

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Virtual – Video conference via Zoom	P Gareth Williams
Meeting date: 13 November 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 – 13.35)

Made Negative Resolution Instruments

2.1 SL(6)401 – The School Teachers' Incentive Payments (Wales) Order 2023

(Pages 1 – 2)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–31–23 – Paper 1 – Draft report

Affirmative Resolution Instruments

2.2 SL(6)412 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023

(Pages 3 – 8)

[Regulations](#)

[Explanatory Memorandum](#)



Attached Documents:

LJC(6)–31–23 – Paper 2 – Draft report

LJC(6)–31–23 – Paper 3 – Written Statement by the Minister for Climate Change, 7 November 2023

LJC(6)–31–23 – Paper 4 – Letter from the Minister for Climate Change, 30 October 2023

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

(13.35 – 13.40)

Affirmative Resolution Instruments

3.1 SL(6)396 – The Vehicle Emissions Trading Schemes Order 2023

(Pages 9 – 12)

Attached Documents:

LJC(6)–31–23 – Paper 5 – Report

LJC(6)–31–23 – Paper 6 – Welsh Government response

3.2 SL(6)397 – The Building Safety (Description of Higher–Risk Building) (Design and Construction Phase) (Wales) Regulations 2023

(Pages 13 – 16)

Attached Documents:

LJC(6)–31–23 – Paper 7 – Report

LJC(6)–31–23 – Paper 8 – Welsh Government response

4 Inter–Institutional Relations Agreement

(13.40 – 13.45)

4.1 Written Statement by the Minister for Finance and Local Government: The Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2023

(Pages 17 – 18)

Attached Documents:

LJC(6)-31-23 – Paper 9 – Written Statement by the Minister for Finance and Local Government, 8 November 2023

4.2 Written Statement by the Minister for Economy: Meeting of the Inter-Ministerial Group on UK-EU Relations

(Pages 19 – 20)

Attached Documents:

LJC(6)-31-23 – Paper 10 – Written Statement by the Minister for Economy, 9 November 2023

5 Papers to note

(13.45 – 13.50)

5.1 Correspondence from the Counsel General and Minister for the Constitution: Ministerial scrutiny

(Pages 21 – 25)

Attached Documents:

LJC(6)-31-23 – Paper 11 – Letter from the Counsel General and Minister for the Constitution, 7 November 2023

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

(13.50)

7 Legislative Consent Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill: Draft report

(13.50 – 14.05)

(Pages 26 – 36)

Attached Documents:

LJC(6)-31-23 – Paper 12 – Draft report

8 Statutory Instrument Consent Memorandum on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023

(14.05 – 14.15)

(Pages 37 – 40)

[Statutory Instrument Consent Memorandum Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-31-23 – Paper 13 – Letter from Minister for Rural Affairs and North Wales, and Trefnydd, 25 October 2023

LJC(6)-31-23 – Paper 14 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 24 October 2023

LJC(6)-31-23 – Paper 15 – Legal Advice Note

9 Infrastructure (Wales) Bill: Draft report

(14.15 – 15.00)

(To Follow)

Attached Documents:

LJC(6)-31-23 – Paper 16 – Draft report

10 Subordinate legislation laid in English only: Consideration of discussion paper

(15.00 – 15.20)

(Pages 41 – 61)

Attached Documents:

LJC(6)-31-23 – Paper 17 – Discussion Paper

11 UK – EU Governance inquiry: Consideration of draft report

(15.20 – 15.50)

(Pages 62 – 105)

Attached Documents:

LJC(6)-31-23 – Paper 18 – Draft report

SL(6)401 – The School Teachers’ Incentive Payments (Wales) Order 2023

Background and Purpose

This Order provides that lump sum payments paid to school teachers in Wales under the Welsh in Education Teacher Retention Bursary are not treated as remuneration for the purpose of section 122(1) of the Education Act 2002 and are not subject to the statutory pay framework and are not pensionable.

Procedure

Negative

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

Technical Scrutiny

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

Merits Scrutiny

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

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

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

“No consultation has been undertaken in relation to the making of the Order as it is a procedural matter ensuring the legal effect of the policy is as intended, providing clarity to payroll and pension scheme administrators and mitigating the risk of unfunded pensions contributions being required.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 November 2023



SL(6)412 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023

Background and Purpose

The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the 2014 Regulations”) prescribe the categories of persons from abroad who are eligible or ineligible for an allocation of housing accommodation and/or housing assistance provided by local authorities.

The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023 (“the Regulations”) amend the 2014 Regulations to extend eligibility to those who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023, and who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack.

Persons within this category who are British Nationals, others not subject to immigration control (or treated as such), and those who have immigration leave and recourse to public funds, will be eligible to apply for an allocation of housing support and/or housing assistance upon arrival in Wales.

Procedure

Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

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

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



As noted in the Explanatory Memorandum, the Minister for Climate Change wrote to the Chair of the Legislation, Justice and Constitution Committee on 30 October 2023, seeking the Committee's assistance in expediting scrutiny of the Regulations, due to their urgency.

The Minister also issued a Written Statement about the Regulations on 7 November 2023.

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

No consultation has been carried out in relation to the Regulations. Section 5 of the Explanatory Memorandum provides the following explanation:

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

Local authorities will however be informed of the legislative change, along with an addendum to the Code of Guidance, to ensure local authorities are aware of how to apply the new legislation.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

9 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Pack Page 4

Legislation, Justice and Constitution Committee



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Draft Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023**

DATE **07 November 2023**

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

The situation in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, continues to be dangerous and uncertain, and we need to prepare for the very real scenario that people may need to escape or evacuate these affected territories.

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

We need to align housing law in Wales with the UK Government's change of approach, so that people who come to Wales from those affected territories can be made eligible to apply for social housing and homelessness assistance. I therefore intend to lay the draft Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023 ("the draft Regulations"). This will enable British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds evacuated from the conflict to be eligible for social housing and housing assistance where they need it.

Whilst we do not expect there to be significant numbers of people arriving in Wales and in need of such support, we must be prepared for those that do. As such, we need to make these changes to legislation as soon as possible. Consequently, the draft Regulations have been laid today for consideration by the Senedd on 14th November.

Due to the urgency of the situation and to ensure both the preparation of our stakeholders, along with certainty to those arriving from the affected territories, I have taken the decision to accelerate this process. I wrote to the Legislation, Justice and Constitution Committee to seek their assistance for urgent consideration of the Regulations on 30th October, in order that Members of the Senedd have sight of the Committee's report before the debate on 14 November 2023.

This is a desperate and worrying situation, and I would like to take this opportunity to thank the Committee and Members of the Senedd for their support on this urgent issue.

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



Llywodraeth Cymru
Welsh Government

Our ref: MA/JJ/02801/23

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

30 October 2023

Dear Huw

I write to you in relation to the recent escalating conflict in the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights (collectively referred to below as the Occupied Palestinian Territories), Israel and Lebanon. We are currently liaising with the UK Government to determine whether there are any intentions for evacuation exercises to be undertaken. However, in the meantime we do need to prepare should British Nationals in those affected territories choose to return to the UK.

With effect from 27 October, the UK Government has disapplied the habitual residence test (which is used to stop someone who has a right to enter the UK from claiming benefits immediately after their arrival) for specified people evacuated from the violence in Israel, the Occupied Palestinian Territories or Lebanon. The UK Government has disapplied the habitual residence test in relation to British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds evacuated from the conflict in Israel, the Occupied Palestinian Territories or Lebanon. Disapplying the habitual residence test will give those arriving from those affected areas immediate access to benefits, including housing and homelessness assistance.

Currently the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 do not give British nationals or those not subject to immigration control, any exemption from the habitual residence test should they also wish to access public funds. The changes made by the UKG government require an urgent response to ensure parity in Wales and I have therefore, instructed my officials to undertake the necessary actions to reflect the UK Government legislative change in Wales as a matter of urgency.

This is necessary to align the housing rules in Wales and to maintain the Welsh Government's commitment as a nation of sanctuary. You will be aware that this process would usually take one to three months to complete but, given the seriousness of the emerging situation, it is necessary to expedite the process.

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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 Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) Regulations 2023 (“the amending Regulations”) are being drafted for the purpose of giving people who have been affected by the violence in Israel, the Occupied Palestinian Territories and Lebanon eligibility to housing and homelessness services in Wales and waives the habitual residence test. The amending Regulations will be laid before the Senedd as soon as possible. Due to the urgency of this situation, I would be grateful if the Committee would give early consideration and provide an urgent report on the amending Regulations in time for a plenary debate to take place on 14 November 2023.

I would like to thank the Committee in advance for their assistance in providing support to these arrangements, which will allow people fleeing the violence and conflict an opportunity to seek housing or homelessness assistance in Wales without undue delay.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

SL(6)396 – The Vehicle Emissions Trading Schemes Order 2023

Background and Purpose

The Vehicle Emissions Trading Schemes Order (“the Order”) establishes Great Britain wide trading schemes.

The Order consists of four trading schemes which will operate by limiting both the numbers of new non-zero emission vehicles (“non-ZEVs”) which may be registered in Great Britain, and the CO2 emissions from such vehicles, as part of the transition to zero emission vehicles (“ZEVs”). This policy framework will replace the UK’s existing New Car and Van CO2 Emissions Regulation, which will cease in Great Britain with the commencement of this Order but will be preserved in Northern Ireland for the time being.

The Explanatory Note accompanying the Order provides that the trading schemes will limit, or encourage the limitation of, CO2 emissions resulting from the registration of new cars and vans, and this purpose is also reflected in article 4(2) of the Order. The Explanatory Memorandum provides that the Order will contribute to Wales’s and the United Kingdom’s emissions reduction targets and Net Zero goal.

Procedure

Draft Affirmative.

A draft of the Order has been laid before Senedd Cymru, the United Kingdom Parliament, and the Scottish Parliament. The draft must be approved by each of those legislatures before it can be made by His Majesty.

Technical Scrutiny

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

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh

The Order has been laid before Senedd Cymru, the United Kingdom Parliament, and the Scottish Parliament. The Order has been made in English only. The Welsh Government’s Explanatory Memorandum states as follows (at paragraph 2.2):

“As the Order will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.”

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



The term “banked” is defined for the purposes of Chapters 1 and 3 of Part 3 of the Order. However, it is also used in article 77(l) and (m) in the context of “banked CRTS allowances” and “banked VRTS allowances” respectively. As article 77 is found within Part 4 of the Order, the definition of “banked” does not extend to those provisions and the term remains undefined for that purpose. In the same way that “CRTS allowance” and “VRTS allowance” are defined for the purposes of the Order as a whole in article 3(1), it may have been helpful if the definition of “banked” had been extended to Part 4 or to the Order as a whole.

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

The phrase “relevant national authorities” appears in article 96(3) of, and paragraphs 3 and 5 of Schedule 3 to, the Order. In two of these instances, the phrase is defined within a footnote as meaning as defined in section 47 of the Climate Change Act 2008. There does not seem an obvious reason for including the definition in footnotes, which are non-operative parts of the text, rather than in the body of the Order itself, for example in article 3(1) (interpretation).

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

Article 110(16)(f) omits the phrase “in domestic law or, as the case may be, as that Regulation has effect”, in both places it occurs, from point 1.2.4 in Part A of Annex 3 to Regulation (EU) 2019/631. However, that phrase does not appear in point 1.2.4. It is noted that the phrase “in domestic law and as that Regulation has effect” appears in point 1.2.4 on 3 occasions and this may have been the phrase intended to be omitted.

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

Article 110(16)(h) substitutes the phrase “light commercial vehicle” with “NI light commercial vehicle” in point 2 in Part A of Annex 3 to Regulation (EU) 2019/631. However, the phrase “light commercial vehicle” appears on two occasions in point 2 and it is not clear whether article 110(6)(h) is intended to substitute one (and, if so, which) or both occurrences.

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 except in relation to point 1.

Committee Consideration

The Committee considered the instrument at its meeting on 6 November 2023 and reports to the Senedd in line with the reporting points above.



Government Response: *The Vehicle Emissions Trading Schemes Order 2023*

The Vehicle Emissions Trading Schemes Order (“the Order”) is a GB-wide Order which has been drafted by the UK Government with input from the Welsh and Scottish Governments. The UK Government have therefore provided the following response to the Legislation, Justice and Constitution Committee report dated 30 October 2023.

Technical Scrutiny point 2:

The Committee is correct that these terms are only defined for the purposes of Chapters 1 and 3 of Part 3 of the Order, and that it would have been preferable to define them for the purposes of Part 4 also. However, the UK Government does not consider any doubt could arise as to what is meant by these terms in the context of article 77, which is about the information that will be provided to participants in the trading schemes about their activity in each of the schemes. The administrator of the schemes (the Secretary of State for Transport) will be under an obligation to prepare and provide the information under article 77 and will be well aware that banked CRTS and VRTS allowances take their meaning from the relevant Chapters of Part 3 of the Order. The UK Government considers that scheme guidance can also make this clear for scheme participants.

Technical Scrutiny point 3:

The Legislation (Wales) Act 2019 does not apply to the Order (see section 3 of that Act). The Interpretation Act 1978 does apply to the Order. Section 11 of the Interpretation Act 1978 provides that where an Act confers power to make subordinate legislation (which includes Orders in Council -see section 21), expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act. The UK Government does not therefore usually repeat such definitions within the text of statutory instruments and would risk criticism from the UK Parliament Joint Committee on Statutory Instruments if it did.

Technical Scrutiny point 4:

The Committee is correct on both counts. However, to the extent that the amendments purported to be made by article 106(16)(f) would be of no effect, a continued reference in point 1.2.4 in Part A of Annex 3 to Regulation (EU) 2019/631 to both the domestic and EU versions of Annex XXI to Regulation (EU) 2017/1151 would not be problematic. This is because point 1 in Part A of Annex 3 deals with detailed data to be recorded and reported about NI light commercial vehicles. Point 1.2.4 deals with the reporting of CO₂ emissions of certain base vehicles, which are to be calculated using the same method as applied for the UK(NI) or EU type-approval, subject to certain modifications. As UK(NI) and EU type-approval would require use

of the EU version of Annex XXI to Regulation (EU) 2017/1151, there can be no doubt that it is the EU regime on type-approval which is the relevant one for the purposes of this provision.

Technical Scrutiny point 5:

The Committee is correct, there are two references to "light commercial vehicle" in point 2 in Part A of Annex 3 to Regulation (EU) 2019/631, and both concern NI light commercial vehicles. However, point 2 simply includes supplementary material about the information which is referred to in point 1; that is the information which is to be gathered about NI light commercial vehicles. It states where the information is to be taken from and which mass is relevant. There is therefore no doubt that the light commercial vehicles referred to in point 2 are those NI light commercial vehicles which are referred to in point 1.

SL(6)397 – The Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023

Background and Purpose

These Regulations define what is meant by a higher-risk building for the purposes of section 120I of the Building Act 1984 (the 1984 Act), which was inserted into the 1984 Act by Part 3 of the Building Safety Act 2022. This makes provision for higher-risk buildings to be subject to an enhanced regulatory regime during the design and construction phase.

Regulation 3 defines a higher-risk building as a building that is either at least 18 metres high, or has at least 7 storeys, where it always contains at least one residential unit or is a hospital, care home or children's home.

Regulation 4 makes provision for the measuring of the height of a building.

Regulation 5 makes provision for the calculation of the number of storeys in a building.

Regulation 6 provides for exceptions to the definition of higher-risk building. Such buildings will not be subject to the enhanced regulatory regime.

Procedure

Affirmative.

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

Technical Scrutiny

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

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

In regulation 2, it is unclear why a specific definition of a "dwelling" has been included, and why it only makes direct reference to the inclusion of a flat. The definition of a "residential unit" is broad, and includes a dwelling or "any other unit of living accommodation...". A flat would likely fall within the ordinary meaning of limb (a) of the definition as a "dwelling" and would likely also fall within the very broad definition of (b) "any other unit of living accommodation...". As such, the choice to define "dwelling" as including a flat, and then defining "flat" itself as a premises "divided horizontally" may cause confusion to a reader. The definitions make it unclear what the status of a maisonette or similar dwelling might be, which



spans different floors and may have a vertical and horizontal divisions to accommodate e.g. private staircases. Later, the reader finds that a “residential unit” would likely include a maisonette in any event. As such, the inclusion of the definition of “dwelling” and “flat” require further explanation, as both have known meanings in ordinary language, that the regulations do not appear to wish to depart from. The definition of “residential units” appears to have been clearly drafted without the need for these additional supporting definitions.

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

In regulation 2, the definition of “His Majesty’s forces” is given the same meaning as in the Armed Forces Act 2006. But the relevant section number where the term can be found in the Armed Forces Act 2006 is noted in footnote (3) on page 3. This also occurs in the definition of “visiting force” which has the same meaning as it does for the purposes of Part 1 of the Visiting Forces Act 1952. But the relevant section number of that Act is noted in footnote (2) on page 4. There does not seem an obvious reason for including the relevant section numbers in footnotes, which are non-operative parts of the text, rather than in the definitions themselves.

Similarly, the definitions of “care home” and “children’s home” refer to a care home service and a secure accommodation service within the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016. But they also fail to identify the specific provisions where those terms are defined and given a meaning for the purposes of Part 1 in that Act. This also occurs in the definition of “hospital” when referring to an “independent hospital” within the meaning the Care Standards Act 2000. Therefore, the reader has to search those Acts to discover where the terms are found in them.

It would be preferable to have the relevant section numbers included in the definition in each case, to aid the reader to locate and understand the definitions being used in this instrument.

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.

Committee Consideration

The Committee considered the instrument at its meeting on 6 November 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023

Technical Scrutiny point 1:

The definition of “higher-risk building” will interact with other legislation, in particular (but not exclusively) the Building Act 1984 and the Building Regulations 2010. The definition of “flat” and “dwelling” in the draft regulations are similar to the definitions used in the Building Regulations 2010, the intention being to make the definition as accessible as possible, particularly to those most likely to be interacting with the regulations. The Welsh Government acknowledge that a different drafting approach could have been adopted, and was indeed considered, but are satisfied that the drafting achieves the policy aim, including in relation to maisonettes and other similar dwellings i.e. that they come within the definition of a “residential unit” as defined in regulation 2.

Technical Scrutiny point 2:

It is accepted that a different approach could have included more specific signposting. However, the Welsh Government consider there is no ambiguity in the drafting, and that it meets the policy intent of applying the appropriate meaning of the defined terms to the definition of “higher-risk building”. As such amendments to the drafting are not considered necessary.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2023
DATE	8 November 2023
BY	Rebecca Evans MS, Minister for Finance and Local Government

The Legislation which is being amended:

The Public Contracts Regulations 2015 (PCR 2015)

The Concession Contracts Regulations 2016 (CCR 2016)

The Utilities Contracts Regulations 2016 (UCR 2016)

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence.

This SI contains provisions that enable functions to be exercised by the Minister for the Cabinet Office, some of which require the prior consent of the Welsh Ministers in relation to Devolved Welsh Authorities.

These functions would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B of the Government of Wales Act 2006, and this therefore will be a relevant consideration in the context of the Senedd's competence to legislate in these areas in the future.

The purpose of the amendments

The purpose of the amendments is to reflect the Republic of North Macedonia accession to the World Trade Organisation's Agreement on Government Procurement (GPA) on 7 November 2023.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.legislation.gov.uk/uksi/2023/1169/contents/made>

Matters of special interest to the Legislation, Justice and Constitution Committee

None identified.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	Meeting of the Inter-Ministerial Group on UK-EU Relations – 11th September 2023
DATE	09 November 2023
BY	Vaughan Gething, Minister for Economy

In accordance with the Inter-Institutional Relations Agreement, I am notifying Members that I attended a meeting of the Inter-Ministerial Group on UK-EU Relations on 11th September 2023.

The meeting was chaired by Leo Docherty MP, UK Government Minister for Europe at the Foreign, Commonwealth and Development Office (FCDO). Also in attendance was Angus Robertson MSP, the Scottish Government's Cabinet Secretary for the Constitution, External Affairs and Culture. A senior official from the Northern Ireland Civil Service was present as an observer.

The meeting was held in preparation for the range of UK-EU meetings within the framework of the Trade & Co-operation Agreement scheduled for the remaining months of 2023 and the next UK-EU meeting of the Withdrawal Agreement Joint Committee (WAJC), expected to be held in early 2024.

Officials had earlier raised concerns at the short notice given for previous meetings and we are pleased this was taken on board in setting a date for this meeting.

The meeting provided a useful opportunity for me to outline several important Welsh Government issues to be progressed in the coming months. These included:

- Our general concerns relating to the existing Trade Cooperation Agreement (TCA) and need to maximise its effectiveness.
- Appreciation that the UK will now return to Horizon Europe and Copernicus programmes.
- Concern that the UK government has decided not to return to Euratom and the alternatives UK Government is pursuing.

- Welsh Government's desire to see an early resolution of issues around the Rules of Origin for electric vehicles.
- Our concerns relating to the export of live bivalve molluscs.
- The need to ensure an effective trade in seed potatoes.
- The need to maintain effective relationships internationally to preserve resilience in our energy system through the TCA to build a stable basis for the import and export of energy.
- Wales's particular exposure to the EU Carbon Border Adjustment Mechanism (CBAM) because of its large steel industry.
- Continued concern that Welsh and Scottish Governments have yet to be invited to be part of the UK delegation for WAJC meetings.

The subsequent Joint Committee meeting is to be arranged.

The next meeting of the IMG on UK-EU Relations is not yet scheduled, nor has any agenda yet been agreed.

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

Ein cyf/Our re: CG/377/2023

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

7 November 2023

Dear Huw,

Further to my attendance before the Committee on 10 July and our subsequent correspondence, please find attached a copy of my letter dated 12 May 2023 as sent to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations.

I also confirmed (at RoP 249) I would share information around amendments to UK Bills. You will be aware of the particular challenges posed by UK Parliamentary legislation over the last few years, including the Wales Act 2016, the European Union (Withdrawal) Act 2018 and the United Kingdom Internal Market Act 2020. The Welsh Government's response included publication of legislative drafting to show how that legislation might be amended, or approached in a different way, in order to properly respect devolution. However, those do not represent examples of amendments to legislation being accepted and tabled by UK Government on our behalf.

Whilst there are situations whereby Welsh Government officials and lawyers engage with UK Government on the suitability of text within UK Bills, the Welsh Government do not offer draft amendments or provisions for inclusion in UK Bills.

Yours sincerely,



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

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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.



Ein cyf/Our ref: CG/PO/141/2023

Rt. Hon. Michael Gove MP
Secretary of State for Levelling Up,
Housing and Communities and Minister for Intergovernmental Relations
2 Marsham Street
London
SW1P 4DF

psmichaelgove@levellingup.gov.uk

12 May 2023

Dear Michael,

I am writing further to our discussions at the most recent IMSC, and following the discussions between the First Minister and Prime Minister in Holyhead in March, to highlight key issues and areas of concern regarding the UK Legislative Programme. As the First Minister indicated to the Prime Minister, whilst there have been signs of improvements, the overall picture continues to be deeply concerning. I would ask, therefore, for your personal commitment to seek changes both to improve engagement and to ensure the positions of the Welsh Government and the Senedd are fully reflected in Bills across the UK Government's legislative programme.

As I have indicated to you previously, the disrespect shown for the Senedd's position during this Parliamentary session is shameful. Despite the concerns of the Welsh Government, and the lack of Senedd consent, the **Trade (Australia and New Zealand) Act 2023** has now received Royal Assent. You will be aware that the same concerns surrounding concurrent powers in that Bill also exist as regards the trade provisions in the **Procurement Bill**. This is all the more disappointing given the otherwise good collaboration we have had on that Bill. The Senedd withheld consent to the trade aspects of that Bill on 28 March.

In this Parliamentary session, the Senedd has also withheld consent in relation to the **Northern Ireland Protocol Bill**, and the **Genetic Technology (Precision Breeding) Act 2023**. Whilst the former will fall following the Windsor Agreement, there was no indication from UK Government in the passage of the Bill that the concerns of Welsh Government or the Senedd would lead to a change in the Bill's trajectory. The lack of consideration by the UK Government of the devolution implications of the Genetic Technology (Precision Breeding) Act 2023 is, contrasting starkly with the UK Government's stated intention to

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respect devolution, and breaching the ways of working underpinning Common Frameworks to which the UK Government has committed.

We have consistently outlined to UK Government ministers our serious concerns around the **Retained EU Law (Revocation and Reform) Bill** for well over a year now. The First Minister has specifically raised this Bill with the Prime Minister noting in particular the serious risks to devolved legislation arising from the sunset date and our opposition to the powers given to UK Government ministers in respect of devolved responsibilities. The issue of the sunset deadline could be largely resolved by the amendments to the Bill tabled by the UK Government ahead of Report Stage in the House of Lords but there has been no movement so far on the matter of the inclusion on the face of the Bill of a requirement to obtain the consent of the Welsh Ministers for the exercise of 'concurrent' powers by UK Government Ministers. As the First Minister has noted, achieving these outcomes would help ameliorate some of our worst difficulties with the Bill.

The above picture must also be considered amongst the backdrop of the last Parliamentary session, where the Senedd's position in relation to legislative consent was disregarded in relation to the **Professional Qualifications Act 2022**, the **Subsidy Control Act 2022**, the **Nationality and Borders Act 2022** and the **Police, Crime, Sentencing and Courts Act 2022**.

The Sewel Convention and s107(6) of the Government of Wales Act 2006 provide that Parliament will 'not normally' legislate without the consent of the Senedd. However, the growing set of examples outlined above shows the opposite approach – there is an increasing disregard for Senedd consent as the UK Government pursues its legislative programme. This clear lack of respect for the Sewel Convention and the devolution settlement is entirely unacceptable.

Unfortunately, looking ahead there are considerable issues presented by various other UK Bills. Whilst the Senedd has yet to reach a view on these Bills, it is clear that their contents are problematic and require significant change.

As you are aware, the existence of concurrent powers has been a major concern for the Senedd. I am therefore deeply concerned by the continued inclusion of such powers in the **Levelling-Up and Regeneration Bill**. The provision for the setting of levelling-up missions, associated metrics and targets and reporting on progress in Part 1 of that Bill also represents an inappropriate intrusion into the legislative competence of the Senedd. I understand that the Minister for Climate Change wrote to you with regards these concerns on 26 April. The Levelling Up White Paper, which set out the Levelling Up Missions, made significant commitments to be fully respectful of devolution settlements, recognising that this will require close and collaborative work, and the need for a process of *sustained and systematic engagement and consultation with ...devolved administrations, on the White Paper*. However, these discussions, and in particular consultation on the twelve missions, did not materialise in the development of the Bill. We will be unable to recommend the Senedd give consent to this Bill in its current form and there is absolutely no case for these provisions to be retained in their application to Wales without Senedd consent.

Whilst consideration is ongoing, it is clear that there are also considerable devolution issues in the **Energy Bill**. These include (but are not limited to) the Offshore Wind Environmental Improvement Package clauses, as set out by the Minister for Climate Change to the Secretary of State for Energy Security and Net Zero on 29 March.

You will also be aware that we have laid Legislative Consent Memoranda for the **Strikes (Minimum Service Levels) Bill** and the **Illegal Migration Bill**. To date, the Senedd has considered the former and withheld its consent. Although our Governments are not in

agreement on the need for Senedd consent on those Bills, the legitimate interest of the Welsh Government and Senedd in both cannot be disputed - these Bills relate to issues of the utmost importance with significant impacts on devolved services and authorities – as you acknowledged at the last IMSC meeting and agreed to take forward action to address. It is deeply regrettable then, that these Bills were introduced without engagement; an all too common feature of your Government's approach to legislation. You will be aware of the Welsh Government's opposition to the **Bill of Rights**. Whilst the future of that Bill remains unclear, it is again a worrying example of poor engagement on incredibly important legislation, particularly given the consensus on the requirement for Senedd consent.

There are examples which show our Governments can work together effectively where commitments and responsibilities are respected. We have discussed and agreed principles of engagement at IMSC, which go to even the most basic matters such as the importance of sharing policy detail and drafting as early as possible. When those principles are adhered to, we are much more likely to reach consensus on legislation. The ongoing engagement and collaboration on the **Non-Domestic Rating Bill** is a positive example of this.

The **Social Housing (Regulation) Bill** was generally a positive example of inter-Governmental working until its final stages. On that point, I reiterate that the introduction of late-stage amendments (the day prior to the Senedd debate on consent) places significant difficulties on the legislative consent process and the Senedd's ability to consider provisions. It is deeply concerning that this Bill very nearly moved to Royal Assent without the consent of the Senedd being provided on all relevant amendments and I thank you for your interventions in ensuring that this did not take place.

Unfortunately, however, these principles of engagement have all too often been discarded.

The **Energy Prices Act 2022** was not shared with Welsh Government until the evening prior to introduction, and received Royal Assent just two weeks later. Whilst we appreciated the urgency around this Bill, and worked hard to support its smooth passage, the lack of meaningful engagement was entirely unreasonable and placed major limitations on the ability of both Welsh Government and the Senedd to consider the Act.

The **UK Infrastructure Bank Act 2023** was another promising example, where collaboration led to consensus. However, it remains disappointing that consensus was only reached through tireless negotiation, concluding only at the late stages of the Bill's passage. Early, effective engagement should ensure that devolution issues are addressed ahead of a Bill's introduction, not at the last moments under the pressures of Parliamentary timetabling.

Similar difficulties continue to be presented in more recently introduced Bills. Whilst conversations are ongoing in relation to the **Victims and Prisoners Bill** and the **Data Protection and Digital Information No.2 Bill** on matters relating to devolved representation, I see no reason why these issues could not have been suitably explored and resolved prior to introduction of these Bills. Attempting to address concerns throughout the passage of such Bills only hinders progress.

I was also left frustrated and deeply disappointed at UK Government's recent approach on the **Protection from Sex-based Harassment in Public Bill**. Whilst we were keen to ensure provision could be achieved for Wales, the urgent ultimatum for inclusion on that Bill was wholly unacceptable, and again emphasises the major obstacles presented with poor engagement.

We follow the principle that primary legislation in devolved areas should be enacted by the Senedd. However, we remain willing to work with the UK Government on its legislative programme and are committed to achieving outcomes where we can achieve beneficial

policy results whilst respecting devolution. We are unable to do this effectively whilst the UK Government continues to fail to adhere to the principles of engagement we have previously agreed to. These include continuous engagement to avoid 'surprises', notifying of legislative plans as soon as reasonably possible (and particularly where those plans would have an impact on the responsibilities of another), and early sharing of draft clauses. Regrettably, the above overview of our experiences does not demonstrate a commitment by UK Government to live up to these principles.

There are still many outstanding devolution issues in your legislative programme that are not yet beyond positive resolution. I would, therefore, once again ask you and your Ministerial colleagues to ensure that these considerations are taken seriously with a view to ensuring those resolutions can be reached and avoiding disagreements escalating further.

Where, however, ultimately the Senedd does not consent to a UK Government Bill, the UK Government needs to rediscover its respect for the devolution and reverse the position whereby breaches of the Sewel Convention have become the default.

I hope the above enables you to understand the deep concerns surrounding the UK Government's legislative programme, from both the Welsh Government and the Senedd, and how significant improvements are readily achievable by the UK Government with a change in mindset and approach.

As specifically noted at IMSC, and given their urgency, I would ask that you address our concerns with the Levelling-Up and Regeneration Bill, and engage with relevant UK Government Ministers to ensure the devolved interests in the Retained EU Law Bill, the Minimum Service Levels Bill and the other Bills referenced in this letter are urgently addressed. I would also ask that you take steps to ensure that UK Government Ministers consistently apply the principles of engagement we have agreed at IMSC, across the entirety of the UK Government legislative programme.

I am copying this letter to the Cabinet Secretary for Constitution, External Affairs and Culture in the Scottish Government and to the head of the Northern Ireland Civil Service.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

Mick Antoniw AS/MS

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

Agenda Item 7

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

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



Llywodraeth Cymru
Welsh Government

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

25th October 2023

Dear Huw

I am writing to inform you I have laid a statutory instrument consent memorandum SICM ("the memorandum") in relation to the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023, laid before Parliament on 16 October 2023.

The memorandum has been laid outside the normal three-day SO30A deadline due to the need to check the complexity and detailed wording in the instrument.

I have released a written statement, which you can access [here](#).

Yours sincerely,

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

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Statutory instrument consent memorandum SICM (“the memorandum”) in relation to the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023
DATE	24 October 2023
BY	Lesley Griffiths, MS, Minister for Rural Affairs, North Wales and Trefnydd

I have laid a [statutory instrument consent memorandum SICM \(“the memorandum”\) in relation to the Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023](#) (“the Regulations”), laid before Parliament on 16 October 2023. The Regulations make technical amendments to various pieces of primary legislation, some of which are for provisions that relate to Wales and that are within the legislative competence of the Senedd.

The purpose of the Regulations is to update references, in existing primary legislation made at Westminster, to “retained EU law” to “assimilated law” (and similar terms). This reflects section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

I have laid the memorandum in accordance with the requirement under Standing Order 30A. I consider the Regulations to be a relevant statutory instrument because they make provisions in relation to Wales amending primary legislation within the legislative competence of the Senedd, which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters that are not within the legislative competence of the Senedd.

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

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Agenda Item 11

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

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