review of the current Youth Justice system in Wales, considering the opportunities that arise from devolution and to assess what the next practical steps towards devolution might be. Dr Evans is being supported in his work by the Wales Youth Justice Academic Advisory Group consisting of academics and those with practitioner experience across Wales.

On probation, we are seeking to take forward a focussed piece of research on the practical steps needed to make the devolution of probation a reality. This will complement the work that is being taken forward by the Probation Development Group, a group of academics and those with operational probation experience, under the auspices of the Welsh Centre for Crime and Social Justice, on exploring best practice in relation to probation and reducing reoffending and identifying some of the potential opportunities arising from devolution of probation in Wales.

Beyond this work, policing is another area where devolution has been advocated as long ago as the Silk Commission, and the Senedd voted in favour of devolution of policing last March. Pursuing the case for the devolution of policing is a specific Programme for Government commitment, and our intention is that we will also take forward work in this area.

Given the importance of this work, and ensuring that it is aligned, it is important there is expert support and scrutiny across the range of our plans. As part of that, we have

appointed Dame Vera Baird KC to take on a role as an Independent Expert Adviser to the Welsh Government on Justice Devolution.

This programme of work, along with our continuing internal work, will lead to a wide range of insights and learning which will help us to understand how to make devolution in these areas a practical and positive reality.

We will keep members informed of progress, including through an oral statement in due course.

Agenda Item 9

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

Document is Restricted

Agenda Item 10

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

Document is Restricted

Agenda Item 11

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

Document is Restricted

Agenda Item 12

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

Document is Restricted



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

SeneddLJC@senedd.wales

19 April 2023

Dear Huw

Thanks for your letter. In principle, I agree to attend your committee as requested subject to the following considerations.

As you know, I attend First Minister's Scrutiny Committee each term to take questions across the range of government business; this is in addition, of course, to my weekly duties in the Senedd. Our long-standing policy is that the First Minister should not normally attend committees scrutinising portfolio business for which individual ministers exercise accountability on behalf of the Welsh Government.

I recognise that the issues you specify – the Legislative Programme, International Relations and Europe - are matters on which, as First Minister, I have specific and strategic responsibilities. I would, therefore, be content to attend your committee to take questions on these topics. For clarity, and in keeping with the policy described above, I would be unwilling to take questions, for example, on the Justice portfolio which is covered by direct ministerial accountability in the normal way.

If you are content to proceed on this basis then I will be happy for our offices to make the necessary arrangements.

Yours sincerely

MARK DRAKEFORD

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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.

Rt Hon Mark Drakeford MS
First Minister of Wales

11 April 2023

Dear Mark

Invitation to give evidence – 18 September 2023

As you will no doubt be aware, my Committee's scrutiny remit extends extensively into your responsibilities as First Minister, including on inter-governmental relations, the Legislative Programme, international relations and relations with Europe.

As we near the mid-point of the Sixth Senedd, I would therefore like to invite you to attend the Committee's meeting on 18 September to consider these issues with you in detail. I anticipate the evidence session will be held between 13:00 and 14:30, and in a committee room on the Senedd estate.

Please let me know as soon as possible whether you will be able to attend; if you have prior commitments which prevent your attendance on this date please contact the committee clerks to discuss alternative dates.

I look forward to hearing from you.

Yours sincerely,



Huw Irranca-Davies
Chair

Huw Irranca-Davies MS (Chair)

Legislation, Justice and Constitution Committee
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From: Rachel Merelie
Senior Director, Office for the
Internal Market

25/04/2023

Evidence to the Legislation, Justice and Constitution Committee

Dear Huw,

Thank you for the invitation to give evidence to the Legislation, Justice and Constitution Committee.

We are grateful for the opportunity to discuss our Periodic and Annual Reports, as well as our Data Strategy Roadmap, with the Committee and I would be delighted to accept the invitation on behalf of the Office for the Internal Market.

In accepting the invitation, I note that our remit is to look at the impact of regulation on the UK internal market and the effectiveness of the United Kingdom Internal Market Act 2020 itself, rather than a broader assessment of the laws made by the Senedd or others. There are, therefore, likely to be limits to what we can add to your discussions on these broader points.

Your office can contact [REDACTED] to make further arrangements for the evidence session.

Yours sincerely,

Rachel Merelie

[REDACTED]
Senior Director

Office for the Internal Market
[REDACTED]

Rachel Merelie
Senior Director
Office of the Internal Market

11 April 2023

Dear Rachel,

Evidence to the Legislation, Justice and Constitution Committee

My Committee is taking a keen interest in the operation of the *United Kingdom Internal Market Act 2020* (the Act), particularly its impact on the effectiveness of law made by the Senedd.

We note that on 22 March 2023 the Office of the Internal Market published two reports:

- the first annual report on the operation of the UK internal market and developments as to the effectiveness of the operation of that market, in accordance with section 33(5) of the Act;
- the first periodic report assessing the arrangements established by the Act, in accordance with section 33(6) of the Act.

In light of our interest in the Act and the publication of these reports, we believe it would be an opportune time to invite you to an evidence session, to discuss the operation of the internal market and to explore in further detail some of the relevant issues. If you are content to accept our invitation, I'd be grateful if you would contact the Clerk of the Committee, Gareth Williams, at the e-mail address

above to arrange a suitable date and time.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

