

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Virtual – Video conference via Zoom	P Gareth Williams
Meeting date: 4 December 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 no reporting issues under Standing Order 21.2 or 21.3

(13.30 – 13.35)

(Page 1)

Attached Documents:

LJC(6)-34-23 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)418 – The Valuation for Rating (Plant and Machinery) (Wales) (Amendment) Regulations 2023

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

(13.35 – 13.40)

Made Negative Resolution Instruments



3.1 SL(6)417 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2023

(Pages 2 – 7)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–34–23 – Paper 2 – Draft report

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

(13.40 – 13.45)

4.1 SL(6)409 – The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023

(Pages 8 – 12)

Attached Documents:

LJC(6)–34–23 – Paper 3 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 27 November 2023

LJC(6)–34–23 – Paper 4 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 23 November 2023

4.2 SL(6)414 – The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2023

(Pages 13 – 16)

Attached Documents:

LJC(6)–34–23 – Paper 5 – Report

LJC(6)–34–23 – Paper 6 – Welsh Government response

5 Inter–Institutional Relations Agreement

(13.45 – 13.50)

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

(Pages 17 – 19)

Attached Documents:

LJC(6)–34–23 – Paper 7 – Written Statement by the Counsel General and Minister for the Constitution, 28 November 2023

LJC(6)–34–23 – Paper 8 – Letter from the Counsel General and Minister for the Constitution, 29 November 2023

5.2 Written Statement and correspondence from the Minister for Climate Change: Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023

(Pages 20 – 22)

Attached Documents:

LJC(6)–34–23 – Paper 9 – Written Statement by the Minister for Climate Change, 30 November 2023

LJC(6)–34–23 – Paper 10 – Letter from the Minister for Climate Change, 30 November 2023

6 Papers to note

(13.50 – 13.55)

6.1 Written Statement by the Minister for Climate Change: Leasehold and Freehold Reform Bill

(Pages 23 – 24)

Attached Documents:

LJC(6)–34–23 – Paper 11 – Written Statement by the Minister for Climate Change, 28 November 2023

6.2 Correspondence from the First Minister: Third meeting of the UK–EU Parliamentary Partnership Assembly

(Pages 25 – 27)

Attached Documents:

LJC(6)-34-23 – Paper 12 – Letter from the First Minister, 28 November 2023

LJC(6)-34-23 – Paper 13 – Letter to the First Minister, 18 October 2023

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

(13.55)

8 Senedd Cymru (Members and Elections) Bill: Draft report

(13.55 – 14.35)

(Pages 28 – 38)

Attached Documents:

LJC(6)-34-23 – Paper 14 – Draft report

LJC(6)-34-23 – Paper 15 – Letter from the Counsel General and Minister for the Constitution, 16 November 2023

LJC(6)-34-23 – Paper 16 – Letter to the Counsel General and Minister for the Constitution, 31 October 2023

9 International agreements

(14.35 – 14.45)

(Pages 39 – 49)

Attached Documents:

LJC(6)-34-23 – Paper 17 – Research Brief

Statutory Instruments with Clear Reports 04 December 2023

SL(6)418 – The Valuation for Rating (Plant and Machinery) (Wales) (Amendment) Regulations 2023

Procedure: Made Negative

These Regulations amend the Valuation for Rating (Plant and Machinery) (Wales) Regulations 2000 (“the 2000 Regulations”). The 2000 Regulations prescribe assumptions as to plant and machinery on or in a hereditament for the purposes of rating valuation.

The Schedule to the 2000 Regulations prescribes the classes of plant and machinery which are to be assumed to be part of a hereditament for rating valuation purposes, with exceptions for certain prescribed classes.

Regulation 2 of these Regulations amends Class 1 in the Schedule to the 2000 Regulations to insert two further exceptions in respect of renewables plant and machinery and electric vehicle charging points. These exceptions apply in relation to days on or after 1 April 2024 and before 1 April 2035.

Parent Act: Local Government Finance Act 1988

Date Made: 20 November 2023

Date Laid: 21 November 2023

Coming into force date: 01 April 2024



Agenda Item 3.1

SL(6)417 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2023

Background and Purpose

The Specification of Apprenticeship Standards for Wales (**SASW**) specifies the requirements that must be met for recognised Welsh apprenticeship frameworks to be issued. This Order modifies the SASW. The modifications include, in brief:

- widening participation among apprentices with learning difficulties and learning disabilities by offering flexibility as regards essential skills requirements,
- allowing additional proxy qualifications as a recognised alternative to essential skills,
- including a new section on degree and professional apprenticeships, which removes the essential skills requirements for apprenticeships at this level.

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

The following 13 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The Order fails to precisely define the document that is the SASW. There is no reference to the publisher, the date it was published or the ISBN number and there is no hyperlink to the document. Contrast this to the clear approach taken by the UK Government in an equivalent Order that modified the Specification of Apprenticeships Standards in England in 2018:

<https://www.legislation.gov.uk/uksi/2018/946/article/2/made>

When legislation refers to documents, it is important that readers know precisely which document is being referred to and where they can find it.



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

It is unclear what is the status of the Welsh language version of the SASW. The Welsh language version of the Order makes modifications to the Welsh language version of the SASW. We assume that these modifications are intended to have legal effect.

However, both the English and Welsh versions of the Order that gave effect to the original SASW back in 2013¹ gave effect only to “The Specification of Apprenticeship Standards for Wales (SASW)”, i.e. the English language version of the SASW.

Therefore, it is unclear when the Welsh language version of the SASW was given legal effect and what is the current status of the Welsh language version.

When the SASW was last modified in 2016,² it was modified in the English language only.

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

In the Welsh language version, the date of the Minister’s signature is in English.

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

In new paragraph 1 of the SASW, there appears to be an error at the end of the following sentence, with our emphasis added:

“It includes a new section on degree and professional apprenticeships (levels 6 and 7), which removes the essential skills requirements for apprenticeships **at this level**”.

By referring to “levels 6 and 7” we wonder whether “at this level” should read “at these levels”, as this would save any confusion arising as to what “at this level” means.

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

The existing SASW contains two columns – a first column that includes the text of the requirement, and a second column that includes a reference to the relevant section of the Apprenticeships, Skills, Children and Learning Act 2009; see this extract from the current SASW for example:

6. A framework must be at a minimum of 37 credits but may where appropriate exceed this; in many cases frameworks will significantly exceed 37 credits. A framework must not be so narrow that it is only relevant to a specific workplace where the apprenticeship was attained.	Section 31(2)(a)
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¹ The Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013

² By the Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016



However, where the Order inserts a new paragraph (such as paragraph 16A), it inserts only the first column – no second column is inserted. If there is no relevant section of the 2009 Act to refer to, for the sake of clarity, it would still be helpful to include a second column to explain that.

On a related note, where the Order modifies an existing paragraph (such as paragraph 6 above), the Order does not state that the modification is to the first column only. However, we assume that is the case and that the second column remains unmodified.

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

In the new paragraph 10, the sub-paragraphs (a), (b) and (c) are linked by the conjunctions “and” after sub-paragraph (a) and “or” after sub-paragraph (b). However, the drafting guidelines in Writing Laws for Wales warn against mixing different conjunctions when linking divisions as has been done in these sub-paragraphs. This is because it leads to ambiguity when interpreting the relationship between the sub-paragraphs.

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

In the new paragraph 16A, in the Welsh text, the words that correspond to “Essential Communication Skills and Essential Application of Number Skills” have been translated differently and inconsistently in the first place they occur on page 6 compared with the second time where it is correct.

On the first occasion it is incorrectly translated as meaning “Essential Communication and Application of Number Skills”.

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

We note the following inconsistencies in terminology.

- In the Schedule, in the English text, the phrase “learning difficulty or disability” is used in several places. However, in the new paragraph 16A “learning difficulty or learning disability” is used. And in the new paragraph 24, “learning difficulties or a learning disability” is used. Therefore, there is a variation in the terminology which creates uncertainty.
- In the new paragraph 16A in the Welsh text, in the fifth paragraph, the phrase “learning difficulty or disability” has been translated as meaning “learning difficulty or learning disability” leading to a difference between the English and Welsh text.



- In the English text of the Schedule, there is reference to both “maths” and “mathematics”. It is unclear why both terms have been used when “maths” is not used in the existing SASW.
- Uncertainty arises in respect of the name of one qualification listed in the Schedule. In particular, on pages 12 and 18 of the Order, there is reference to an International Baccalaureate Diploma Standard or Higher Level Qualification in...Mathematical. The use of “Mathematical” at the end on its own does not appear to be right.
- In the Schedule, in the English text, the term “proxies” is used in the new paragraphs 25A and 36. However, “proxy qualifications” is used elsewhere in the Schedule and in the existing SASW. In the Welsh text, it has been translated as “proxy qualifications” throughout the Schedule and the existing translation of SASW. Therefore, the English text is inconsistent in using the term “proxies” in places.
- In the Schedule, in the English text, the acronym “IBO” is used in the first column of the tables on several occasions in relation to the “IBO Middle Years Programme Level 1 / 2 Certificate”. However, that acronym is not used elsewhere in the tables, where “International Baccalaureate” is used in full. In addition, the website of the organisation appears to use “IB” as its acronym. The Welsh text has repeated the full name of the International Baccalaureate in Welsh on each occasion in the corresponding places.
- In the new paragraph 35, there is reference to exceptions “for people”. However, a parallel provision in new paragraph 24 refers to exceptions “for apprentices”.

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

The Order replaces the current paragraph 24 with a new paragraph 24. However, the new text of paragraph 24 appears to deal with a matter that is dealt with in current paragraph 25. This would mean that the SASW as modified by this Order would have two paragraphs (i.e. paragraphs 24 and 25) that deal with the same matter, but in slightly different ways.

We would be grateful if the Welsh Government could confirm that the new paragraphs 24, 25A and 25B have been correctly numbered and will fit into the new SASW as intended.

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

In the new table immediately after new paragraphs 25B and 36A, the heading “English qualification” appears above the first column. However, that column includes qualifications relating to the Welsh language and British Sign Language. It is unclear why those kinds of qualifications are included under the heading “English qualification”.



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

In the Welsh language version of the Schedule, the phrase “Pre U” (which we understand to refer to a pre university qualification) has not been translated in the name of certain qualifications. Did the Welsh Government consider giving the phrase a Welsh translation?

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

In new paragraph 35, there is a difference between the Welsh and English texts – the Welsh text includes additional words. As a result, “as outlined in paragraph 16A” is translated as meaning “as well as those qualifications outlined in paragraph 16A”.

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

Paragraph 13 of the Schedule changes the “heading at paragraph 38”. There are no headings “at” paragraph 38. There is a broad heading that captures paragraphs 38 to 42 and there is a narrower heading that captures paragraph 38 to 40. We assume the change is to the broader heading, but this should have been made clear in the Order.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

14. 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

New paragraph 16A of the SASW recognises that apprentices with a learning difficulty or a learning disability may experience barriers to participation in apprenticeships. Consequently, paragraph 16A permits exceptions in relation to certain minimum requirements. As regards the minimum requirements for Essential Communication Skills and Essential Application of Number Skills, the minimum requirements can be adjusted, but only when specified conditions are met (see the requirement for “all” conditions in paragraph 16A to be met).

Given that paragraph 16A provides for reasonable adjustments, we would be grateful if the Welsh Government could clarify the relationship between paragraph 16A and the duty to make reasonable adjustments under the Equality Act 2010. The Equality Act 2010 is less prescriptive as to when reasonable adjustments can be made.

15. 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 have noted above some of the modifications this Order makes to the SASW. However, the Explanatory Memorandum states: “there is no policy change” and “no new policies are being implemented”.



In paragraph 5, the Explanatory Memorandum says:

As there is no policy change, no public consultation was undertaken. The purpose of the Order is solely to enable the current legislation to be updated to meet the apprenticeships policy commitments, where technical and public consultations have taken place.

We would be grateful if the Welsh Government could clarify what those policy commitments are, and where and when they were set out. This will help us understand the Welsh Government's position that the Order does not implement new policy.

Welsh Government response

A Welsh Government response is required to each reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

29 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 7



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

27th November 2023

Dear Huw.

Thank you for your letter of 23 November regarding The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023.

I am grateful to the Committee for their careful consideration of these Regulations. I agree it is important the Regulations are clear, accessible and operable. To this end, I have decided to withdraw these Regulations ahead of their scheduled debate on 28 November 2023.

I intend to lay revised Regulations to achieve the same policy intent. These Regulations will also still seek to extend or apply the Movement Assistance Scheme but will address the specific points raised by the Committee.

In particular, the new Regulations will provide clarity that regulations 3(5C) and 3(5D) no longer operate in law, and restate the provisions as new sections 3(5E) and 3(5F)

As a result of this amendment, the new draft regulations will not seek to make retrospective provision in relation to Regulation 3(5C) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. This means there will be no retrospective exemption from fees for certain movements of wood, wood products, isolated bark or used forestry machinery. Instead, the relevant fee exemption will now be in place from 1 January 2024 until 30 June 2025. Regrettably, this means there will be no fee exemption in place for certain movements of certain regulated material for 2023 due to the provision not being extended previously. However, as previously communicated, the potential for businesses to be adversely affected by this is considered to be low-risk.

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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.

In order to ensure there is no gap in provision of fee exemptions in relation to the movement of Regulated material under the Plant Health etc. (Fees) (Amendment) (Wales) Regulations 2018, these Regulations need to come into force by 31 December 2023. To enable this to happen, I would be grateful if the Committee would expedite scrutiny of the revised Regulations ahead of the final plenary session of the year on 12 December. It is my intention the new Regulations are debated during this session.

Once again, I would like to thank the Committee for its diligent consideration of these Regulations.

Regards,

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

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

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

23 November 2023

Dear Lesley

The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023

At our meeting on 20 November 2023 we considered the draft Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023 and the Welsh Government's response to our draft reporting points. You will be aware that our final report has since been laid before the Senedd.

While we welcome receiving the Welsh Government response to our draft reporting points in time for the response to be included as part of our full consideration of the draft Regulations, there remain some matters on which we consider further information and clarification is required.

Our second technical reporting point highlights that Regulation 3(5C) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 ceased to have effect on 31 December 2022, by virtue of regulation 3(5D) in those Regulations. You will know that we asked how the Welsh Government considers that using the 2023 Regulations to substitute the date in regulation 3(5D) of the 2019 Regulations revives regulation 3(5C) of those same 2019 Regulations.

In response we were told that regulation 3(5C) "has never been revoked, but has had (until these Regulations) no legal effect since 1st January 2023". We were also told that "Regulation 3(5D) as now amended and which sits separately to regulation 3(5C) revives regulation 3(5C) of the 2019 Regulations by retrospectively providing for the continuation in period of the effect of regulation 3(5C)."

We understand that regulation 3(5D) in the 2019 Regulations effectively revoked regulation 3(5C) on 31 December 2022; the words "*Paragraph (5C) ceases to have effect*" amounting to a revocation on the specified date, even if the word "revoked" is not expressly used. We therefore consider that, after 31 December 2022, paragraph (5D) in regulation 3 remained in place but had no legal effect, whereas paragraph (5C) had been revoked. The advice we have received indicates that paragraph (5D) may be revived by amending the relevant date (subject to any concerns about retrospectivity). We remain unclear as to why express re-statement of paragraph (5C) is not required to ensure that the amended paragraph (5D) has its intended legal effect. This would appear to accord with the principle set out in both the *Interpretation Act 1978* and the *Legislation (Wales) Act 2019* that repeal of a repealing provision (A) by provision (B) does not revive anything repealed by (A) in the absence of express words to that effect. Even if there is doubt as to the strict necessity of re-stating paragraph (5C) of regulation 3, we consider that it would provide legal certainty and clarity to the reader, which is particularly important when legislation is being changed retrospectively.

We would therefore welcome further information to clarify why the Welsh Government does not consider it necessary to expressly re-state paragraph (5C) of regulation 3 in the 2019 Regulations.

Our third reporting point notes that there appear to be inconsistencies between the Explanatory Note and the effect of the amendments made by these Regulations. We highlighted that the Explanatory Note states "Regulation 2 amends the Plant Health etc. (Fees) (Wales) Regulations 2018 by providing that the relevant date for fees to become payable under regulation 5A(4A) is 30 June 2025.

Regulation 3 amends the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 by providing that the relevant date for fees to become payable under regulation 3(5C) is 30 June 2025." However, it is our understanding that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations provide for the exemption from the payment of fees, but the fees are not payable under these particular paragraphs and once the fees become payable, these paragraphs cease to have effect. Furthermore, we consider that the effect of the amendments is that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations cease to have effect at the end of 30 June 2025, and that, therefore, the fees will become payable on 1 July 2025.

In response we were told that "Clarity and consistency in the Explanatory Notes with the Regulations is desirable. However, the Explanatory Notes do not form part of the Regulations and the Regulations are correctly stated."

Even though the Explanatory Note does not form part of the Regulations, they appear alongside the Regulations in the same document. We would be grateful for your views on whether an Explanatory Note which contains information that is inconsistent with the corresponding regulations could adversely affect the accessibility of the law.

We would be grateful if you would address these matters during the Plenary debate on the draft Regulations, scheduled to take place on 28 November 2023, as well as providing a full written response by 30 November 2023.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



SL(6)414 – The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2023

Background and Purpose

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”), which make provision for the repayment of income-contingent student loans in England and Wales.

Regulation 2 amends the 2009 Regulations to cap the interest that would otherwise be payable on certain undergraduate and postgraduate student loans (under regulations 21A, 21B and 21C). It puts in place a long-term interest rate cap, assessed on a monthly basis (replacing the existing regulation 20B, which was calculated on a quarterly basis and required quarterly amending Regulations to be made). The cap is calculated in relation to a month, first, by calculating the 12 month rolling average in two data sets published by the Bank of England and, then, by taking the lower of the two. The Authority¹ is required to publish the interest rate cap for each month.

Regulation 3 makes amendments to the 2009 Regulations consequential on the change made by regulation 2.

Regulation 4 concerns the scope of the fixed instalment rate, which is relevant to the repayment of student loans by overseas borrowers. It provides for the fixed instalment rate for plan 1 student loans to be calculated in the same way as for plan 2, plan 3 and plan 5 student loans.

Procedure

Composite Negative

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament.

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. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

¹ The Authority” means - (a) in relation to a plan 1, 2 or 3 loan and subject to regulation 7 - (i) the Welsh Ministers in the case of a loan made or deemed made by them, or (iii) the Secretary of State in any other case; and (c) in relation to a plan 5 loan and subject to regulation 7, the Secretary of State.



Technical Scrutiny

The following point is 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

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament. As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

“The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State. They govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which begin on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by His Majesty’s Revenue and Customs (HMRC). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

As the regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. Therefore, the 2023 Regulations are made in English only.”

Merits Scrutiny

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

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

We note the purpose and intended effect of the legislation. The Explanatory Memorandum explains that:

“To avoid the need to make quarterly regulations, the 2023 Regulations introduce a permanent provision that creates a system with an in-built cap that would be applied whenever the student loans interest rates would otherwise exceed the PMR. This would provide for Plan 2, Plan 3 and Plan 5 interest rates to be RPI plus up to 3% (depending on the plan type, as per the current regulations) unless the PMR was less than this, in which case the PMR cap would apply. This would mean the Plan 2, Plan 3 and Plan 5 interest rates could change any month when the cap is in force and would see the cap being applied based on the latest published PMR data. Where a PMR cap is applied, all borrowers will see a reduction in the rate of interest applied to their loan balance compared to the uncapped position. For



operational reasons the PMR cap adjustment would be implemented on the first day of the relevant month (where it was applicable to do so)."

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

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

"No consultation has been undertaken. A consultation was not deemed necessary as the 2023 Regulations are being implemented to uphold the requirements in the Teaching and Higher Education Act 1998. Furthermore, this is an area of the student finance system where there is very limited scope for Wales to take a different approach for Welsh borrowers and the limited time available to legislate in respect of Welsh loans in response to the UK Government's changes for English borrowers, did not allow for a consultation to be undertaken."

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

Regulation 2(b) inserts the new regulation 20BA in the 2009 Regulations. As such regulation 20BA(6) provides that *"The Authority must publish the interest rate cap in relation to every month, as soon as practicable and by whatever means and in whatever media the Authority thinks fit."* Can the Welsh Government give an indication as to where the monthly interest rate cap will be published?

Welsh Government response

A Welsh Government response is required for point four only.

Committee Consideration

The Committee considered the instrument at its meeting 27 November 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2023

Merit Scrutiny point 4: All interest rate changes to Plan 1, Plan 2 and Plan 3 student loans for Welsh domiciled students are published by the Welsh Ministers through the Student Loans Company via their GOV.UK web page. Students are also informed of interest rate changes by way of their annual statements.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Inter-Ministerial Standing Committee – 19 October 2023

DATE 28 November 2023

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

I represented the Welsh Government at the fifth meeting of the Inter-Ministerial Standing Committee (IMSC) on 19 October. The meeting was chaired by the Deputy First Minister of Scotland and Cabinet Secretary for Finance, Shona Robison MSP.

A joint [communiqué](#) was published following the meeting, which contains full details of other attendees. The agenda enabled discussion of a range of issues including: the continuing cost of living crisis; the situation in Israel and Gaza; the International Development White Paper, UK legislation and the planned King's Speech, and intergovernmental working in relation to smoking and vaping.

As referred to in the communiqué, the Committee noted the ongoing cross-government work on the cost of living. In doing so we noted a proposal to set up a bilateral Inter-Ministerial Group between the Department for Work and Pensions and the Welsh Government. I outlined the importance of continuing joint work on this given the concerning situation of ongoing inflationary pressures being felt widely across the UK.

As part of the discussion relating to international issues and the International Development White Paper, I pressed for further consideration be given to an Inter-Ministerial Group for international relations. It was agreed to consider how best to ensure international matters are appropriately considered in the IGR system, including through ministerial level engagement. I also expressed my sadness at the ongoing situation in Israel and Gaza, and the impact it is having on our communities here in Wales. I explained that we are working with our police and crime commissioners, as well with faith groups to ensure that people feel secure in what is a very worrying time for many of our communities.

In relation to UK Bills, I put forward my strong concerns around the repeated recent breaches of the Sewel Convention and the unacceptable and damaging constitutional implications of this. As I have stated in that forum before there is simply no justification for this. We discussed preparations for the King's Speech on 7 November, and I subsequently

issued a Written Statement on 10 November providing our initial views on the programme of UK legislation announced.

The Committee also discussed intergovernmental work in relation to smoking and vaping, and I welcomed the ongoing joint work on this.

I will be chairing the next IMSC in line with rotating chair arrangements.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/405/2023

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

29 November 2023

Inter-Institutional Relations Agreement: Inter-Ministerial Standing Committee

Further to my letter of 9 October, I have issued a [Written Ministerial Statement](#) summarising discussions at the most recent meeting of the Inter-Ministerial Standing Committee ('IMSC').

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

I have also copied this letter to the Finance Committee, the Economy, Trade and Rural Affairs Committee, and the Culture, Communications, Welsh Language, Sport, and International Relations Committee

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

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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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	SI laid in Parliament, which amends secondary legislation in a devolved area The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023 (“the 2023 Regulations”)
DATE	30 November 2023
BY	Julie James MS, Minister for Climate Change

Members of the Senedd will wish to be aware that consent is being given to the Secretary of State to exercise a subordinate legislation-making power in a devolved area in relation to Wales.

In 2019, Ministers across the UK agreed to introduce a new Extended Producer Responsibility regime for packaging (pEPR) to replace the current packaging scheme. The planned start date for the new pEPR of 2024 has been delayed due to ongoing concerns from producers and the need for further work on the draft Regulations. Ministers have therefore announced a 12-month delay. To cover the gap that will exist between the targets set under the current scheme, which end in 2023, the regulations will roll forward the existing packaging producer responsibility targets for 2023 (with the exception of wood which will be increased from 35% to 42%).

Agreement has therefore been sought by The Rt Hon Lord Benyon Minister for Biosecurity, Marine and Rural Affairs to make a Statutory Instrument (SI) titled The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023 to apply in relation to England and Wales.

The above titled SI will be made by the Secretary of State in exercise of powers conferred by section 50 of and paragraphs 1(1) and 2(2) of Schedule 4 to the Environment Act 2021. The SI amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871) which impose obligations on packaging producers to recycle packaging waste to meet overall recycling and material-specific recycling targets.

These Regulations set an overall recycling target as well as material-specific recycling targets for 2024 on obligated producers in England and Wales in relation to glass, plastic, aluminium, steel, paper/board, and wood as well as a specific re-melt target for glass.

The regulations were laid before Parliament on 22 November 2023 to come into force on 1 January 2024.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/406/2023

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

30 November 2023

Dear Huw,

I am writing to inform the Committee that I have given consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales.

In July 2023, Ministers across the UK announced a 12-month delay to the introduction of the new Extended Producer Responsibility regime for packaging. To cover the gap that would otherwise exist, between the targets set under the current packaging scheme which end in 2023 and introduction of the new Extended Producer Responsibility regime, agreement is being given to the Secretary of State making The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023. This instrument is being made by the Secretary of State in exercise of powers conferred by section 50 of and paragraphs 1(1) and 2(2) of Schedule 4 to the Environment Act 2021.

The SI amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871). The 2023 regulations will roll forward the existing packaging producer responsibility targets for 2023 (except for wood which will be increased from 35% to 42%). Those Regulations impose on producers of packaging, obligations to recycle packaging waste in order to attain overall recycling and material-specific recycling targets. These Regulations set an overall recycling target of 80% and material-specific recycling targets for glass (82%), plastic (61%), aluminium (69%), steel (87%), paper/board (83%) and wood (42%) as well as a specific re-melt target for glass (82%).

Yours sincerely,

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

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

Back Page 22
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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Leasehold and Freehold Reform Bill**

DATE **28 November 2023**

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

The UK Government introduced the Leasehold and Freehold Reform Bill into UK Parliament on 27 November.

The Bill will legislate for England and for Wales. It is my view that working together with the UK Government represents the best way to achieve these changes. In doing so we will be able to reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.

I will be laying a Legislative Consent Memorandum in respect of the Bill, given housing is within the legislative competence of the Senedd.

The Bill addresses serious deficiencies in the operation of leasehold which have long blighted homeowners in England and Wales and implements many of the recommendations of the Law Commission's reports on Enfranchisement and the Right to Manage. This will make it simpler, easier and cheaper for leaseholders to exercise these important rights. Additionally, the Bill introduces requirements for enhanced transparency in the operation of service charges, reforms to the legal costs regime and a ban on taking commissions for arranging buildings insurance paid for by leaseholders. Together, these will ensure that leaseholders can much more easily understand what their service charges pay for and can better challenge poor practice where it occurs.

Furthermore, this Bill introduces much needed protections for freeholders subject to estate management charges. These charges often apply on housing developments where maintenance arrangements for open spaces and facilities must be paid for by homeowners. My call for evidence in 2020 revealed many instances of poor practice in the operation of such charges. I am pleased to see that the UK Government has acted on my request that they fulfil their commitments to address the situation of freeholders on these estates. Until this point, homeowners subject to the charges have had minimal legal protection. This Bill will address that deficit by requiring transparency in the levying of charges and by introducing a right for freeholders to challenge their reasonableness via the tribunal.

Eich cyf/Your ref: 18/10/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@Senedd.Wales

Luke Fletcher MS
Member
Economy, Trade and Rural Affairs Committee

Llywodraeth Cymru
Welsh Government

28 November 2023

Dear Huw and Luke,

Thank you for your letter of 18 October 2023, reporting on the third meeting of the UK-EU Parliamentary Partnership Assembly and for providing a summary of the Senedd's participation in it.

It is encouraging to read the Senedd and Welsh Government continue to actively engage in the UK-EU PPA meetings and the governance of the TCA, ensuring that those matters that are particularly important to Wales are reflected. The report on the outcomes of this meeting is very informative and helpful, as are the recommendations. It is particularly pleasing that UK participation in Horizon Europe has now been restored.

I am keen that your Committees and the Welsh Government should continue to work together to ensure the most effective input to the TCA processes to maximise Wales' interests in the UK-EU relationship. This is particularly true as we enter a period of institutional transition and the lead-up to the review of the TCA.

I look forward to your further update following the next meeting.

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

18 October 2023

The third meeting of the UK-EU Parliamentary Partnership Assembly

Dear Mark,

As you will be aware, the Trade and Cooperation Agreement (TCA) provided for the establishment of a UK-EU Parliamentary Partnership Assembly (PPA). The PPA oversees the implementation of the TCA and any future UK-EU Agreements.

We represented the Senedd at the third meeting of the UK-EU PPA on 3-4 July. During this meeting, the PPA held important discussions on issues such as the Northern Ireland Protocol and the Windsor Framework, the signing of the Memorandum of Understanding on Financial Services, securing energy supplies, climate cooperation, UK access to the Horizon research programme, improving citizens' mobility between the UK and EU, and including citizen voices through civil society cooperation.

A number of recommendations were made to the TCA Partnership Council during this session which include:

- A reiteration of a recommendation from the breakout group on mobility previously made to the TCA that the EU and the UK should negotiate a comprehensive agreement to allow artists to tour and work in the EU and the UK; and
- The PPA reiterated its unwavering condemnation of the war in Ukraine, its support for Ukraine and the need for cooperation between the EU and the UK particularly in



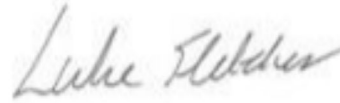
relation to an effective sanctions policy. It also called for an 'intensification of dialogue' on avenues for future cooperation and coordination on foreign and security related matters in general between the UK and the EU. It has asked the Partnership Council to report back on its recommendation before the next meeting in December 2023.

We are writing to you to draw your attention to our short report on the outcomes of the meeting. We hope the issues discussed will be of interest to you and we will continue to keep the Welsh Government updated of the Senedd's work with the PPA and any areas discussed of particular importance to Wales.

Yours sincerely,



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



Luke Fletcher MS
Member
Economy, Trade and Rural Affairs Committee

We welcome correspondence in Welsh or English

Agenda Item 8

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/387/2023

Alun Davies MS

Temporary Chair, Legislation, Justice and the Constitution Committee

16 November 2023

Dear Alun,

Thank you for your letter of 31 October 2023 detailing a number of follow-up questions pertaining to my attendance of the Committee's meeting of 16 October 2023, as part of your consideration of the Senedd Cymru (Members and Elections) Bill.

I have detailed my answers to these questions in an annex to this letter.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

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

Section 5 – Increasing number of Ministers

Question 1: Section 5 of the Bill permits the maximum limit of the Welsh Ministers to be increased, by regulations, from 17 to 18 or 19. Why is a regulation-making power being proposed and why would a new Bill not be more constitutionally appropriate?

The inclusion of a power to increase the number of Welsh Ministers arose from a recommendation by the Senedd’s Business Committee in its December 2022 report.

The Business Committee concluded, following a public consultation, that:

“... it would be reasonable for the legislation to include a mechanism which would enable the Welsh Government to propose further increasing this limit to a maximum of 19 by way of secondary legislation, in order to future proof the legislation for the devolution of further powers, or other circumstances where an increase is considered to be merited. Such an increase should be subject to an affirmative (majority) vote of the Senedd.”¹

The delegated power in section 5 is thereby intended to build in an element of future proofing, allowing the Welsh Ministers some flexibility to increase further by regulations, the upper limit on the number of Ministers able to hold office at any time (up to a maximum of 19 Ministers). The Bill sets out in detail the scope of this delegated power.

As set out in the Statement of Policy Intent, the Welsh Government has no expectation to immediately utilise this power to increase the maximum from the 17 that would be established by the Bill. It would be necessary for a future Welsh Government to justify why circumstances necessitated that the limit on Welsh Ministers needs to be increased beyond 17. As the Business Committee stated, this might be due to the devolution of further powers, or otherwise other circumstances whereby an increase was merited.

Question 2: Why is there no power to subsequently decrease the maximum limit by regulations in future once the power has been used? As a result, for example, it would not be possible to temporarily increase the limit for specific purposes - such as a dedicated Minister for specific emergencies (e.g. Covid), or large events (e.g. the Commonwealth Games).

In its December 2022 report, the Senedd’s Business Committee stated on this issue that “any proposed increase, once agreed by the Senedd, should be permanent.”² The Bill reflects the conclusion reached.

¹ Business Committee, Response to the Special Purpose Committee on Senedd Reform’s report – Reforming our Senedd: A stronger voice for the people of Wales, Conclusion 1, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

² Business Committee, Response to the Special Purpose Committee on Senedd Reform’s report – Reforming our Senedd: A stronger voice for the people of Wales, Paragraph 16. <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

It may also be noted that the power provides for an increase in the maximum limit upon Welsh Ministers, not a minimum limit. Consequently, in practice a First Minister would be free to choose not to appoint to that maximum limit, without need for further legislation.

Question 3: What consideration was given for the section 5 power to be subject to a procedure requiring a super-majority of Members to vote in favour?

In its December 2022 report, the Senedd’s Business Committee stated that:

“A majority of our membership consider that such a vote should be passed on a simple majority, whilst Darren Millar MS stated that it should require the support of two-thirds of Members voting.”³

As the Senedd would need to agree (by a super majority) to the principle that the maximum limit of Ministers should be increased to 17 and can be further increased within a limited range, it was considered proportionate that any regulations made under this power should be subject to the affirmative procedure, as the Business Committee concluded.

The affirmative procedure will ensure the Senedd has a role in approving any increase in the size of the government and reflects the fact that any regulations changing the upper limit on the size of government will amend primary legislation.

Section 7 – Job-sharing

Question 4: In your view, would section 7 of the Bill become redundant if a new Welsh Government published a statement on job-sharing in, for example, the first year of the Seventh Senedd?

Section 7 would remain in force even in the event a new Welsh Government published a statement. The key step in satisfying section 7 is for the Llywydd to table the motion. It would then be a matter for the Senedd to determine whether to agree to the motion, in light of any such statement. The duty on the Welsh Ministers to table a statement in section 7(5) is only triggered if the committee is established, and that committee lays its report before the Senedd.

Question 5: Why would a new Welsh Government not be obliged to take any steps in relation to the recommendations of a Committee established under section 7?

The Welsh Government would, as is established practice, respond to committee reports and recommendations that are directed to it. The Bill does not oblige the government of the day to accept the recommendations of a committee established to review job-sharing.

³ Business Committee, Response to the Special Purpose Committee on Senedd Reform’s report – Reforming our Senedd: A stronger voice for the people of Wales, Paragraph 16.
<https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

Rather, the Bill places a duty on the Welsh Ministers to lay a statement in response to such a committee report. The nature of the response, including any steps to be taken by the Government, would depend upon the recommendations that are made by any committee. The provision proposes an approach that follows the model of work that led to the Senedd Cymru (Members and Elections) Bill, whereby a Senedd committee considered the matter and made recommendations that were then taken forward by the government.

Question 6: Why is there no provision in the Bill to require a future Welsh Government to publish and consult on a draft Bill relating to job-sharing?

To do so would be premature and pre-empt the outcome of a committee's work. It is possible that a committee is unable to make recommendations that can be implemented through legislation, and therefore it would not be appropriate to require a future government to take such a step at this stage.

Section 19 – review provisions

Question 7: Please can you explain why section 19 requires the establishment of a new committee, when a committee established at the start of the Seventh Senedd may be better placed to undertake that work (should it wish to do so)?

Section 19 would not preclude the Senedd from deciding to include this work within the wider remit of a committee established at the start of the Seventh Senedd. The timings for the tabling of the motion would allow the Llywydd, in conjunction with the Business Committee, to consider options in relation to the establishment of the wider committee structure at the start of the Senedd term when all committees for that term are established. If it is considered appropriate for an established committee to conduct the review, it is open to any Member to table an amendment to the motion to this effect in accordance with Standing Order 12.22.

Question 8: What factors did you take into account before deciding that the “review must be completed by the committee no later than twelve months after the first meeting of the Senedd following the first general election held after 6 April 2026”? Why would a committee not set its own timetable for post-legislative scrutiny?

The reduction in the length of Senedd terms increases the frequency of Senedd elections. If there are lessons to be learned from the operation of the Act following the election in 2026, then it is important that there is sufficient time for those findings and any potential responses to be considered in advance of the subsequent election in 2030. Again, it is of course a matter for the Senedd as to whether there is support for the motion – including the timescales for reporting - and it remains open for any Member to table an amendment to the motion in accordance with Standing Order 12.22.

Accessibility (including overlap between electoral reform Bills)

Question 9: There is some overlap between this Bill and the Elections and Elected Bodies (Wales) Bill. For example, both amend the Senedd's disqualification regime, and both make provision about the (currently named) Local Democracy and Boundary Commission for Wales.

- a. Please can you explain why provisions relating to disqualification are not consolidated in a single Bill.**

In the course of developing and preparing the Senedd Cymru (Members and Elections) Bill, the Welsh Government, and their Co-operation Agreement partners in Plaid Cymru, considered a number of policies that related to the Special Purpose Committee's original recommendations but which were not themselves specific recommendations of the committee. This included the disqualification related to residency.

The disqualification provisions in the Elections and Elected Bodies Bill are part of a package of reforms which were consulted on as part of a white paper (Consultation on the electoral administration and reform White Paper). Such reforms also have specific implications for Local Authorities and Town and Community Councils. This did not include a disqualification related to residency.

Accordingly, it was considered more appropriate for these disqualifications to be addressed separately, through the two Bills.

Both Bills achieve their individual policies by way of amendment to the existing disqualification regime in the Government of Wales Act 2006. This will mean that, if the Bills are enacted, there will still be a single disqualification regime ensuring that the legislation remains accessible.

- b. Please can you explain why provisions related to the (currently named) Local Democracy and Boundary Commission for Wales are not consolidated in a single Bill.**

Where there are broad overlaps in the changes required to the Local Democracy and Boundary Commission for Wales from both a local government and Senedd reform perspective, then those changes have been included in one Bill - the Senedd Cymru (Members and Elections) Bill. These include changes to the name (to reflect new responsibilities) and maximum number of Commissioners for example. This has been done to avoid changes being made to the same provisions in close succession.

However, it is right that changes that relate to and modify specific functions (for example those relating to local government electoral reviews), are made in the most relevant Bill, leading to smaller and more focused legislation.

Both Bills achieve their changes to the Local Democracy and Boundary Commission for Wales by way of amendment to the existing legislative framework in the Local Government (Democracy) (Wales) Act 2013, to be renamed the Democracy and Boundary Commission Cymru etc. Act 2013. This will mean that, if the Bills are enacted, the legislation remains accessible in a single Act.

Question 10: Please can you explain how the forthcoming ‘gender quotas’ Bill is likely to interact with this Bill, and the extent to which both are interdependent?

The Senedd Cymru (Members and Elections) Bill is in functional terms internally coherent- it is not dependent upon the forthcoming Senedd Cymru (Electoral Candidate Lists) Bill. This Bill is to be introduced before the end of the year, at which point it will be subject to scrutiny by the Senedd. The Bill will be introduced by the Deputy Minister for Social Partnership.

I can assure the committee that consideration has been given to the interaction and interdependencies between these two Bills. While of course this is a matter for the Senedd Cymru (Electoral Candidate Lists) Bill, it is not intended for that legislation to change anything in respect of what is being proposed in the Senedd Cymru (Members and Elections) Bill with regard to the fundamental arrangements for returning and maintaining the Senedd including matters such as the length of lists, allocation of seats or the filling of casual vacancies.

Question 11: Section 4 of the Bill provides for the election of an additional Deputy Presiding Officer by making numerous amendments to section 25 of the Government of Wales Act 2006. The overall effect of the amendments on the face of the Bill is difficult to discern without reference to the Schedule of Amendments/Keeling Schedule in the Explanatory Memorandum. We acknowledge that section 25 of the 2006 Act could not be substituted in its entirety for reasons of legislative competence. However, please can you explain why the Bill did not substitute the majority of the text in section 25 for ease of reading, rather than making numerous separate amendments in section 4?

Fundamentally, this was a drafting approach, although it also reflects that the functions and responsibilities of the existing Deputy Presiding Officer as provided for under section 25(1)(b) are unchanged.

A keeling schedule has been provided in annex 3 of the Bill’s Explanatory Memorandum for ease of reading.

In addition, as referred to in this question, and as detailed in the Trefnydd’s correspondence to Business Committee on 21 June (regarding the Committee’s proposal that the titles of the Presiding Officer and Deputy Presiding Officer should be amended), the government cannot state that it would have full confidence that amendments to section 25(1)(a) - which creates the role of Presiding Officer and states how that role is referred to in GoWA – would be within the Senedd’s legislative competence.

Potential factors impacting implementation by 2026

Question 12: What assessment has the Welsh Government made of the risk of the Bill being referred to the Supreme Court by the UK Government Attorney General?

The government has carefully assessed the legislative competence of the provisions of the Bill, and I am confident that this Bill is within the legislative competence of the Senedd.

Question 13: Please can you explain the consequence of a Supreme Court referral on the ability of the Senedd to implement the electoral reforms under the Bill in time for the 2026 election.

A reference of the Bill under section 112 of GoWA would mean the entire Bill will be delayed after its passage but before receiving Royal Assent as GoWA prohibits the Llywydd from submitting a Bill for Royal Assent at any time when a reference remains live. If the Bill were to be referred, we would need to consider all the implications for implementation at that time.

However, as already stated, I am confident that the Bill is within the legislative competence of the Senedd.

Question 14: Please can you explain what other factors may impact the Senedd's ability to implement the proposed reforms in time for the 2026 election, and how the Welsh Government has mitigated those risks.

This is a large reform agenda with an ambitious timetable. Where appropriate, the Bill includes measures to ensure, as far as possible, that the reforms are in place for 2026. For example, the DBCC will acquire its new functions the day after Royal Assent so that the 2026 review can commence the day after Royal Assent; there is a statutory deadline by which the DBCC must provide their final report setting out their determinations for the 2026 review and the Welsh Ministers are under a duty to implement those recommendations within a specified period. The implementation plan also respects the Gould convention, which ensures that electoral administrators have sufficient time to take account of the changes to electoral legislation.

Future legislation

Question 15: Does the Welsh Government have plans for any further electoral reform legislation after the forthcoming 'gender quotas' Bill? If so, would the Counsel General commit to such legislation being introduced in draft form?

We hold an ambition to consolidate the statute book for Wales where we can, to deliver an accessible, bilingual legislative framework.

We intend to take steps to consolidate electoral law in Wales for devolved elections, as part of our longer-term goal of modernising electoral law.

In particular, the National Assembly for Wales (Representation of the People) Order 2007, ("the Conduct Order") sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, including provisions for legal challenge to the election.

The Conduct Order has been reviewed and amended before each Senedd election. It was originally made and subsequently amended by the Secretary of State, before the function of making the Order was transferred to the Welsh Ministers by the Wales Act 2017. As the original Order was made in 2007, this represents a valuable

opportunity for us to consolidate and re-state the law as part of an accessible, bilingual framework for the first time.

In doing so, we will take account of the principles set out in the Legislation (Wales) Act 2019 and seek to produce an Order which uses modern and clear language which is accessible to the reader.

I am happy to confirm that we will consult on a bi-lingual, draft consolidated Conduct Order ahead of making this legislation.

In the processes of remaking the Order, we will reflect the changes arising from all three Bills, subject to them receiving Royal Assent, to ultimately achieve a consolidated, accessible, bilingual framework.

Mick Antoniw MS,
Counsel General and Minister for the Constitution

31 October 2023

Dear Mick,

Legislation, Justice and Constitution Committee, 16 October 2023

Thank you again for attending our meeting on 16 October 2023. We are grateful for the time you gave over to the Committee.

As noted at the start of the meeting, there are a series of questions we wished to ask you but for which time did not allow. As such, we would welcome a response to the questions in the Annex by 16 November 2023.

I am copying this letter to the Chair of the Reform Bill Committee, David Rees MS.

Yours sincerely,



Alun Davies
Chair (Temporary)

ANNEX

Section 5 – Increasing number of Ministers

Question 1: Section 5 of the Bill permits the maximum limit of the Welsh Ministers to be increased, by regulations, from 17 to 18 or 19. Why is a regulation-making power being proposed and why would a new Bill not be more constitutionally appropriate?

Question 2: Why is there no power to subsequently decrease the maximum limit by regulations in future once the power has been used? As a result, for example, it would not be possible to temporarily increase the limit for specific purposes - such as a dedicated Minister for specific emergencies (e.g. Covid), or large events (e.g. the Commonwealth Games).

Question 3: What consideration was given for the section 5 power to be subject to a procedure requiring a super-majority of Members to vote in favour?

Section 7 – Job-sharing

Question 4: In your view, would section 7 of the Bill become redundant if a new Welsh Government published a statement on job-sharing in, for example, the first year of the Seventh Senedd?

Question 5: Why would a new Welsh Government not be obliged to take any steps in relation to the recommendations of a Committee established under section 7?

Question 6: Why is there no provision in the Bill to require a future Welsh Government to publish and consult on a draft Bill relating to job-sharing?

Section 19 – review provisions

Question 7: Please can you explain why section 19 requires the establishment of a new committee, when a committee established at the start of the Seventh Senedd may be better placed to undertake that work (should it wish to do so)?

Question 8: What factors did you take into account before deciding that the “review must be completed by the committee no later than twelve months after the first meeting of the Senedd following the first general election held after 6 April 2026”? Why would a committee not set its own timetable for post-legislative scrutiny?

Accessibility (including overlap between electoral reform Bills)

Question 9: There is some overlap between this Bill and the Elections and Elected Bodies (Wales) Bill. For example, both amend the Senedd’s disqualification regime, and both make provision about the (currently named) Local Democracy and Boundary Commission for Wales.

- a. Please can you explain why provisions relating to disqualification are not consolidated in a single Bill.
- b. Please can you explain why provisions related to the (currently named) Local Democracy and Boundary Commission for Wales are not consolidated in a single Bill.

Question 10: Please can you explain how the forthcoming 'gender quotas' Bill is likely to interact with this Bill, and the extent to which both are interdependent?

Question 11: Section 4 of the Bill provides for the election of an additional Deputy Presiding Officer by making numerous amendments to section 25 of the *Government of Wales Act 2006*. The overall effect of the amendments on the face of the Bill is difficult to discern without reference to the Schedule of Amendments/Keeling Schedule in the Explanatory Memorandum.

We acknowledge that section 25 of the 2006 Act could not be substituted in its entirety for reasons of legislative competence. However, please can you explain why the Bill did not substitute the majority of the text in section 25 for ease of reading, rather than making numerous separate amendments in section 4?

Potential factors impacting implementation by 2026

Question 12: What assessment has the Welsh Government made of the risk of the Bill being referred to the Supreme Court by the UK Government Attorney General?

Question 13: Please can you explain the consequence of a Supreme Court referral on the ability of the Senedd to implement the electoral reforms under the Bill in time for the 2026 election.

Question 14: Please can you explain what other factors may impact the Senedd's ability to implement the proposed reforms in time for the 2026 election, and how the Welsh Government has mitigated those risks.

Future legislation

Question 15: Does the Welsh Government have plans for any further electoral reform legislation after the forthcoming 'gender quotas' Bill? If so, would the Counsel General commit to such legislation being introduced in draft form?

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