

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 8 January 2024	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)-01-24 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)423 – The Non-Domestic Rating Contributions (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)419 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023

(Pages 2 – 5)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 2 – Draft report

3.2 SL(6)436 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations

(Pages 6 – 11)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 3 – Draft report

LJC(6)-01-24 – Paper 4 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Llywydd, 15 December 2023

3.3 SL(6)420 – The Feed Additives (Authorisations) (Wales) Regulations 2023

(Pages 12 – 13)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 5 – Draft report

3.4 SL(6)426 – The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023

(Pages 14 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 6 – Draft report

3.5 SL(6)427 – The Building Control Profession (Charges) (Wales) Regulations 2023

(Pages 16 – 18)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 7 – Draft report

Affirmative Resolution Instruments

3.6 SL(6)425 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Amendment) (Wales) Regulations 2024

(Pages 19 – 22)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-24 – Paper 8 – Draft report

LJC(6)-01-24 – Paper 9 – Written Statement by the Minister for Finance and Local Government, 5 December 2023

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

(13.40 – 13.45)

4.1 SL(6)424 – Separate Collection of Waste Materials for Recycling – A Code of Practice for Wales

(Pages 23 – 25)

[Code of Practice](#)

Attached Documents:

LJC(6)-01-24 – Paper 10 – Draft report

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

(13.45 – 13.50)

Made Negative Resolution Instruments

5.1 SL(6)422 – The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023

(Pages 26 – 31)

Attached Documents:

LJC(6)-01-24 – Paper 11 – Report

LJC(6)-01-24 – Paper 12 – Welsh Government response

6 Inter-Institutional Relations Agreement

(13.50 – 13.55)

6.1 Written Statement and correspondence from the Minister for Economy: Inter-Ministerial Group for Trade

(Pages 32 – 33)

Attached Documents:

LJC(6)-01-24 – Paper 13 – Written Statement from the Minister for Economy, 11 December 2023

LJC(6)-01-24 – Paper 14 – Letter from the Minister for Economy, 11 December 2023

6.2 Written Statement from the Minister for Rural Affairs and North Wales, and Trefnydd: The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024

(Pages 34 – 35)

Attached Documents:

LJC(6)-01-24 – Paper 15 – Written Statement from the Minister for Rural Affairs and North Wales, and Trefnydd, 12 December 2023

6.3 Written Statement and correspondence from the Minister for Social Justice and Chief Whip: Inter-Ministerial Group on Work and Pensions

(Pages 36 – 38)

Attached Documents:

LJC(6)-01-24 – Paper 16 – Written Statement from the Minister for Social Justice and Chief Whip, 13 December 2023

LJC(6)-01-24 – Paper 17 – Letter from the Minister for Social Justice and Chief Whip, 13 December 2023

6.4 Written Statement and correspondence from the First Minister: British–Irish Council Summit

(Pages 39 – 41)

Attached Documents:

LJC(6)-01-24 – Paper 18 – Written Statement from the First Minister, 15 December 2023

LJC(6)-01-24 – Paper 19 – Letter from the First Minister, 15 December 2023

7 Papers to note

(13.55 – 14.05)

7.1 Correspondence from the Minister for Climate Change: Legislative Consent Memoranda on the Energy Bill

(Pages 42 – 43)

Attached Documents:

LJC(6)-01-24 – Paper 20 – Letter from the Minister for Climate Change, 12 December 2023

7.2 Correspondence from the Minister for Climate Change: Infrastructure (Wales) Bill

(Pages 44 – 62)

Attached Documents:

LJC(6)-01-24 – Paper 21 – Letter from the Minister for Climate Change, 15 December 2023

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

(Pages 63 – 74)

Attached Documents:

LJC(6)-01-24 – Paper 22 – Letter from the Minister for Climate Change to the Climate Change, Environment and Infrastructure Committee, 15 December 2023

7.4 Correspondence from the Minister for Climate Change: UK Emissions Trading Scheme

(Pages 75 – 77)

Attached Documents:

LJC(6)-01-24 – Paper 23 – Letter from the Minister for Climate Change, 18 December 2023

7.5 Correspondence with the Counsel General and Minister for the Constitution: Elections and Elected Bodies (Wales) Bill

(Pages 78 – 86)

Attached Documents:

LJC(6)-01-24 – Paper 24 – Letter from the Counsel General and Minister for the Constitution, 19 December 2023

LJC(6)-01-24 – Paper 25 – Letter to the Counsel General and Minister for the Constitution, 28 November 2023

7.6 Correspondence from the Minister for Economy: United Kingdom Internal Market Act 2020

(Pages 87 – 90)

Attached Documents:

LJC(6)-01-24 – Paper 26 – Letter from the Minister for Economy, 19 December 2023

LJC(6)-01-24 – Paper 27 – Letter to the Minister for Economy, 22 September 2022

7.7 Correspondence between the Interparliamentary Forum and the Secretary of State for Levelling up, Housing and Communities, and Minister for Intergovernmental Relations

(Pages 91 – 94)

[Interparliamentary Forum Statement, 27 October 2023](#)

Attached Documents:

LJC(6)-01-24 – Paper 28 – Letter from the Secretary of State for Levelling up, Housing and Communities, and Minister for Intergovernmental Relations, to the Interparliamentary Forum, 19 December 2023

LJC(6)-01-24 – Paper 29 – Letter from the Interparliamentary Forum to the Secretary of State for Levelling up, Housing and Communities, and Minister for Intergovernmental Relations, 7 November 2023

7.8 Correspondence from the Minister for Social Justice and Chief Whip to the Llywydd: Supplementary Legislative Consent Memorandum on the Victims and Prisoners Bill

(Pages 95 – 96)

Attached Documents:

LJC(6)-01-24 – Paper 30 – Letter from the Minister for Social Justice and Chief Whip to the Llywydd, 22 December 2023

7.9 Correspondence from the First Minister to UK Government: Levelling up

(Page 97)

Attached Documents:

LJC(6)-01-24 – Paper 31 – Letter from the First Minister to UK Government, 22 December 2023

7.10 Correspondence with the UK Government: Use of powers under the Retained EU Law (Revocation and Reform) Act 2023

(Pages 98 – 103)

Attached Documents:

LJC(6)-01-24 – Paper 32 – Letter from the UK Government, 2 January 2024

LJC(6)-01-24 – Paper 33 – Letter from the UK Government, 14 December

2023

LJC(6)-01-24 – Paper 34 – Letter to the UK Government, 1 November 2023

7.11 Correspondence from the Minister for Finance and Local Government: Welsh Government response to the Committee's report on the Legislative Consent Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill

(Page 104)

Attached Documents:

LJC(6)-01-24 – Paper 35 – Letter from the Minister for Finance and Local Government, 2 January 2024

8 Motion to elect a temporary Chair under Standing Order 17.22 for agenda item 11

(14.05 – 14.10)

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

(14.10)

10 International agreements

(14.10 – 14.30)

(Pages 105 – 123)

Attached Documents:

LJC(6)-01-24 – Paper 36 – Draft report

LJC(6)-01-24 – Paper 37 – Briefing

Break

(14.30 – 14.35)

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

(14:35 – 15:00)

(Pages 124 – 175)

[Joint schedule of amendments: Elections and Elected Bodies \(Wales\) Bill and the Senedd Cymru \(Members and Elections\) Bill](#)

Attached Documents:

LJC(6)-01-24 – Paper 38 – Draft report

LJC(6)-01-24 – Paper 39 – Letter from the Counsel General and Minister for the Constitution, 11 December 2023

Statutory Instruments with Clear Reports 08 January 2024

SL(6)423 – [The Non-Domestic Rating Contributions \(Wales\) \(Amendment\) Regulations 2023](#)

Procedure: Made Negative

The Non-Domestic Rating Contributions (Wales) Regulations 1992 prescribe the rules for calculating non-domestic rating contributions to be paid by billing authorities in Wales to the non-domestic rates pool.

Amendments are made annually to Schedule 4 to the 1992 Regulations which sets out the adult population figures for each billing authority to ensure that the basis for calculating contributions from billing authorities to the rates pool remains up to date. These Regulations update the adult population figures in that Schedule.

These Regulations also make consequential amendments to Schedule 2 of the 1992 Regulations. Those changes are made as a result of the coming into force of the Local Government (Democracy) (Wales) Act 2013.

Parent Act: Local Government Finance Act 1988

Date Made: 30 November 2023

Date Laid: 04 December 2023

Coming into force date: 31 December 2023



Agenda Item 3.1

SL(6)419 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023

Background and Purpose

These Regulations amend the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (S.I. 2021/77 (W. 20)) (“the 2021 Regulations”), and are due to come into force on 1 January 2024.

These Regulations implement the second stage of a two-stage process for introducing an enhanced nutrient management regime for the calendar year 2024 for holdings or part of holdings not previously situated within a Nitrate Vulnerable Zone (“NVZ”) and sown with at least 80% grass (defined in these Regulations as “qualifying grassland holdings”).

Regulation 3 amends regulation 2 (transitional measures for holdings not previously in a nitrate vulnerable zone) of the 2021 Regulations. It changes the implementation date for regulation 4 (application of livestock manure – total nitrogen limit for the whole holding) for holdings or parts of holdings not previously situated within a NVZ as shown on the NVZ index map, where 80% or more of the agricultural area is sown with grass (“qualifying grassland holdings”) from 1 January 2024 to 1 January 2025. This means that the total nitrogen limit in livestock manure for the whole holding (170kg multiplied by the area of the holding in hectares) in regulation 4 of the 2021 Regulations does not apply to qualifying grassland holdings until 1 January 2025.

Regulation 4 amends regulation 3 (interpretation) of the 2021 Regulations by inserting definitions of the terms “enhanced nutrient management plan”, “precision spreading equipment”, “qualifying grassland holding” and “relevant period”. It also substitutes a definition of “NRW” for “NRBW”.

Regulation 5 inserts new regulations 4A and 4B into the 2021 Regulations. Regulation 4A (application of grazing and non-grazing livestock manure on qualifying grassland holdings during the relevant period – total nitrogen limits for whole holding and additional requirements) establishes, for the calendar year 2024 (the “relevant period”), the whole holding total nitrogen limits for both grazing and non-grazing livestock manure for qualifying grassland holdings. Regulation 4A(1) provides that occupiers of qualifying grassland holdings must not apply, during the relevant period, a total amount of nitrogen in grazing livestock manure to the whole holding in excess of 250kg multiplied by the area of the holding in hectares and must not apply a total amount of nitrogen in nongrazing livestock manure to the whole holding in excess of 170kg multiplied by the area of the holding in hectares.

Regulation 4A(2) provides that where an occupier of a qualifying grassland holding intends to apply to the



holding, during the relevant period, a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares, they must comply with additional enhanced nutrient management requirements established under Schedule 1A (enhanced nutrient management requirements) and notify Natural Resources Wales (“NRW”). Regulation 4B (notice requirements) sets out the notice requirements that the occupier of a qualifying grassland holding must comply with when notifying NRW.

Regulation 6 makes minor amendments to regulation 14 (spreading organic manure near surface water, boreholes, springs or wells) of the 2021 Regulations to assist with clarity.

Regulation 7 replaces references to “NRBW” with references to “NRW” wherever they occur in the Regulations. This is in consequence of replacing the definition of “NRBW” with “NRW” under regulation 3.

Regulation 8 inserts a new Schedule 1A (enhanced nutrient management requirements) into the 2021 Regulations which sets out the additional enhanced nutrient management requirements to be met by an occupier of a qualifying grassland holding if the occupier intends, during the relevant period, to apply to the holding a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares.

The additional enhanced nutrient management requirements set out in these Regulations will apply to occupiers of qualifying grassland holdings in additions to the requirements which already apply to such occupiers by virtue of Parts 2 to 7 of the 2021 Regulations. Also, any occupier of a holding failing to comply with these additional requirements during the calendar year 2024 will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine, as is provided for under regulation 46 of the 2021 Regulations.

Procedure

Negative

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

Technical Scrutiny

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

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

In the Schedule, in the new Schedule 1A, in paragraph 1, there is a difference between the English and Welsh texts. In the English text, it refers to “the occupier of a qualifying grassland



holding”, but this has been translated as meaning “the holder of a qualifying grassland holding”. Elsewhere in the existing Regulations and in the new amendments, the Welsh text has correctly used “meddiannydd” (“occupier”) rather than “deiliad” (“holder”) as the translation of “occupier”.

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

In the Schedule, in the new Schedule 1A, the structure of paragraph 11 is incorrect as it opens with “11-(1)”. This creates an expectation in the reader that the sub-paragraph (1) will be followed by a sub-paragraph (2). But there is no sub-paragraph (2) so it should be structured as “11” rather than “11-(1)”. An example of a correctly structured provision is seen later in paragraph 20.

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

In the Schedule, in the new Schedule 1A, in paragraph 12(2), there is a reference which is incorrectly described as “paragraph (1)(a) or (b)”. But the reference should be correctly described as “sub-paragraph (1)(a) or (b)” (see the relevant guidance about composite references in *Writing Laws for Wales* 6.16).

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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.

We note the following in part 5 of the Explanatory Memorandum in relation to consultation on these Regulations:

“23. The Welsh Government consulted formally on proposals to introduce a licensing scheme for farm businesses to work to an annual nitrogen holding limit, from grazing livestock manures, of 250kg/ha, subject to crop need and other legal considerations. The consultation ran for 12 weeks from 25 November 2022 to 17 February 2023.

24. On 10 October 2023, we published a summary of responses to the formal consultation. This, along with the consultation document can be found at: <https://gov.wales/nutrient-management-managing-application-livestock-manures-sustainably>

25. As the Regulations provide a time-limited amendment similar to the proposals previously consulted upon and do not reflect a change in the Welsh Government’s policy, a further formal public consultation did not take place.”

5. 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 that these Regulations are to be revoked by the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023, which come into force on 31 December 2023. We further note the following explanation in a letter from Lesley Griffiths AS/MS Minister for Rural Affairs and North Wales, and Trefnydd to the Llywydd dated 15 December 2023:

“The reason for not adhering to the 21-day convention in this case is that if the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023 do not come into force on or before 31 December 2023, then the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023 will come into force on 1 January 2024 without maximising legal clarity, accessibility, and certainty for end users regarding the combined application of manures from both grazing and non-grazing livestock.”

Welsh Government response

A Welsh Government response is required in relation to reporting points 1, 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 5

Agenda Item 3.2

SL(6)436 – The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023

Background and Purpose

These Regulations amend the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (S.I. 2021/77 (W. 20)) (“the 2021 Regulations”), and are due to come into force on 31 December 2023.

These Regulations implement the second stage of a two-stage process for introducing an enhanced nutrient management regime for the calendar year 2024 for holdings or part of holdings not previously situated within a Nitrate Vulnerable Zone (“NVZ”) and sown with at least 80% grass (defined in these Regulations as “qualifying grassland holdings”).

Regulation 3 amends regulation 2 (transitional measures for holdings not previously in a nitrate vulnerable zone) of the 2021 Regulations. It changes the implementation date for regulation 4 (application of livestock manure – total nitrogen limit for the whole holding) for holdings or parts of holdings not previously situated within a NVZ as shown on the NVZ index map, where 80% or more of the agricultural area is sown with grass (“qualifying grassland holdings”) from 1 January 2024 to 1 January 2025. This means that the total nitrogen limit in livestock manure for the whole holding (170kg multiplied by the area of the holding in hectares) in regulation 4 of the 2021 Regulations does not apply to qualifying grassland holdings until 1 January 2025.

Regulation 4 amends regulation 3 (interpretation) of the 2021 Regulations by inserting definitions of the terms “enhanced nutrient management plan”, “precision spreading equipment”, “qualifying grassland holding” and “relevant period”. It also substitutes a definition of “NRW” for “NRBW”.

Regulation 5 inserts new regulations 4A and 4B into the 2021 Regulations. Regulation 4A (application of grazing and non-grazing livestock manure on qualifying grassland holdings during the relevant period) requires the occupier of a qualifying grassland holding to ensure that for the calendar year 2024 (“the relevant period”) the area of the holding (in hectares) is greater than or equal to the sum of the total amount of nitrogen in grazing livestock manure applied to the holding divided by 250, plus the total amount of nitrogen in non-grazing livestock manure applied to the holding divided by 170. The purpose of this calculation is to limit the total amount of nitrogen in livestock manure that an occupier of a qualifying grassland holding is permitted to apply to the holding, whether directly by an animal or by spreading, during the relevant period. It ensures that where an occupier of a qualifying grassland holding is only applying grazing livestock manure to the holding, they must not apply more than 250kg of nitrogen in grazing livestock manure per hectare during the relevant



period. It also ensures that where an occupier of a qualifying grassland holding is only applying non-grazing livestock manure to the holding, they must not apply more than 170kg of nitrogen in non-grazing livestock manure per hectare during the relevant period. Where an occupier of a qualifying grassland holding is applying both grazing and non-grazing livestock manures to the holding during the relevant period, the calculation also makes provision for the application of both to be adjusted on a pro-rata basis.

Regulation 4A(2) provides that where an occupier of a qualifying grassland holding intends to apply to the holding, during the relevant period, a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares, they must comply with additional enhanced nutrient management requirements established under Schedule 1A (enhanced nutrient management requirements) and notify Natural Resources Wales ("NRW"). Regulation 4B (notice requirements) sets out the notice requirements that the occupier of a qualifying grassland holding must comply with when notifying NRW.

Regulation 6 makes minor amendments to regulation 14 (spreading organic manure near surface water, boreholes, springs or wells) of the 2021 Regulations to assist with clarity.

Regulation 7 replaces references to "NRBW" with references to "NRW" wherever they occur in the Regulations. This is in consequence of replacing the definition of "NRBW" with "NRW" under regulation 3.

Regulation 8 inserts a new Schedule 1A (enhanced nutrient management requirements) into the 2021 Regulations which sets out the additional enhanced nutrient management requirements to be met by an occupier of a qualifying grassland holding if the occupier intends, during the relevant period, to apply to the holding a total amount of nitrogen in grazing livestock manure which exceeds 170kg multiplied by the area of the holding in hectares.

Regulation 9 revokes the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023, which were due to come into force on 1 January 2024.

The additional enhanced nutrient management requirements set out in these Regulations will apply to occupiers of qualifying grassland holdings in addition to the requirements which already apply to such occupiers by virtue of Parts 2 to 7 of the 2021 Regulations. Also, any occupier of a holding failing to comply with these additional requirements during the calendar year 2024 will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine, as is provided for under regulation 46 of the 2021 Regulations.

Procedure

Negative

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



Technical Scrutiny

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

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

In the Schedule, in the new Schedule 1A, in paragraph 1, there is a difference between the English and Welsh texts. In the English text, it refers to “the occupier of a qualifying grassland holding”, but this has been translated as meaning “the holder of a qualifying grassland holding”. Elsewhere in the existing Regulations and in the new amendments, the Welsh text has correctly used “meddiannydd” (“occupier”) rather than “deiliad” (“holder”) as the translation of “occupier”.

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

In the Schedule, in the new Schedule 1A, the structure of paragraph 10 is incorrect as it opens with “10-(1)”. This creates an expectation in the reader that the sub-paragraph (1) will be followed by a sub-paragraph (2). But there is no sub-paragraph (2) so it should be structured as “10” rather than “10-(1)”. An example of a correctly structured provision is seen later in paragraph 20.

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

In the Schedule, in the new Schedule 1A, in paragraph 11(2), there is a reference which is incorrectly described as “paragraph (1)(a) or (b)”. But the reference should be correctly described as “sub-paragraph (1)(a) or (b)” (see the relevant guidance about composite references in *Writing Laws for Wales* 6.16).

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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.

We note the following in part 5 of the Explanatory Memorandum in relation to consultation on these Regulations:

“26. The Welsh Government consulted formally on proposals to introduce a licensing scheme for farm businesses to work to an annual nitrogen holding limit, from grazing livestock manures, of 250kg/ha, subject to crop need and other legal considerations. The consultation ran for 12 weeks from 25 November 2022 to 17 February 2023.”



27. On 10 October 2023, we published a summary of responses to the formal consultation. This, along with the consultation document can be found at: <https://gov.wales/nutrient-management-managing-application-livestock-manures-sustainably>

28. As the Regulations provide a time-limited amendment similar to the proposals previously consulted upon and do not reflect a change in the Welsh Government's policy, a further formal public consultation did not take place."

5. 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 breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Lesley Griffiths AS/MS Minister for Rural Affairs and North Wales, and Trefnydd in a [letter](#) to the Llywydd dated 15 December 2023.

In particular, we note the following explanation:

"The reason for not adhering to the 21-day convention in this case is that if the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023 do not come into force on or before 31 December 2023, then the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023 will come into force on 1 January 2024 without maximising legal clarity, accessibility, and certainty for end users regarding the combined application of manures from both grazing and non-grazing livestock."

Welsh Government response

A Welsh Government response is required in relation to reporting points 1, 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2023





Ein cyf/Our ref:MA/LG/3213/23

Rt. Hon. Elin Jones MS
Llywydd
Senedd Cymru

15 December 2023

Dear Elin,

The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 31 December 2023, less than 21 days after it has been laid.

A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 seek to tackle the causes of water (and air quality) pollution from agricultural activities across Wales. The 2021 Regulations include an annual limit on the amount of nitrogen in livestock manure that may be applied (whether by direct deposit or by spreading) to a holding. This annual limit is set at 170kg of nitrogen per hectare (the '170kg limit') and this applies as an average across the holding. Whilst this limit already applies to holdings that were previously in a Nitrate Vulnerable Zone (NVZ), it is not due to apply to holdings that were not previously in NVZs until 1 January 2024.

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

The purpose of these Regulations is to allow occupiers of holdings or part of holdings not previously situated within an NVZ where at least 80% of the agricultural area of the holding is sown with grass to continue to apply (whether by direct deposit or by spreading) in excess of 170kg of nitrogen per hectare in grazing livestock manure to the holding for the calendar year 2024, up to a maximum of 250kg per hectare. Additionally, these Regulations ensure that where such applications do occur, occupiers must comply with additional enhanced nutrient management requirements to mitigate any potential environmental impact, this includes notifying Natural Resources Wales of their intention to apply in excess of 170kg of nitrogen per hectare to their holdings. The Regulations also require, for the calendar year 2024, that occupiers of qualifying holdings limit the total amount of nitrogen in livestock manure to be applied to their holding. Such that the application of nitrogen in livestock manure does not exceed 170kg per hectare for non-grazing livestock, and 250kg per hectare for grazing livestock. Where an occupier of a qualifying holding applies both grazing and non-grazing livestock manures to the holding, the application of both must be adjusted on a pro-rata basis. The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023 will provide clarity on the above, and will revoke and replace the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023.

The reason for not adhering to the 21-day convention in this case is that if the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023 do not come into force on or before 31 December 2023, then the Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 3) Regulations 2023 will come into force on 1 January 2024 without maximising legal clarity, accessibility, and certainty for end users regarding the combined application of manures from both grazing and non-grazing livestock.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Bethan Davies, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping initial 'L'.

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

Agenda Item 3.3

SL(6)420 – The Feed Additives (Authorisations) (Wales) Regulations 2023

Background and Purpose

These Regulations authorise, in relation to Wales, the placing on the market of thirteen feed additives.

The authorisations are for:

- Nutritional additives, the function of which is to provide essential micro-nutrients to animal diets such as amino acids;
- Technological additives, such as silage additives (substances including enzymes or micro-organisms intended to be incorporated into feed to improve the production of silage);
- Zootechnical additives, such as digestibility enhancers (substances which, when fed to animals, increase the digestibility of diets through action on target feed materials) and substances which favourably affect the environment.

They also provide transitional arrangements due to an ID code change for one previously authorised feed additive to allow existing stocks to be depleted, and revoke spent authorisations.

Procedure

Negative.

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

Technical Scrutiny

The following two 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

In regulation 2(3), "*Regulation 1831/2003*" is defined for the purposes of regulation 2 only, as regulation 2(3) begins with the words, "*In this regulation*". However, "*Regulation 1831/2003*" is also used in regulation 3(2) and, for the purpose of that regulation, is currently undefined.

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



In both Schedules 3 and 4 to these Regulations, in table note (2), reference is made to a British Standards Institution publication which aids the reader in understanding the analytical methods referenced in those Schedules in relation to each specified additive.

In the English text, the publication is referred to as, “*Animal feeding stuffs: Methods of sampling and analysis. Detection and enumeration of Pediococcus spp. used as feed additive*” (emphasis added). However, in the Welsh text, “*Bacillus spp.*” is used, rather than “*Pediococcus spp.*”

An explanation is required as to this inconsistency between the English and Welsh texts as they appear to reference separately titled publications.

Merits Scrutiny

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

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

A full regulatory impact assessment has not been produced. The Explanatory Memorandum explains as follows:

“The FSA [Food Standards Agency] has assessed the impacts that would result from the authorisation of these feed additives. The impacts considered included those most frequently identified as potential impacts when introducing or amending food and feed law (i.e., local authority delivery, health, environment, growth, innovation, trade, competition, consumer interests and small and micro businesses). The FSA did not identify any significant impacts therefore, a full regulatory impact assessment has not been produced. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

The FSA did identify that the authorisation of these products should generally result in the greater market competition supporting growth and innovation in the sector.”

Welsh Government response

A Welsh Government response is required except in relation to reporting point 3.

Legal Advisers

Legislation, Justice and Constitution Committee

12 December 2023



Agenda Item 3.4

SL(6)426 – The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023

Background and Purpose

These Regulations prescribe periods for registration of a registered building inspector and registered building control approver, set out the sanctions for registered building control approvers and deal with appeals of a decision made by the Welsh Ministers, who are the regulatory authority in relation to Wales, under Part 2A of the Building Act 1984 (“the Act”).

Regulation 2 prescribes the period for registration of a registered building inspector.

Regulation 3 prescribes the period for registration of a registered building control approver.

Regulation 4 sets out that where the Welsh Ministers make a disciplinary order they must as soon as reasonably practicable give a copy of the disciplinary order to each local authority in Wales where there has been a variation of a registered building control approver’s registration, a suspension of registration for a specified period, or a cancellation of registration from a specified date.

Regulation 5 provides that where the Welsh Ministers make or revoke an order under section 58V of the Act they must as soon as reasonably practicable give a copy of the interim suspension order to each local authority in Wales where the Welsh Ministers consider that the suspected contravention is so serious that, if the Welsh Ministers determine that the contravention has occurred, they are likely to make an order under section 58U(2)(d) of the Act cancelling the person’s registration.

Regulation 6 relates to appealing a decision made by the Welsh Ministers under Part 2A of the Act.

Procedure

Negative

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

Technical Scrutiny

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 that section 1 of the Building Act 1984 is cited as one of the enabling powers. Please could clarification be provided as to which subsection(s) is relied upon?

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 December 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 3.5

SL(6)427 – The Building Control Profession (Charges) (Wales) Regulations 2023

Background and Purpose

Part 2A of the Building Act 1984 (**the 1984 Act**) provides for the regulation of the building control profession and the oversight of those exercising building control functions. Part 2A aims to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control.

The 1984 Act also includes a regulation-making power for the Welsh Ministers to recover charges for, and in connection with, the performance of their functions under the 1984 Act. These Regulations are made under that power, allowing the Welsh Ministers to recover charges for functions performed under the 1984 Act (**chargeable functions**), such as: determining applications for registration as a registered building inspector or a building control approver; investigating professional misconduct; responding to appeals.

Procedure

Negative

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

Technical Scrutiny

The following three 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

Regulation 3(2) sets out a list of chargeable functions. Regulation 3(2)(c) to (e) refers to “action” taken in respect of certain functions, while regulation 3(2)(f) to (g) refers to “any action” taken in respect of certain other functions.

It is unclear whether “action” and “any action” are intended to have different meanings. If they are intended to be different, what is the difference? If they are not intended to be different, why are different terms used?

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

Regulation 6(1) says that a person must pay certain charges if the Welsh Ministers have “reasonable grounds” to believe the person contravenes Part 2A of the Building Act 1984. Therefore, regulation 6(1) expressly requires the grounds to be reasonable.

However, elsewhere in the Regulations, there is no express requirement to be reasonable. For example:

- In regulation 3(2)(c), a chargeable function includes “action” taken by the Welsh Ministers under section 58H of the Building Act 1984. Regulation 3(2)(c) does not say “reasonable action”.
- In regulation 4(2), there is reference to the “costs” incurred by the Welsh Ministers. Regulation 4(2) does not say “reasonable costs”.

As a matter of public law, the Welsh Ministers must always act reasonably, therefore it is unclear why regulation 6(1) needs to refer to the Welsh Ministers being reasonable.

We would welcome clarification from the Welsh Government as to its approach to including “reasonable” in legislative provisions such as those outlined above.

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

In the English regulation 8(2)(a), a request for payment of charges must include:

“a statement of the work done and the costs incurred by the Welsh Ministers **in the performance of the chargeable function**” (our emphasis).

However, the words emphasised are missing in the Welsh regulation 8(2)(a).

Merits Scrutiny

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

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

The Regulations refer to the following documents:

- a charging scheme (regulation 4),
- a code of conduct (regulation 6(4)(a)),
- professional conduct rules (regulation 6(4)(b)),
- operational standards rules (regulation 6(4)(b)).

We would be grateful if the Welsh Government could confirm the current status of these documents, including details of where they will be available and confirmation that each document has been finalised and is easily accessible from the time the Regulations came into force on 1 January 2024.

Welsh Government response

A Welsh Government response is required to each reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2023

SL(6)425 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Amendment) (Wales) Regulations 2024

Background and Purpose

'Council Tax Reduction Schemes' ("CTRS") are the mechanism by which local authorities in Wales provide support to low-income households in meeting their council tax liability.

The operation of CTRS in Wales is governed by the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013, and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (collectively, the "2013 CTRS Regulations").

These Regulations amend the 2013 CTRS Regulations to uprate certain figures used to calculate an applicant's entitlement to a reduction under a CTRS.

A Written Statement on 5 December 2023 by Minister for Finance and Local Government, Rebecca Evans MS stated that this will:

"ensure that the scheme in place for the 2024-25 financial year reflects increases in the cost-of-living. This helps to ensure that the scheme maintains entitlements for almost 261,000 low-income households across Wales who rely on this support."

In addition, the Regulations make provision to ensure that:

- applicants living in Wales are not negatively impacted because they have received a widowed parent's back payment or a retrospective bereavement support payment;
- applicants in Wales are treated in the same way for any compensation or support payment made in connection with the failings of the Post Office Horizon system;
- compensation payments relating to the Vaccine Damage Payment scheme, or the Infected Blood Inquiry will also be disregarded from the calculation of an applicant's capital under the scheme.

Procedure

Draft Affirmative.

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

Technical Scrutiny

The following three 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 regulations 3(a) and 12(a), the new definitions are described as being inserted “at the appropriate places” in the interpretation provisions of both sets of Regulations. However, this approach is only appropriate if it is clear how the lists of definitions have been ordered in both language texts (which is usually alphabetical order). In the Welsh text of both sets of Regulations, the definitions are not ordered according to the Welsh alphabet as is usually the case in Welsh SIs but follow the same order as the list of the definitions in the English text. Therefore, it may not be obvious to the reader where to insert the new definitions in the Welsh text on this occasion, and it would provide greater certainty to specify after which entries the new definitions should be inserted – see Writing Laws for Wales, paragraph 7.17.

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

In regulation 8(d), the opening words state that the subsequent amendments numbered as sub-paragraphs (i) to (vii) are made to “the second column (amount) of the Table **in paragraph 17...**” in Schedule 7. However, the final amendments in sub-paragraphs (vi) and (vii) are not made to paragraph 17 but to figures found in paragraphs 23 and 24 of Schedule 7. Therefore, the structure of regulation 8(d) is incorrect and sub-paragraphs (vi) and (vii) should have been numbered as paragraphs (e) and (f) as done in a similar provision found later in regulation 16(d) to (f) of these Regulations.

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

In regulation 13(c)(i), in the English text, the description of the amendment should state “in the English language text” because this amendment is only made to the English text of paragraph (b) in sub-paragraph (9) of paragraph 28 of the default scheme. The Welsh translation does already include those words in regulation 13(c)(i) because there is no corresponding conjunction to be omitted at the end of paragraph (b) in sub-paragraph (9) of paragraph 28 in the Welsh text of the default scheme. Therefore, the drafting does not follow the guidelines found in Writing Laws for Wales, paragraph 7.9(2) when only amending one language text of an existing bilingual enactment. It also means that there is a difference between the descriptions given in the English and Welsh texts of regulation 13(c)(i).

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.



Legal Advisers
Legislation, Justice and Constitution Committee
3 January 2024





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Laying of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Amendment) (Wales) Regulations 2024**

DATE **05 December 2023**

BY **Rebecca Evans MS, Minister for Finance and Local Government**

Today, I have laid the draft Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Amendment) (Wales) Regulations 2024 before the Senedd.

Subject to the approval of the Senedd, these Regulations will uprate the financial figures in the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 to ensure that the scheme in place for the 2024-25 financial year reflects increases in the cost-of-living. This helps to ensure that the scheme maintains entitlements for almost 261,000 low-income households across Wales who rely on this support.

In addition, we want to ensure that no applicant living in Wales is negatively impacted because they have received a widowed parent's back payment or a retrospective bereavement support payment. It is therefore proposed that a consequential amendment will be made to disregard the payment received from the calculation of an applicant's capital under the scheme.

Further amendments proposed will ensure applicants in Wales are treated in the same way for any compensation or support payment made in connection with the failings of the Post Office Horizon system. Compensation payments relating to the Vaccine Damage Payment scheme, or the Infected Blood Inquiry will also be disregarded from the calculation of an applicant's capital under the scheme.

I look forward to the debate on the Regulations early in the New Year.

SL(6)424 – Separate Collection of Waste Materials for Recycling – A Code of Practice for Wales

Background and Purpose

The Waste Separation Requirements (Wales) Regulations 2023 (“the 2023 Regulations”) set out the separation requirements in Wales for the purposes of section 45AA of the Environmental Protection Act 1990 (“EPA 1990”). The 2023 Regulations apply to the presentation, collection and handling of waste in respect of non-domestic premises.

Section 45AB(1) of the EPA 1990 provides that the Welsh Ministers may issue codes of practice for the purpose of giving practical guidance about how to comply with requirements imposed by or under section 45AA.

Separate Collection of Waste Materials for Recycling – A Code of Practice for Wales (“the Code”) is issued by the Welsh Ministers in exercise of this power and provides guidance on how to comply with the separation requirements contained in the 2023 Regulations.

Procedure

No procedure.

The Welsh Ministers have laid the Code before the Senedd as required by section 45AB(4)(b) of the EPA 1990.

Scrutiny under Standing Order 21.7

The following points are identified for reporting under Standing Order 21.7 in respect of the Code.

1. The Code may not provide sufficient practical guidance to occupiers of non-domestic premises to assist them in identifying waste excluded from the separation requirements. In particular:
 - Paragraph 4.17 of the Code sets out some information about the types of waste not within scope of the separation requirements, but there is other information about these types of waste in paragraphs 6.9 and 6.10, paragraphs 7.26 and 7.30 and in the Glossary. It may be of more practical utility to the reader if this information had been consolidated into a single, comprehensive section of the Code, rather than being presented piecemeal.
 - A reader of the Code attempting to identify whether waste is excluded from the separation requirements because it is hazardous, is signposted to regulation 6 of the Hazardous Waste (Wales) Regulations 2005 (“the 2005 Regulations”). Regulation 6 provides that waste is hazardous if it is listed as a hazardous waste in



"the List of Wastes". Regulation 4 of the 2005 Regulations defines *"the List of Wastes"* as *"the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time"*. It may be challenging for the reader to locate the relevant Decisions/Directives, and thus find the List of Wastes, in order to identify whether a particular item of waste should be excluded from the separated waste streams. Paragraph 6.8 links to guidance on waste classification, but the gov.uk webpage suggests that, to fully utilise that guidance, the reader needs to *"be competent in hazardous waste and have some knowledge of chemistry"*.

- Paragraph 6.9 of the Code defines the Animal By-Products (Enforcement) (Wales) Regulations 2014 as *"the 2014 Regulations"*. Paragraph 7.30 refers to *"the requirements of the Animal By-Products Regulations"*, rather than using the defined term. It may be unclear to the reader which legislation is being referred to here, as paragraph 7.26 refers to Regulation (EC) 1069/2009, which also relates to animal by-products.
 - There is an inconsistency between the description of animal by-products in paragraph 6.10 and the Glossary entry for "Animal By-Products (ABPs)", which could cause confusion to readers of the Code. Paragraph 6.10 provides that the 2014 Regulations include *"meat, fish, milk and eggs **when they are not** intended for human consumption"*, whereas the Glossary entry states that ABPs include *"meat, fish, milk and eggs **often where not** intended for human consumption"* (emphasis added).
2. There is an inaccuracy in paragraph 7.31 of the Code, which states that the Prohibition on Disposal of Food Waste to Sewer (Civil Sanction) (Wales) Order 2023 provides that an occupier of non-domestic premises in Wales must not discharge food waste to the public sewer. However the prohibition and associated criminal offence are set out in section 34D of the EPA 1990. The 2023 Order establishes the civil sanctions regime for an offence under section 34D(3) of the EPA 1990.
3. We note the following inconsistencies between the English and Welsh versions of the Code.
- The English version makes many references to duties and requirements "applying" to specified persons. The Welsh version says that the duties and requirements are "perthnasol", which to us means they are "relevant". It would appear to us that the use of "applying" in the English is correct, and that the use of "cymwys" in the Welsh would be more appropriate.
 - In paragraph 5.10, the English version refers to the scenario of "Bus, coach, train stations", which we understand to mean bus stations, coach stations and train



stations. The Welsh version refers to the scenario of “Bws, bws moethus, gorsafoedd trên”. We believe the Welsh should read “Gorsafoedd bysiau, bysiau moethus a threnau”.

- In paragraph 8.2, the English version refers to “articles” while the Welsh version refers to “nwyddau”. We believe that “eitemau” would be a clearer equivalent to “articles” (“eitemau” is used in paragraph 8.11).
- In paragraph 8.21, there is an additional sentence at the beginning of the Welsh version that does not appear in the English version. The Welsh version appears to be the correct version.
- In the Welsh version of the Glossary, part of the definition of “Llygyddion Organig Parhaus (POPs)” has found its way into the definition of “Gwastraff masnachol”. Also, there is no definition of “Is-ffracsiwn” in the Welsh version.

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 December 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 5.1

SL(6)422 – The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023

Background and Purpose

In July 2021, the UK Government signed a free trade agreement with Norway, Iceland, and Liechtenstein (“the FTA”).

Chapter 12 of the FTA establishes a mandatory system for the mutual recognition of professional qualifications between the UK, Norway, Iceland, and Liechtenstein (“the Party States”). It requires regulators across the UK to recognise the professional qualifications of applicants from the Party States where those qualifications are comparable to the qualifications required to access and pursue the same profession in the UK. The FTA also sets out the way in which applications for recognition of qualifications must be handled and requires regulators to offer adaptation periods and aptitude tests where necessary.

These Regulations implement the FTA in Wales and require Welsh regulators to comply with the provisions for the recognition of professional qualifications in the FTA. These Regulations also amend Welsh legislation as required to take into account the implementation of the FTA and the revocation of previous legislation in this area, namely the the European Union (Recognition of Professional Qualifications) Regulations 2015.

These Regulations impose duties on the following regulators in respect of the twelve regulated professions listed below:

Regulator	Professions
The Welsh Ministers	Agricultural analyst
Education Workforce Council	Food analyst
Social Care Wales	Food examiner
Food Standards Agency	Professional driver and attendant engaged in the transport of livestock, equines and poultry
Animal and Plant Health Agency	Public analyst
	School teacher
	Slaughterer
	Social care manager
	Social worker
	Social care worker in a:-
	- care home
	- domiciliary support service
	- residential family centre service



- secure accommodation service
Youth support worker
Youth worker

Procedure

Negative.

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

Technical Scrutiny

The following three 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

It is not clear why the word "specified" is defined in regulation 2. Its meaning is given as "specified in regulations", however the word is not used in this context in the body of the Regulations (as opposed to the wording that the Regulations insert into other legislation). It is only used as part of the phrase "specified state", which is defined as a state specified in Schedule 2 to the Regulations, and as part of the phrase "specified state professional" which links back to the definition of specified state. There does not therefore appear to be any use of the word "specified" in the context of "specified in regulations", and its inclusion as a defined term which does not reflect the manner in which it is used in the Regulations may cause confusion for the reader. The Welsh Government is therefore asked to explain why a definition of "specified" is included in regulation 2.

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

Regulation 8(6) refers to documents being authenticated in accordance with the law of the United Kingdom. Under the Legislation (Wales) Act 2019, "United Kingdom" means Great Britain and Northern Ireland. It therefore appears that the provision should refer to the laws of England and Wales, and/or Scotland and/or Northern Ireland if applicable.

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

In the English text, regulation 12(b) requires a Welsh regulator to make available information about the "relevant laws" to be applied regarding disciplinary action, financial responsibility etc. In the Welsh text, the phrase "relevant laws" is written as "deddfau perthnasol".



To us, “deddfau” is associated with “primary legislation”, rather than the broader concept of “laws”. We would welcome clarification from the Welsh Government as to what “laws” are intended to be captured by regulation 12(b) and whether there is any inconsistency between the English and Welsh texts.

Merits Scrutiny

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

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

The preamble to the Regulations states that consultation has been carried out as required by Article 9 of Regulation (EC) No 178/2002(1) of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (“the Regulation”). This requires open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. The Explanatory Memorandum refers to consultation with regulators under the Professional Qualifications Act 2022 (“the 2022 Act”) but contains no detail regarding consultation under the Regulation. The Welsh Government is asked to confirm what consultation it carried out under the Regulation as stated in the preamble.

5. 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 breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Jeremy Miles MS, Minister for Education and Welsh Language in a [letter](#) to the Llywydd dated 30 November 2023.

In particular, we note the following paragraphs from the letter:

The UK Government is using the concurrent powers in the Professional Qualifications Act 2022 to make the Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023 (“the UK Regulations”). The UK Regulations implement on a UK wide basis provisions relating to the recognition of professional qualifications contained in the free trade agreement between Iceland, Liechtenstein and Norway and the United Kingdom (“the FTA”), and make provision in subject areas which are devolved to Wales.

The Wales Regulations amend the UK Regulations to provide that they do not apply to the Welsh regulators of specified regulated professions in respect of which the Senedd has legislative competence.



The Wales Regulations also impose the duties required under the FTA on Welsh regulators and amend sectoral legislation in Wales to reflect the implementation of the FTA and the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015.

As the Wales Regulations amend the UK Regulations, it has been necessary to delay making the Wales Regulations until the UK Regulations have been made and exist in law. The UK Government did not lay the UK Regulations until 17 October, and these were not made until 29 November. This meant that the Wales Regulations could not be made until 30 November. As the Wales Regulations must come into force by 1 December in order to comply with the terms of the Free Trade Agreement, it is therefore necessary for them to come into force less than 21 days after they have been made. If the Wales Regulations are not in force by that date, there is a risk that Welsh regulators and Welsh Ministers will be in breach of the Free Trade Agreement and failing to meet international obligations.

The Welsh Government is asked to provide details of the discussions that it had with the UK Government in relation to these Regulations and the abovementioned UK Regulations with a view to avoiding both sets of regulations being made in such a short timeframe.

6. 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

The Committee notes that these Regulations are made under the 2022 Act, in relation to which two legislative consent motions were debated in the Senedd before that Act was passed. The Welsh Government recommended that the consent of the Senedd was withheld due to the inclusion of concurrent regulation making powers and such consent was withheld.

Welsh Government response

A Welsh Government response is required in relation to all reporting points save for point 6.

Committee Consideration

The Committee considered the instrument at its meeting on 11 December 2023 and reports to the Senedd in line with the reporting points above.



Government Response: *The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023*

Technical Scrutiny point 1:

The Welsh Government accepts this point and will undertake to make corrections at the earliest possible opportunity.

Technical Scrutiny point 2:

The Welsh Government accepts this point and will undertake to make corrections at the earliest possible opportunity.

Technical Scrutiny point 3:

The ‘Geiriadur Prifysgol Cymru (A Dictionary of the Welsh Language)’ offers the following broad definition of “deddf”:

Un o'r corff rheolau sy'n rhwymo deiliaid gwlad, &c., tan berygl cosb o'u torri, cyfraith; act unigol o ddeddfwriaeth, mesur (seneddol), ystatud, ordeiniad, gosodedigaeth, gorchymyn;

We note also that two different terms, i.e. “act” and also “law”, are provided to correspond to “deddf” in other authoritative sources of terminology such as Y Porth Termau and Y Termiadur Addysg. As such it does not necessarily follow that “deddfau perthnasol” would be interpreted as a reference to primary legislation only.

“Cyfraith” is a term often used to imply the broader meaning of a range of primary and secondary legislation. Once in the plural “cyfreithiau”, however, this term also could be interpreted either to mean a wide body of law or a narrower meaning of primary Acts.

The intention here was to convey a broad range of primary and secondary legislation, and we are satisfied that both languages convey this.

Merit Scrutiny point 4:

The agreed terms of the free trade agreement between Iceland, Liechtenstein, Norway and the United Kingdom (“the FTA”) has been subject to the required parliamentary scrutiny processes. UK-wide consultation on the implementation of Chapter 12 of the FTA was carried out from 27 January 2023 to 10 March 2023. Further targeted consultation with Welsh regulators was undertaken by the Welsh Government in October 2023.

The Welsh Government considers that appropriate consultation has been undertaken that satisfies the requirements of Article 9 of Regulation (EC) No 178/2002.

The amendments to The Food Safety (Sampling and Qualification) (Wales) Regulations 2013 made by The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023 are substantively identical to the amendments made to the corresponding Regulations for England and for Northern Ireland by the Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023, and to the corresponding Regulations for Scotland The Animal Welfare and Food Safety (International Professional Qualification Recognition Agreement Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023.

Merit Scrutiny point 5:

The Welsh Government has had regular discussions with the UK Government during the development of the UK-wide Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023.

The Welsh Government repeatedly made it clear that it was unacceptable for the UK Government to progress with legislating in devolved areas without seeking the consent of Welsh Ministers or the Senedd. We confirmed with the UK Government that we would be disapplying the Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023, and shared a draft of The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023 in September 2023.

The UK Government held monthly meetings with all the Devolved Governments throughout 2023 to discuss implementation of the Professional Qualifications Act (2022) and progress of The Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023. The UK Government confirmed the dates for the Parliamentary debates for The Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023 on the 16 November.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Inter-ministerial Group for Trade**

DATE **11 December 2023**

BY **Vaughan Gething, Minister for Economy**

In accordance with the inter-institutional relations agreement, I can report to Members that I attended the Inter-ministerial Group for Trade on 29 November.

The meeting was also attended by:

- Minister Hands – Minister of State for Trade Policy, DBT, UK Government (MH)
- Minister Lochhead – Minister for Small Business, Trade and Innovation, Scottish Government
- Minister Barker – Minister of State for Northern Ireland
- Minister Jones – Minister of State for Wales.

The Inter-ministerial Group for Trade provides the primary forum to discuss matters of trade policy between the UK government, Northern Ireland Executive, Scottish Government and Welsh Government.

In the meeting we discussed the ongoing negotiations with India, preparations for the upcoming WTO ministerial conference (MC13), as well as engagement between the devolved governments and UK government around the US MoU negotiations.

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Our ref/ein cyf: VG-PO-0431-23

Llywodraeth Cymru
Welsh Government

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

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

SeneddEconomy@senedd.wales

SeneddLJC@assembly.wales

11 December 2023

Dear Paul, Huw

I am writing in accordance with the inter-institutional relations agreement to inform you that I attended the Inter-ministerial Group for Trade on Wednesday 29 November.

The meeting was attended by Greg Hands, Minister of State at the Department for Business and Trade; Richard Lochhead, Minister for Small Business, Trade and Innovation, Scottish Government and Ministers from the Wales and Northern Ireland Offices.

We discussed the ongoing negotiations with India, preparations for the upcoming WTO ministerial conference (MC13), as well as engagement between the devolved governments and UK government around the US MoU negotiations.

I will write to you again to inform you of the date of the next meeting.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024
DATE	12 December 2023
BY	Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd

The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024 (“the 2024 Regulations”)

Members of the Senedd will wish to be aware I have given consent to the Secretary of State exercising a concurrent power to make subordinate legislation in a devolved area in relation to Wales.

Consent was sought on 14 September 2023 by Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs to make a statutory instrument titled the Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024. The 2024 Regulations apply in relation to Great Britain and Northern Ireland.

The 2024 Regulations will be made by the Secretary of State in exercise of powers conferred by section 36(1)(a) and 51(1)(a) of the Fisheries Act 2020.

This instrument makes amendments to the following retained EU law:

Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish.

Council Regulation (EC) No 1984/2003 introducing a system for the statistical monitoring of trade in swordfish and bigeye tuna within the Community.

Regulation (EU) No 640/2010 of the European Parliament and of the Council establishing a catch documentation programme for bluefin tuna *Thunnus thynnus*

Commission Delegated Regulation (EU) No 2015/98 on the implementation of the Union's international obligations under the International Commission for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries

Regulation (EU) 2016/1627 of the European Parliament and of the Council on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean

Regulation (EU) 2019/1154 of the European Parliament and of the Council on a multiannual recovery plan for Mediterranean swordfish

Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures

In addition to amending retained EU law, this instrument also amends the Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019.

Consent was granted as these Regulations ensure the UK is compliant with its obligations under the International Convention on the Conservation of Atlantic Tunas (the Convention). Some of the provisions amend retained EU law where the original EU legislation had not been updated prior to Implementation Period completion day to reflect new obligations on contracting parties to the Convention. Some of the provisions amend retained EU law which was up to date on Implementation Period completion day to reflect new obligations which have been adopted under the Convention since the UK left the EU and joined the Convention as an independent contracting party. In order for them to be effective, it is considered application on a UK basis and to all vessels operating in UK waters or wherever they may be.

The 2024 Regulations were laid before Parliament on 12 December 2023 and will come into force on 1 April 2024.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Inter-Ministerial Group on Work and Pensions
DATE 13 December 2023
BY Jane Hutt MS, Minister for Social Justice and Chief Whip

I represented the Welsh Government at the inaugural meeting of the Inter-Ministerial Group (IMG) on Work and Pensions on 6 November.

A [joint communique](#) was published following the meeting, which contains full details of other attendees. The agenda covered: Introductions; IMG Terms of Reference; Move to Universal Credit; Pension Credit Take-up Campaign, and the Welsh Government's Claim What's Yours Campaign.

As referred to in the communique, the Terms of Reference were formally agreed. I welcomed the establishment of the IMG, which will allow us to discuss areas of mutual interest – notably support for the most disadvantaged people in Wales.

I highlighted the Welsh Government's priority to tackle poverty through supporting people to maximise their household income. I stressed the importance of ensuring that Tax Credit claimants in Wales, who are now part of the Move to Universal Credit process, are supported throughout the transition. I raised my concerns that people should not lose out on any money that they are entitled to because of the managed migration process.

On Pension Credit take-up, I highlighted the work the Welsh Government has been doing to increase take-up. This includes the innovative Claim What's Yours campaign, which is having great results in generating increased adoption of benefits across Wales. Last year the campaign helped more than 7,500 people to claim over £3.6 million worth of additional income. I shared that we are currently preparing to launch our fourth campaign which will include promotional materials to target older people specifically on Pension Credit.

I conveyed my support for the use of pilots, such as the one that DWP are running in Powys which is directly encouraging older people who may be eligible for Pension Credit to submit a claim. However, with an estimated 80,000 pensioners across Wales being entitled to Pension Credit but not currently claiming, there is still much work to be done.

Whilst our projects in Wales are delivering great results, I raised again the suggestion that a strategic UK-wide benefit campaign would be helpful to increase take-up further. The focus of such a campaign, should not only be on awareness raising, but also supporting access to advice and support services, as well as aiding data sharing arrangements.

Finally, I raised my concerns that promotion and awareness raising is only a part of the solution in increasing take-up of benefits, and that some people will require support in making the claim itself. Although the Welsh Government's Single Advice Fund is supporting the voluntary sector to provide such provision in Wales. I called on the UK Government to consider funding a Help to Claim service for Pension Credit, like their service that is helping people to claim Universal Credit.

The next meeting of the IMG on Work and Pensions will be chaired by myself, as the representative of the Welsh Government, and is expected to take place in Spring 2024.

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



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Welsh Government

Ein cyf/Our ref JH/PO/439/2023

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
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CC: Jenny Rathbone MS
Chair of the Equality and Social Justice Committee
SeneddEquality@senedd.wales

13 December 2023

I am writing to inform you that the inaugural meeting of the Interministerial Group (IMG) on Work and Pensions took place on 6 November.

The IMG was chaired by the Minister for Disabled People, Health, and Work, representing the UK Government's Department for Work and Pensions. As Minister for Social Justice and Chief Whip, with responsibility for advice and advocacy services, I represented the Welsh Government.

I wish to apologise that you were not notified of the IMG, prior to its inaugural meeting, as set out by the Inter-Institutional Relations Agreement. I will keep you informed of all future meetings of the IMG.

Following the inaugural meeting, I have issued a [Written Ministerial Statement](#) which summarises the discussions that took place. As confirmed in the Statement, in line with rotating chair arrangements, the next IMG meeting will be chaired by myself.

I expect the next meeting to take place in Spring 2024, and I will provide a written update on its arrangements including a likely agenda and date in due course.

I have also copied this letter to the Equality and Social Justice Committee.

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip

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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.



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **British-Irish Council Summit in Ireland**

DATE **15 December 2023**

BY **First Minister, Mark Drakeford MS**

I attended the 40th meeting of the British-Irish Council on 23 and 24 November, which was hosted by the Government of Ireland.

The meeting was chaired by the Taoiseach Leo Varadkar TD on behalf of the Government of Ireland. Other attendees included Tánaiste Micheál Martin TD, the First Minister of Scotland the Rt Hon Humza Yousaf MSP, the Chief Minister of Jersey Deputy Kristina Moore, the Chief Minister of the Isle of Man Hon Alfred Cannan MHK, Secretary of State for Levelling Up, Housing and Communities, and Minister for Intergovernmental Relations the Rt Hon Michael Gove MP, and the Secretary of State for Northern Ireland the Rt Hon Chris Heaton-Harris MP.

The theme of this summit was Transforming Children's Lives: Tackling Child Poverty and Improving Wellbeing.

The Council took the opportunity to reflect on the lasting impact of the Belfast/Good Friday agreement on its 25th anniversary, and the importance of the British-Irish Council as an independent institution under the agreement.

We discussed topics of mutual interest, including the conflict in Israel and Gaza; the Russian invasion of Ukraine; shared climate objectives; the EU-UK relationship and the ongoing cost-of-living crisis. This included an update about political developments in Northern Ireland, noting that we all look forward to the restoration of enduring devolved power-sharing institutions in Northern Ireland as soon as possible.

The summit took place against the sombre backdrop of the tragic stabbings and subsequent rioting in Dublin on 23 November. I noted in the plenary session the potential for collective sharing of experiences to support community cohesion.

We discussed the efforts across the member administrations to tackle child poverty and improve wellbeing. As well as highlighting Wales' Flying Start programme, the roll out of free

school meals in primary schools and the reform of the school year consultation, I also outlined our basic income pilot for care leavers.

A joint communiqué was issued after the meeting, which is available here: [40th BIC Summit - Communique.pdf \(britishirishcouncil.org\)](#)

The next British-Irish Council summit will be hosted by the Isle of Man Government.



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

15 December 2023

Dear Huw,

Inter-Institutional Relations Agreement: British-Irish Council Summit in Dublin

Further to my letter of 23 November regarding the inter-institutional relations agreement and a British-Irish Council Summit being held in Ireland, I would like to draw your attention to my [written statement](#) of today, and to the BIC [communiqué](#) summarising the outcomes of the Summit.

Whilst at the Summit, I took the opportunity to hold bilateral meetings with the Minister for Public Expenditure and Reform, Paschal Donohoe TD, the Taoiseach Leo Varadkar TD, the First Minister of Scotland the Rt Hon Humza Yousaf MSP, and the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations the Rt Hon Michael Gove MP.

I have also copied this letter to the Chairs of the following Committees: Climate Change, Environment, and Infrastructure; Local Government and Housing; Culture, Communications, Welsh Language, Sport, and International Relations; and Equality and Social Justice.

Yours sincerely,

MARK DRAKEFORD

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Ein cyf/Our ref: JJ/PO/427/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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12 December 2023

Dear Huw,

Thank you for the report from the Legislation, Justice and Constitution Committee on the Welsh Government's Legislative Consent Memorandum on the UK Energy Bill.

You have already received my response to your first recommendation regarding the process within Welsh Government surrounding decisions relating to UK Bills. In terms of your second recommendation, I draw your attention to the processes that we outlined in that response. We expect timely and open engagement from the UK Government on all potentially relevant UK legislation, in line with commitments made as part of the IGR Review. As I have stated to your Committee and in Senedd Plenary, this simply did not happen for the UK Energy Bill.

I want to set out the action I have called for to ensure that where the UK Government is working up new policy in areas that impact on our ability to deliver on our net zero commitments, including matters such as those covered in the now UK Energy Act, there is effective involvement and engagement with the devolved nations. This action builds on the lessons that we learnt from the development of the UK Energy Bill and wider work on net zero.

First, I continue to call on the UK Government, at both the portfolio level with the Secretary of State for Energy Security and Net Zero and to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations that the current intergovernmental working on net zero, including energy, needs greater cross government working. In addition, the UK Government need to have greater recognition that matters reserved to the UK Government have significant implications on our ability to deliver our energy and wider net zero commitments. I have written to both Secretaries of State calling for a strengthening of the current intergovernmental structures to make this joint working possible. This is also a matter I have raised with the Independent Commission on the Constitutional Future of Wales citing the UK Energy Bill as an example where intergovernmental working arrangements were clearly insufficient.

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Secondly, and related to the above point, the UK Energy Bill highlighted that in some areas, heat specifically, the devolution settlement is less than clear on where specific responsibility rests. In recognition of this, we have agreed through the IMG on Net Zero that a new Heat and Buildings intergovernmental group is established to work through the details of how we decarbonise heat and buildings in a way where actions across the nations of the UK support our collective net zero priorities. This will support direct implementation of the UK energy Act and wider work on heat and building decarbonisation.

While I remain deeply concerned with the approach the UK Government have taken to disregard the devolution settlement to proceed with the Bill without the consent of the Senedd, I can report that a number of the commitments the UK Government made to strengthen the requirement to consult with the Devolved Governments are being implemented. While we are at the very first stages of implementation, consultation is underway across a number of areas and I hope this results in meaningful joint policy development in areas where we feel the Act is acting in areas of devolved competence.

I fully appreciate that laying our LCM for this Bill so late in the process made effective scrutiny from the Senedd extremely challenging. While I repeat that we progressed the laying of the LCM and supplementary LCMs as soon as we could in the specific context of this Bill, there was more that the Welsh Government could have done to update the Senedd on our analysis and work with the UK Government on the Bill. While I hope we will not be in this position again, I remain committed to ensuring the Senedd and relevant committees are updated on progress to support effective scrutiny.

Yours sincerely,



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

Agenda Item 7.2

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-JJ-3057-23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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15 December 2023

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee Report in relation to the Infrastructure (Wales) Bill, published on 22 November 2023.

Please see my responses to the set of recommendations within the report in Annex 1. I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee and the Chair of the Finance Committee for information.

Yours sincerely

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

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Annex 1

Infrastructure (Wales) Bill

Responses to Legislation, Justice and Constitution Committee recommendations

Recommendation 1. The Minister should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.

Ministers endeavour to respond to the Committees as soon as reasonably possible but it is not always practical for Welsh Ministers to do this prior to the Stage 1 debate.

Recommendation 2. The Minister should update the Senedd on the Welsh Government's discussions with the UK Government regarding the outstanding Minister of the Crown consents and the transfer of legislative competence for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone.

I accept this recommendation.

The transfer of legislative competence

Lord Callanan, Parliamentary Under Secretary of State for Energy Efficiency and Green Finance, wrote to me on 16 November confirming the UK Government position. Their view is that maintaining the current approach provides clarity for developers and investors by maintaining consistency between the consenting system in England and Wales and it is not evident that the current approach is creating significant difficulties for developers. The letter does offer the opportunity to provide further evidence on this matter. I disagree with this view and have instructed my officials to provide the necessary evidence.

Minister of the Crown consents

Engagement with the UK Government over the Minister of the Crown consents is still ongoing. The UK Government is aware of our timetable for tabling amendments.

Recommendation 3. The Minister should review the Bill and put on its face information already known about, for example, the requirements on or the functions of people, and who those people are, so that there is a better balance between what the Senedd is being asked to approve, and consequently what detail will be found in the Act, and what will be left to subordinate legislation.

I accept this recommendation.

I will bring forward amendments to provide more detail on the face of the Bill, where I consider it appropriate.

Recommendation 4. The Minister should provide to the Senedd a clear, full and detailed list of each and all delegated powers in the Bill, by reference to specific location, type and scrutiny procedure.

I accept this recommendation.

Details will be included in the revised explanatory memorandum.

Recommendation 5. The Minister should clarify why the Bill does not include overview sections, particularly for Parts 1 to 7, to describe what each part is seeking to achieve and how they relate to each other.

I accept the recommendation.

The purpose of an overview provision is to help the reader navigate an Act. Overviews are often included in Senedd Acts, but not always. The Welsh Government's policy on overviews (as set out in 'Writing Laws for Wales') is that drafters should consider whether they will be helpful to readers. There is no need for an overview if a clear picture is already given by the table of contents or by the long title. The drafters of this Bill felt that the part titles and crossheadings gave a clear idea of what the Bill does and that an overview would not add further value. In the light of the Committee's comments, I will give further consideration to whether an overview could be constructed that does add value without becoming too unwieldy.

Recommendation 6. The Minister should:

- **provide clarity and detailed justification for the inclusion of flood prevention and minerals (in section 17(4)(b) and (c) respectively) as types of projects which may be added to the scope of the Bill (if and when enacted) via subordinate legislation;**
- **explain why criteria for the type of development that would fall under the fields of flood prevention and minerals were not included on the face of the Bill on introduction.**

I accept this recommendation.

Flood defence projects, such as barriers and systems, as well as operations involving the winning of mineral resources can create large scale environmental change, affect multiple communities, require multiple consents across different regimes and form part of the national infrastructure in Wales. Therefore, I consider they should be included within the new consenting process.

However, while it is clear that projects relating to flood prevention and minerals have the potential to reach a scale and complexity to be of national importance, I have not received evidence to indicate a suitable threshold for these projects. This means I

have not identified a specific project threshold where an application would be considered under the new regime.

As further evidence becomes available, my officials will engage with all stakeholders before bringing forward any proposals for inclusion of such projects.

Recommendation 7. As suggested by stakeholders, to enable public consultation the Minister should consider the use of a super-affirmative procedure in respect of the making of regulations under section 17(1) which make provision for projects relating to the fields of flood prevention and minerals.

I reject this recommendation.

It is my opinion that the affirmative procedure, coupled with the Welsh Government's commitment to consult on regulations, provides sufficient opportunity for the Senedd and stakeholders to scrutinise any regulations made under section 17.

The super affirmative procedure is only used in rare instances where the content of a Bill is fundamentally changed. This is not the case in section 17, where the scope of the section is only to amend or add the type of projects which are considered Significant Infrastructure Projects (SIPs), but does not change the principles of the Bill itself.

Recommendation 8. The Minister should provide additional detail and reasoning as to why the regulation-making power in section 22 is needed in addition to the power in section 17.

I accept the recommendation.

The two sections serve a different purpose. The scope of section 17 is to be able to amend the Bill in future should evidence emerge that the categories and criteria defining a project as a SIP are no longer fit for purpose, due to technological advance or legislative changes, for example. An amendment made through section 17 amends the face of the Bill.

The scope of section 22 is different. It is recognised that, where there are novel or specific circumstances, an individual project may be of national significance even if it does not fall into the categories in Part 1. Section 22 enables an individual project to be designated a SIP due to specific circumstances, without listing that type of project on the face of the bill. This is because in other circumstances the type of project is not of national significance.

The regulation making power included in section 22(2)(c) is there to limit the power to direct that a project is a SIP to those specified in regulations.

Recommendation 9. In conjunction with recommendation 8, the Minister should explain the consequences if section 22 were removed from the Bill, and what would the Minister be prevented from doing that could not be achieved with section 17.

I accept this recommendation.

As set out in response to recommendation 8, the sections serve different purposes. Should section 22 be removed from the Bill the only projects that would be captured by the new regime would be those projects that are on the face of the Bill.

Therefore, any projects below those thresholds would not be captured by the new regime. For example, a solar farm located in a very sensitive location generating 40MW would not be captured by the new consenting regime. However, given the nature of the project, it might be considered more appropriate for it to be determined under the new regime. Section 22 enables individual projects to be directed as a SIP (provided the project is listed in regulations under 22(2)(c)).

The ability to have projects such as the solar farm example mentioned above considered by the new regime could not be achieved by section 17 alone for the following reasons:

Firstly, section 22 applies to individual projects, whereas section 17 applies to all projects above a threshold. A direction under section 22 therefore takes into account site specific circumstances.

Secondly, using the solar farm example, the intention is not to capture all projects above 40MW, only this individual project due to its specific circumstances.

Thirdly, using section 17 to achieve the same results of section 22 would mean frequent amendments to Part 1 of the Bill.

Fourthly, the intention of section 22 is to apply the new regime to an individual project. Changing Part 1 of the Bill using section 17 would not respond to an individual project which has come to light, unless the amendment was applied retrospectively.

Fifthly, developers have stated their preference for certain projects below the threshold to be considered under the new regime. Section 25 identifies what a qualifying request from a developer for a Direction is, and that the Welsh Ministers must provide a response.

Section 17 and 22 are fundamentally different in purpose, and I consider the removal of section 22 would be to the detriment of the principles of the Bill.

Recommendation 10. Section 24 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be

amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject the recommendation.

Section 24 provides that the Welsh Ministers may give a direction specifying that a proposed development that would otherwise be considered a SIP should not be classed as one for the purpose of this Bill. A direction made under section 24 may only be given if the proposed development is partly in Wales or the Welsh marine area.

The power is therefore naturally limited in its current drafting. Projects classified as a SIP are listed in sections 2 to 16, and directions under section 24 may only apply to these projects. SIP. A direction may only be made where the development is partly in Wales or the Welsh marine area. This means it is only projects that cross the boundary of these areas that may be subject to a direction under this section.

Recommendation 11. Section 24 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation in part.

I accept that informing the Members of the Senedd would be beneficial, and it is my intention to table an amendment to the Bill to require the Welsh Ministers to publish the direction and issue an accompanying statement in the Senedd.

Recommendation 12: Section 31 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be included in regulations made under subsection (4) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

Section 31(4) sets out the scope of what may be included in regulations made under that provision, and they are limited to provision about applications for infrastructure consent. Subsection (5) clarifies that provision made under subsection (4) can confer a function on any person, including the exercise of a discretion. The provision made in subsection (5), and in similar provisions elsewhere in the Bill, are intended to enable sub-delegation. In this case, the discretionary functions will be related to the process set out in the regulations for making an application.

The Statements of Policy Intent accompanying the Bill provide information about what is intended to be included in those regulations, subject to consultation. To separate out the 'functions' from the process would pre-empt the consultation and would lead to a confusing split in an administrative process between provisions on the face of the Bill and in regulations.

Recommendation 13: Section 33(2)(a) of the Bill should be amended to state that Natural Resources Wales, and any other known body/person, must be given a notice of any application for infrastructure consent.

I reject this recommendation.

Natural Resources Wales (“NRW”) may only have an interest in certain applications which fall within the scope of the Bill. There is certainty over the applications in the Welsh marine area and those which straddle the onshore / offshore area due to the role NRW have in the consenting of marine licenses.

I have ensured NRW will always be notified of an application for development in the Welsh marine area by placing them on the face of the Bill at section 33(2)(b)(i). Building on this position, I have sought to strengthen NRW’s involvement in the consenting process by tabling an amendment which requires prospective applicants to notify NRW of a proposed application for development in the Wales marine area at the pre-application stage. This will enable them to make effective resource plans in relation to future consenting needs.

Furthermore, section 33(2)(c) of the Bill provides for regulations to specify any other persons or descriptions of persons to be notified of an application. This will enable NRW to identify which additional types of development or applications they may have an interest in and wish to be notified about.

Recommendation 14: Section 34 of the Bill should be amended to add details of the requirements which may be imposed and on whom by regulations under subsection (1)(b). The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

There is, in effect, only one function that can be conferred by virtue of section 34(1)(b), requiring a person to respond to a notice. The purpose of this power is to ensure that those stakeholders who have detailed knowledge and expertise in particular types of development captured by the Bill are under a duty to respond to a notification of an application, as they are best placed to provide part of the evidence required to examine an application effectively.

Due to the range of development types captured by the Bill, these stakeholders will vary on a case-by-case basis and to set out a complete list with each of the circumstances in which they are required to respond to a notice, would incur the reading of the Bill. For example, the current list of statutory consultees for Developments of National Significance (DNS) applications is set out in Schedule 5 of the Developments of National Significance (Procedure) (Wales) Order 2016 (as amended), and demonstrates the complexity of who needs to be consulted and when. Furthermore, DNS applications only represent some of the projects captured

under the Bill. I will also need to consider additional consultees from other existing consenting regimes, adding a further layer of complexity.

I also consider it appropriate that the regulations contain administrative matters of this kind. The regulations should tell a coherent story in respect of the procedure to be followed.

Recommendation 15: Section 34 of the Bill should be amended so that details of the functions referred to in subsection (2) which may be conferred by regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

As covered in response to recommendation 12, this approach is to ensure discretionary functions can be included in any regulations. The scope of the regulations is clear from section 34(1), and I have set out my intentions on how this power will be used in the Statements of Policy Intent. It is appropriate that all matters falling within the scope of section 34(1) be included in regulations.

Recommendation 16: The Minister should clarify the change she will seek to make to section 38 of the Bill, in line with our comments that this section contains one regulation-making power in subsection (1). In particular, the Minister should clarify whether an amendment is proposed to change the reference in subsection (3) from a reference to subsection (2) to instead be a reference to subsection (1), or if a more substantial amendment will be required to make the necessary changes to section 38.

I accept this recommendation.

We will make the necessary changes to clarify that the section contains one regulation-making power. This will include removing subsection (2) and changing the reference in subsection (3) to refer to subsection (1).

Recommendation 17: The Minister should clarify, and provide the necessary detail of, the powers contained within section 42 of the Bill.

I accept this recommendation.

I note the Committee's comments regarding the need to provide more clarity and detail in relation to the powers contained in section 42 of the Bill. I have set out in detail what requirements would likely to be included in subordinate legislation made under this section in the Statements of Policy Intent which accompany the Bill. I intend these statements as a starting point, which will be subject to wider public consultation as the subordinate legislation is developed and therefore, may be subject to change based on the representations received from stakeholders.

Recommendation 18: Section 42 of the Bill should be amended to set out the details of the procedure for situations where the decision-making body is to be changed from the examining authority to the Welsh Ministers, and vice versa.

I reject this recommendation.

These are procedural matters that are better suited to subordinate legislation. For example, the Welsh Ministers will provide written notification to the examining authority of their intention to amend who the decision-making body is. There would also be a requirement to notify the applicant, relevant stakeholders and any other persons considered necessary of the change.

Recommendation 19: Section 43 of the Bill should be amended so that the principles relating to the power of entry, as well as any limitations or criteria that should apply to the making of the regulations, should be on the face of the Bill.

I accept this recommendation.

I will table an amendment to set out further detail on powers of entry on the face of the Bill.

Recommendation 20: The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 43.

I accept this recommendation.

I will table an amendment so that any regulation-making powers set out under section 43 are subject to the draft affirmative procedure. The need to prescribe regulation making powers under section 43 will be revisited in light of accepting Recommendation 19 to set out further detail on powers of entry on the face of the Bill.

Recommendation 21: Section 45 of the Bill should be amended so that details of the functions of an appointed representative referred to in subsection (6) which may be conferred in regulations are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

Any functions specified on the face of the Bill relating to an appointed representative will be required to relate to other requirements set out in regulations. There should be one place to go to for all of those functions and having some on the face of the

Bill and others in regulations would make the process inaccessible. In addition, it would be very unlikely we could achieve this separation of functions effectively.

Recommendation 22: The Minister should provide further detail and clarity as to why the regulation-making power in section 52 is necessary.

I accept this recommendation.

The proposed regulation-making power under section 52 will set out those types of infrastructure applications that are to be determined by the examining authority instead of the Welsh Ministers. It is the intention to only require applications to be determined by the examining authority where they may be straightforward cases. Further, the intention is those applications to be specified in subordinate legislation that would be determined by the examining authority may change over time. For instance, as a result of technological advances, a certain type of infrastructure development may come forward in future where potential impacts are negligible and it is straightforward in terms of whether or not to consent.

In summary, I consider that those matters specifying what body would determine specific types of applications are very specific and procedural details in the consenting process. Therefore, I consider they should be specified in subordinate legislation rather than on the face of the Bill.

Recommendation 23: If section 52(1) is retained, the Bill should be amended to require regulations to be made under section 52 to be subject to the draft affirmative procedure.

I accept the recommendation.

I will table an amendment accordingly.

Recommendation 24: Section 55 of the Bill should be amended to include details about the matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I accept the recommendation.

I will table an amendment accordingly.

Recommendation 25: The Minister should clarify why section 56(1)(b) is required, and amend the Bill to provide more details about the limitation of this provision and how the period agreed will be made public.

I accept this recommendation in part.

This provision is necessary as there may be extenuating circumstances, not by fault of the Welsh Ministers, where a limited number of applications may not be able to be determined within the 52-week timeframe and the timeframe needs to be extended. For example, the examination process may require a suspension where essential parties fail to attend a hearing, or that the project of such a magnitude and complexity that a longer period is more appropriate to allow for additional hearing sessions. The provision in those circumstances will require the Welsh Ministers to come to an agreement with the applicant on a revised timeframe under section 56(1)(b).

Section 125 of the Bill requiring the Welsh Ministers to maintain a register of applications for infrastructure consent will provide the legislative tool by which information on an application will be made public, including timescales for the determination of individual applications.

I reject the part of the recommendation seeking to amend the Bill to provide more details about the limitations of this provision. The power would only be applied in extenuating circumstances that would only come to light during the determination of an application. Therefore, it is not possible to set out those limitations on the face of the Bill.

Recommendation 26: The Minister should clarify why the approach adopted in section 56(2) as regards the direction-making power is necessary.

I accept this recommendation.

The direction making power at section 56(2) is necessary as it must be recognised there may be extenuating circumstances, not by fault of the Welsh Ministers, where a limited number of applications may not be able to be determined within the 52-week timeframe. For example, the examination process may require a suspension where essential parties fail to attend a hearing. The direction making power for extending the timetable to determine an infrastructure consent application would only be used in those extenuating circumstances.

Recommendation 27. Section 56 should be amended to include details of what a direction made under subsection (2) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject the recommendation.

Section 56(2) provides that the Welsh Ministers may give a direction to extend the 52-week timeframe. That is the only matter which the direction will contain. The power is therefore naturally limited in its current drafting and therefore it is unclear what details the Committee are seeking.

Recommendation 28. Section 56 should be amended to require that a direction made under subsection (2) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation in part.

The Bill already provides a duty under section 56(4) to publish the direction and section 56(5) provides a duty for the Welsh Government to issue an annual report on the compliance with the timescales to the Senedd. These should ensure Members are aware of the use of this direction making power. However, I recognise that the Senedd have an interest in this matter and I will table an amendment to require the Senedd to be notified by means of a written statement.

Recommendation 29. The Minister should clarify why section 56(3)(b) is required and amend the Bill to provide more details about the limitations that apply to this provision, including in particular the restrictions that apply to the time-period during which a direction under section 56(3)(b) may be given.

I accept this recommendation in part.

Section 56(3) is required because multiple issues may emerge during an examination and may require multiple suspensions. 56(3)(b) is required to provide clarity that it is possible for the Welsh Ministers to extend time after the deadline. The power to extend time is already limited to only be used only where there are extenuating circumstances. This clarity will prevent unnecessary future litigation about the exercise of the power to extend time. Therefore, I will not table an amendment.

Recommendation 30: The Bill should be amended to require regulations to be made under section 56(6) of the Bill to be subject to the draft affirmative procedure.

I accept this recommendation.

I will table an amendment accordingly.

Recommendation 31: Section 57(6) should be amended to constrain the power to what is necessary and in line with how the Minister has stated the power is intended to be used.

I reject this recommendation.

The power relates to the setting of a procedure to be followed and it will relate to other procedures in regulations. Therefore, it is appropriate to have the procedure in regulations so secondary legislation tells a coherent story.

Recommendation 32: Section 59 should be amended to make it a requirement for a statement prepared under subsections (1) or (2) to be provided to the applicant of an infrastructure consent order.

I accept this recommendation.

I will table an amendment accordingly.

Recommendation 33. The Minister should explain why, in respect of section 60(6)(a) and (b), it is appropriate that an infrastructure consent order may amend, modify or exclude enactments without any scrutiny or oversight by the Senedd.

I accept the recommendation.

The Infrastructure Consent Order (ICO) is the product of the application process granting consent for a particular project. As such it will be limited in scope. The power in section 60(6)(a) allows the ICO to apply, modify or exclude an enactment which relates to any matter for which provision may be made in the order. This is limited to the application of enactments to the circumstances covered by the ICO, it does not allow amendments to be made in the general application of those enactments. For example, orders dealing with railways may include provision incorporating the Railways Clauses Consolidation Act 1845, or in relation to harbours, modification of the application of the Harbours, Docks, and Piers Clauses Act 1847.

Section 60(6)(b) allows for amendments, repeals or revocations of enactments of local application. For example, these may include local acts such as amendment of the Ffestiniog Railway Act 1869.

The granting of an ICO is a matter for the Welsh Ministers following the extensive examination process set out in the Bill. It would be confusing the roles of the executive and the legislature to provide for a role for the Senedd in the granting of consent for these SIPs.

Recommendation 34. Section 60 should be amended to require that an order made in accordance with the section must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I reject the recommendation.

The granting of an infrastructure consent order is a matter for the Welsh Ministers following the extensive examination process set out in the Bill. Section 82 of the Bill already provides that Infrastructure Consent Orders must be published and, where contained in a Statutory instrument, must be laid before the Senedd.

Recommendation 35. The Bill should be amended so that orders made under section 82 which create criminal offences must be subject to the draft affirmative scrutiny procedure.

I reject this recommendation.

ICOs relate to specific projects and will be limited in scope. Any criminal offences created in an ICO will trigger the requirement in section 82(3) and will be contained in a statutory instrument. This statutory instrument must be laid before the Senedd as soon as practicable after it has been made, alongside the associated plan and the statement of reasons. As set out in response to recommendation 33, the granting of an ICO is a matter for the Welsh Ministers and it would be confusing the roles of the executive and legislature to provide for a role for the Senedd in the granting of consent for these SIPs.

Recommendation 36. Section 87 should be amended to require that an order made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I reject this recommendation.

Where an existing statutory instrument is amended (by revocation or a change), the amendment must also be contained in a statutory instrument as set out in section 87(7) of the Bill. Section 89(3) states that a copy of the instrument must be laid before Senedd Cymru.

I am satisfied that the current drafting of the Bill results in an appropriate level of scrutiny when Welsh Ministers consider the revocation or changes to an ICO.

Recommendation 37. The provisions contained in sections 87 and 88 relating to the change or revocation of infrastructure consent orders should be amended to include details of the safeguards that will be in place in respect of the use of the power in section 87(1) so as to ensure there are no unintended consequences.

I reject this recommendation.

I understand the Committee's wishes to ensure there are no unintended consequences in this area, however, having considered this recommendation, I do not consider the ability to change or revoke the infrastructure consent order after it is made, requires amendment.

We are proposing a formal process for applicants to apply for a change to the ICO

The processes and procedures required for notifying the Welsh Ministers of a proposed amendment(s), the scope of the amendment(s) and the timescales within which they may be made and how they are to be dealt with by the Welsh Ministers or

the appointed person, will be prescribed in regulations (with detail set out in the Statement of Policy Intent), and in summary will prescribe:

- The form and content of an application;
- Timescales and procedure;
- Consultation requirements;
- The manner in which an application is dealt with.

Any amendments which, in the Welsh Ministers' opinion, are substantial amendments will require the submission of a new application for an ICO.

Having regard to this I am of the view that the current drafting of the Bill and the provision for the detailed and robust procedure to be set out in Regulations is such that no unintended consequences will arise.

Recommendation 38. Section 88 should be amended to make it a requirement for a notice issued under subsection (6) to be provided to the person who originally applied for the infrastructure consent order.

I accept this recommendation.

I propose to table an amendment.

Recommendation 39. Section 92 should be amended to include details of what may be considered as an operation that is not a “material operation”. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

I set out in the Statement of Policy Intent that it is anticipated the regulations will specify that any steps taken in regard to compulsory acquisition (for example the serving of a notice) will not constitute a material operation on its own. It is my view that these matters should be informed by stakeholders before being defined, as the definition will impact on potential enforcement action. Defining this now may lead to changes being made to the Bill before the system is operational, which I do not consider to be best practice.

Recommendation 40: The Minister should provide additional detail and clarity as to what activities will not be prohibited by a temporary stop notice under section 115(1).

I accept this recommendation.

It is difficult to anticipate every eventuality or activity which will not be prohibited by a temporary stop notice given the wide and varying nature of the types of projects captured by the Bill.

However, one example I can provide the Committee is where a development is granted infrastructure consent and works are being undertaken which give rise to urgent health and safety matters. As a result, it may be necessary to mitigate against these matters by carrying out works which may not be in strict accordance with the consent granted. In these circumstances it may be not appropriate to issue a temporary stop notice if doing so would result in significant health and safety concerns.

Furthermore, the committee will note that in my letter of 11 September 2023 in response to question 25, I noted the same power already exists for the wider planning system in the Town and Country Planning Act 1990 and that certain restrictions may be introduced in that process which also hold relevance to applications for infrastructure consent.

Again, although it is not possible to anticipate what these restrictions could be in the future, the flexibility this power offers is important.

Recommendation 41: Section 121 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be contained in regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

I understand the Committee's wishes to ensure clarity on functions in relation to fees. In this case, the discretionary functions will be related to the process set out in the regulations for charging a fee in connection with an application. Such examples could include setting a fee level, or administrative matters, such as collecting a fee and refunding it if required.

I have committed to providing cost recovery, but to do so will require consultation with all stakeholders, where functions will form part of the discussion. To separate out the 'functions' would pre-empt the consultation and would lead to a confusing split in an administrative process between provisions on the face of the Bill and in regulations.

Recommendation 42: Section 126 of the Bill should be amended to require Natural Resources Wales, and any other known body/person, to be consulted about a valid application for infrastructure consent.

I reject this recommendation.

NRW will only have an interest in certain applications which fall within the scope of the Bill, primarily, those in the Welsh marine area and those which straddle the onshore / offshore area. They may also have an interest as a consultee on

applications that may have a potential impact on protected sites or species, for example.

I have ensured NRW will always be notified of an application for development in the Welsh marine area by placing them on the face of the Bill at section 33(2)(b)(i).

Furthermore, section 33(2)(c) of the Bill provides for regulations to specify any other persons or descriptions of persons to be notified of an application, for which NRW could also be included, if there are any additional types of development or applications they may have an interest in.

In addition, I have sought to strengthen NRW's involvement in the consenting process by tabling an amendment which requires prospective applicants to notify NRW of a proposed application for development in the Wales marine area at the pre-application stage.

It is not necessary to place the requirement to consult NRW on the face of the Bill, as the requirement to notify NRW in certain circumstances is already in place. Furthermore, consulting in all cases places an unnecessary obligation on NRW to respond even in cases where this may not be required.

Recommendation 43: The Minister should clarify the details of the “things” a public authority may be required to do as directed by the Welsh Ministers using the power in section 127(1), and the Bill should be amended to set out this detail.

I accept this recommendation in part.

Although the Welsh Ministers have responsibility for undertaking functions relating to applications for infrastructure consent, there may be circumstances where the Welsh Ministers want to, or it is more appropriate to, direct another body to undertake one or more of functions on their behalf.

These matters may include, but would not be limited to, displaying site notices for the purposes of publicising an application or publicising an application in a relevant fishing journal for those developments in the Welsh marine area.

I do not consider it appropriate to specify each potential activity on the face of the Bill as they are procedural in nature and may be subject to change. For example, should a new type of development be categorised as a SIP, it may be necessary to place new requirements on existing bodies, or place a function on a new body.

There may be some value in clarifying the broad scope of the activities that may be the subject of a direction and we will give further consideration to amending section 127 at Stage 2.

Recommendation 44: The Minister should provide further detail and clarity as to why the direction-making power in section 127(1) is necessary, and why the

statutory requirements to be placed on a public authority are not included on the face of the Bill.

I accept this recommendation.

Please see my response to recommendation 43. This power is necessary as it may not always be appropriate for the Welsh Ministers to undertake a particular function in relation to an application for infrastructure consent. This power enables the Welsh Ministers to direct another body undertake a function (or functions) on their behalf.

Recommendation 45: Section 127 should be amended to include the list of relevant devolved Welsh authorities to which the section will apply. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

An interpretation of devolved Welsh authorities is specified in section 157A of the Government of Wales Act 2006. At this point in time, I have not finalised the list of public bodies which will have a function placed upon them. It is my intention to engage with all stakeholders about the list of bodies and set them out in subordinate legislation. Providing them on the face of the Bill at this point would pre-empt that consultation.

Recommendation 46: The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 127(4).

I accept this recommendation.

I will seek to table an amendment to give affect to the recommendation.

Recommendation 47. The Minister should clarify why the approach adopted in section 128(1) as regards the direction-making power is necessary.

I accept this recommendation.

The power is needed in cases where the standard process would involve a disproportional burden on the parties involved. The Bill provides a transparent and fair examination process which is efficient and timely. In order to continue to expedite the consenting process, the Welsh Ministers have the power to dispense with certain procedural requirements but only where there would be no detriment to procedural fairness.

Due to the nature of this power, it is intended to limit its scope through subordinate legislation which must specify the requirements that may be disapplied by direction.

Recommendation 48. Section 128 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list.

I reject this recommendation.

This power of direction is already limited by subordinate legislation subject to draft affirmative procedure. Further consultation will identify the limitations appropriate to place on this power and to place in legislation a potentially incomplete or erroneous list now would only result in immediate changes later on, which will be contrary to our aim of clarity.

Recommendation 49. Section 128 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd.

I accept this recommendation.

An amendment will be tabled to require the direction to be published and a statement issued to all Members of the Senedd

Recommendation 50. The Bill should be amended to require that regulations made under section 129(2) of the Bill are subject to the draft affirmative procedure.

I accept this recommendation.

An amendment will be tabled.

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

Ein cyf/Our ref: MA-JJ-3057-23

Llŷr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
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CF99 1SN

15 December 2023

Dear Llŷr

Thank you for the Climate Change, Environment, and Infrastructure Committee Report in relation to the Infrastructure (Wales) Bill, published on 24 November 2023.

Please see my responses to the set of recommendations within the report in Annex 1. I am copying this letter to the Chair of the Finance Committee and the Chair of the Legislation, Justice and Constitution Committee for information.

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.

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.

Annex 1

Infrastructure (Wales) Bill

Responses to the Climate Change, Environment and Infrastructure Committee recommendations

Recommendation 1. The Committee recommends that the Senedd supports the general principles of the Bill.

I accept this recommendation.

Thank you for supporting the general principles of the Bill.

Recommendation 2. The Welsh Government should publish a detailed timetable for the preparation, publication, and, where appropriate, consultation, of the subordinate legislation arising from the Bill.

I accept this recommendation.

I will provide an update on the implementation plan during the Bill's passage. This will be set out in a letter to the Committee.

Recommendation 3. The Welsh Government should publish in draft key pieces of subordinate legislation and consult stakeholders before final versions are taken forward.

I reject this recommendation.

I understand the importance of engaging stakeholders and local communities early in the legislative process in an inclusive and meaningful way.

I want stakeholders to be involved in setting the provisions, ensuring that as well as certainty, all stakeholders consider the provisions to be workable in practice. The danger of consulting on draft regulations is stakeholders may perceive that we have already decided on our proposals and may lead to less meaningful engagement.

Recommendation 4. The Minister should ensure there is sufficient time available for Senedd committees to consider the key pieces of subordinate legislation in the Bill that will follow the affirmative procedure.

I accept this recommendation.

It is my intention to follow Standing Orders.

Recommendation 5. The Minister should ensure that digital versions of the secondary legislation arising from the Bill, and associated guidance and documents, are available in one place on the internet that is easily accessible to the public, public bodies and developers.

I accept this recommendation.

I will seek to ensure all subordinate legislation and guidance published to supplement the Bill is as accessible as possible for all stakeholders.

Recommendation 6. The Minister should publish an indicative timetable setting out when the transitional arrangements to the new regime will be determined.

I accept this recommendation.

In response to Recommendation 2, I have agreed to provide an implementation plan in relation to the programme of subordinate legislation. Transitional arrangements will follow the same timeline.

It is also my intention to provide further clarity on transitional arrangements prior to the wider consultation on subordinate legislation. I intend to publish a revised statement of policy of intent which will set out in detail our current proposals. I intend to undertake focused engagement on these proposals prior to the wider consultation. The result of these consultations will help inform the final form and content of the transitional provisions taken forward.

Recommendation 7. The Welsh Government and public bodies must work together to find the most effective means of delivering the specialist advice necessary across different geographical locations. The Minister should report back to this Committee on progress within the next 6 months.

I accept this recommendation.

I will ensure that Welsh Government and public bodies work together with regard to delivering specialist advice. An update on the progress of this will be provided in 6 months.

The skills and expertise can be very specialised depending on the nature of the scheme. There is potential to pool or share this expertise to help in the consenting process, through formal and informal means.

I continue to engage with stakeholders on the Bill and will work with local authorities to ensure there is adequate resource available.

Recommendation 8. The Welsh Government should engage with stakeholders on the criteria in Part 1 to resolve concerns before the Bill completes its passage through the Senedd.

I accept this recommendation.

My officials are continuing engagement with stakeholders, in particular with Natural Resources Wales and the energy industry with regards to hydrogen production and other means to store energy.

Currently, hydrogen use is captured by the Bill either as a means to generate energy or as an energy carrier associated with a different type of energy generation.

There is no specific threshold for hydrogen production because to date we do not have enough evidence to understand what an appropriate threshold for these types of projects would be. Currently, hydrogen production will be captured by the Bill as associated development of a Significant Infrastructure Project (“SIP”), or, it could be directed to be a consented in the new regime under section 22 of the Bill.

With regards to pipelines, following a review of the evidence brought to the attention of this committee, I am considering bringing forward amendments to Part 1 to the Bill to include pipelines, subject to the limitations imposed by the Wales Act 2017.

I am happy to confirm that, the 50MW thresholds for solar farm will be the inverter rating (AC).

With regards to the concerns expressed by Dwr Cymru, I will engage further with them.

Recommendation 9. The Minister should clarify her position on the inclusion of an “opt-in” provision to the SIP regime and explain whether she considers that the power in section 22 of the Bill could be used to facilitate such a procedure.

I accept this recommendation.

I do not intend to include an “opt-in” provision in the Bill as I believe it would bring less clarity to the new consenting regime.

Section 25 of the Bill allows developers to submit a qualifying request to the Welsh Minister. The form of the request will be set in regulations and it will allow the developer to explain why they think their project should or should not be considered a SIP, similarly to other qualifying requests such as EIA screening request. It will then be for the Welsh Ministers to determine if a project is of national significance and should be SIP.

Recommendation 10. The Minister should clarify why the fields in section 17 do not have their associated criteria included on the face of the Bill.

I accept this recommendation.

Section 17 of the Bill is intended to amend Part 1 should there be a need to add a new significant infrastructure project or to amend the existing thresholds in the future. This section is to future proof the Bill in line with technological advances. To place criteria and thresholds in section 17 of the Bill would defeat the purpose of this power.

Recommendation 11. The Minister should bring forward amendments to section 25 to mandate the publication of guidance in relation to the circumstances when Welsh Ministers can use the section 22 or 24 powers of direction.

I accept this recommendation in part.

I fully intend to publish guidance on how these powers of direction will be applied but I do not believe this should be placed on the face of the Bill. It would also be inconsistent with the rest of the Bill.

Recommendation 12. The Minister should bring forward amendments to section 25 to specify a time limit within which the Minister must respond to a qualifying request from a developer for a direction under section 22 or 24.

I accept this recommendation in part.

Section 26 of the Bill already states that regulations may make provision about the time limits for making decisions following a request for directions. Therefore, there is no need to amend section 25 of the Bill.

Recommendation 13: The Minister should bring forward amendments to the Bill to provide more clarity in relation to consultation and publicity processes. The Minister should consider as a starting point, the provisions of the Planning Act 2008.

I accept this recommendation in principle.

I note the Committee's comments regarding the need to provide more clarity in relation to consultation and publicity processes. I have set out in detail the minimum requirements for consultation and engagement which would likely be included in subordinate legislation in the Statements of Policy Intent which accompany the Bill.

These statements are a starting point, which will be subject to wider public consultation as the subordinate legislation is developed. Therefore the detailed requirements may change based on any representations received from stakeholders.

I have adopted the approach of setting a minimum standard in subordinate legislation as it applies minimum requirements to all proposed developments captured by the Bill. This provides certainty and clarity to stakeholders and local communities on what they can expect as part of a consultation and engagement exercise. It also allows us to change and adapt to any new and emerging methods of engaging and consulting which could be incorporated into the new consenting process as a minimum standard at the earliest opportunity.

This goes beyond the Planning Act 2008, which sets no minimum standards and offers little certainty and consistency from one application to another.

However, I acknowledge the merit in prospective applicants holding discussions with relevant local planning authorities (“LPA”) on how they could potentially go beyond any minimum consultation and engagement requirements, particularly as they have knowledge of local community groups, suitable venues for events and other information which may be useful when undertaking consultation and engagement. Therefore, subject to identification of suitable body for offshore developments, I can commit to requiring prospective applicants to engage in discussions with the relevant LPA.

The Bill provides the power to specify in subordinate legislation minimum requirements for engagement and consultation. Given this, the requirement for a developer to engage with the LPA (and possibly another body) would be best placed in subordinate legislation, along with the minimum requirements.

Furthermore, I have always acknowledged the importance of engaging and consulting with as wide a range of stakeholders as possible, which is why I have requested any specific recommendations from the Committee and others. Unfortunately, such recommendations have yet to be made.

To make you aware I have also commissioned Planning Aid Wales to undertake research into this matter, with a view that specific recommendations will be made and incorporated into the consenting process.

Recommendation 14: The Minister should, in her response to this Report, set out the timelines for making regulations under section 30. Given the centrality of public consultation to the new regime, the Minister should publish and consult on the draft regulations.

I accept this recommendation in part.

Please see my response to recommendations 2 and 3 of the report which set out my proposals for providing a timetable for making and consulting on regulations, including those made under section 30 of the Bill.

Recommendation 15: The Minister should publish guidance for stakeholders on best practice and expected standards for community consultation.

I accept this recommendation.

I am committed to publishing guidance for prospective developers on best practice when undertaking consultation and engagement with communities and other stakeholders.

Recommendation 16. The Minister should, in response to this Report, set out the circumstances where she considers that an application could be determined by means of an inquiry.

I accept this recommendation.

I expect the majority of infrastructure applications to be examined by the written representations or hearing procedure. The written representation procedure is appropriate where the issues are not complex, can be clearly understood from the documents, do not need to be tested at an oral event and there is limited public interest.

For more complex applications a hearing provides an informal setting for addressing any issues identified by the Inspector. Those attending may bring professional advisors with them, however there will be no formal presentation of evidence, cross-examination or formal submissions.

An inquiry is the most formal of the procedures and is only likely to be arranged where there are complex issues or technical evidence. Although it is not a court of law, the proceedings will often seem to be quite similar. An inquiry is open to the public and provides for the investigation into, and formal testing of, evidence, usually through the questioning (cross examination) of expert witnesses and other witnesses. Parties may be formally represented by advocates. Therefore, this is likely to only be required for the largest or most technical of projects.

Recommendation 17. The Minister should bring forward amendments to ensure that Welsh Ministers are the default decision-makers for significant infrastructure projects. Notwithstanding this, the Minister should ensure the Bill contains provisions to enable the Welsh Ministers to direct that an examining authority has the function of deciding the application in certain, specified circumstances. Regulations should specify the criteria that must be applied in making such a direction.

I reject this recommendation.

The Welsh Ministers are already the default decision-makers for significant infrastructure projects.

Section 52(1) of the Bill provides that the examining authority has the function of deciding an application for infrastructure consent for a development of a kind specified in regulations. Section 52(2) of the Bill provides that the Welsh Ministers have the function of deciding any other application for infrastructure consent.

The effect of these provisions means that only projects specified in regulations are to be determined by the examining authority. If no regulations are made then all applications would be for the Welsh Ministers to determine.

Section 52(4) of the Bill specifies that the Welsh Ministers may direct that an examining authority has the function of deciding an application for infrastructure consent instead of the Welsh Ministers, or visa-versa. The effect of this provision means that only projects directed on an individual case-by-case basis would not be determined by the Welsh Ministers. If no Directions are made then all applications would be for the Welsh Ministers to determine.

Should evidence indicate that a certain type of application can, in the majority of instances, be determined by the examining authority then this application type can be specified in regulations, and it would not be reliant on an individual direction being made in each case.

I do not consider that regulations should specify the criteria that must be applied in making a direction under 52(4). The matters that must be considered would include:

- proposals giving rise to substantial controversy beyond the immediate locality;
- proposals which raise novel planning issues;
- proposals which raise significant legal difficulties;
- proposals to which a Central Government Department has objected.

Given the nature of these matters I consider they are more appropriate for guidance, which I intend to publish.

Recommendation 18. The Minister should publish the criteria for deciding on a direction under section 52.

I accept this recommendation.

I will publish the criteria for deciding whether to issue a direction under section 52 of the Bill. Similar criteria in relation to deciding whether to recover an appeal in the planning system is already published.

Recommendation 19. The Minister should explain why the issue of the primacy of infrastructure policy statements over national plans was still being considered after the introduction of the Bill.

I accept this recommendation.

I have carefully considered the various approaches available to provide a robust policy framework against which infrastructure applications can be considered, which has included a review of the evidence presented to the Committee.

During this review, further consideration was given to the relationship between the Wellbeing of Future Generations Act 2015 (“WFG Act”), the existing national plans and policies and any future infrastructure policy statements. In line with the principles of the WFG Act, my clear preference is for holistic rather than thematic policy documents and we already have a comprehensive suite of national planning policy. If new planning policy is required to help consider these schemes, the best place to provide this is in our existing policy documents.

These statements will be as supporting documents, filling policy gaps for new or novel issues. Given this, the likelihood of conflict between documents is low, and it is more appropriate for the decision maker to make a balanced judgement should one exist.

On this basis I am looking to bring forward an amendment that will provide the decision maker with the ability to make a balanced judgement on policy. This process of making balanced judgements on policy considerations for the determination of infrastructure applications is established practice, including for those schemes submitted to the Welsh Ministers under the current ‘Developments of National Significance’ process.

Recommendation 20. The Welsh Government should engage with stakeholders to address concerns about the need for infrastructure policy statements under section 53 to fill policy gaps in national plans.

I accept this recommendation.

We have a comprehensive suite of national policy in the form of the National Development Framework, the Marine Plan, Planning Policy Wales and supporting Technical Advice Notes. Existing planning policy provides a holistic approach which is well established whereby local issues and impacts are accounted for by decision makers weighing up the different thematic policy considerations on a case-by-case basis.

This provides for the necessary flexible and pragmatic approach to allow for infrastructure schemes to come forward in the right locations across Wales. If any gaps are identified which require the production of infrastructure policy statements in accordance with standard practice, all relevant stakeholders will be consulted.

Recommendation 21. The Minister should bring forward amendments to ensure that infrastructure policy statements are subject to consideration and agreement by the Senedd.

I reject this recommendation.

The intention is these statements will be prepared in exceptional circumstances where our existing plans and policies cannot be updated within required timescales to support the new infrastructure consenting regime. Where they may be prepared in future, they are not intended to be a long-term measure and existing policy documents will eventually be updated to incorporate their content.

The preparation of policy statements would follow a similar route to that taken for updates to Planning Policy Wales. Given the need to respond to new or novel issues and advancements in technology rapidly as well as the short lifespan of these documents, I do not consider it appropriate to require their consideration or approval by the Senedd.

Recommendation 22. Where the Welsh Ministers, in accordance with section 124, determine to designate a document as an infrastructure policy statement for the purpose of the Bill, the Minister should notify the Senedd. The Minister should ensure that the Senedd has considered and agreed the document before any such designation can be made.

I accept this recommendation in part.

I accept that Welsh Ministers should notify the Senedd when a policy statement is designated. I do not accept that these statements should be agreed by the Senedd for the reasons outlined in response to recommendation 21.

Recommendation 23. The Minister should bring forward amendments to set out on the face of the Bill a detailed timetable for the 52-week period for deciding on an application.

I accept the principle of this recommendation.

I believe the committee recognise that flexibility is needed in terms of the timetable for deciding on an application, as in recommendation 24 you have identified the need to consult on timeframes. The Bill already contains an overall timescale of 52 weeks and sub-timescales will be set in subordinate legislation.

I note the Committee in recommendation 24, suggest a Henry VIII power to change the timescale in future, mirroring the Planning Act 2008. However, the same effect can be achieved by setting sub-timescales in subordinate legislation, without using a Henry VIII power.

Recommendation 24. The Minister should consult stakeholders at the earliest opportunity to ensure that the timelines on the face of the Bill are appropriate. If, as a result of the consultation, she believes they need to be changed, that can be achieved through subordinate legislation.

I accept this recommendation in part.

I accept engagement with stakeholders on sub timescales should be undertaken. I do not agree with the recommendation to place a new Henry VIII power in the Bill when the overall timescale for deciding an application is already in the Bill.

Subordinate legislation will set sub-timescales and the same level of certainty will be achieved.

Recommendation 25. If the Minister determines to extend the 52-week period in accordance with section 56(2), the Minister must notify the Senedd by means of a written statement. The Minister should bring forward amendments at Stage 2 to give effect to this.

I agree with the recommendation.

An amendment to this effect will be prepared.

Recommendation 26: The Minister should set out the assistance that will be available to local planning authorities where enforcement proceedings are necessary.

I accept the recommendation.

I note the concerns raised by stakeholders during the evidence sessions and my officials contacted those bodies to gain further understanding of their concerns. I can confirm detailed and robust guidance will be made available to provide assistance to LPAs when carrying out any enforcement action.

Recommendation 27. The Minister should consider whether provisions on so-called “padlock powers” in relation to temporary stop notices should be included in the Bill.

I accept this recommendation.

I will consider the need for a padlock power in relation to temporary stop notices.

Recommendation 28. The Minister should clarify in guidance the routes that are open to the public to raise concerns about unauthorised development.

I accept this recommendation.

I will ensure guidance clarifies when enforcement action may be appropriate and necessary, as well as how members of the public can report any perceived breaches to the relevant enforcing authority.

Recommendation 29: The Minister should provide an update during the Stage 1 debate on discussions with consultees, local planning authorities, and other stakeholders about how full cost-recovery will be achieved.

I accept this recommendation.

During the Stage 1 debate I provided an update to the Senedd.

Discussions with all stakeholders has been ongoing throughout the development of the Bill, and during Stage 1 of Senedd scrutiny. I am committed to full cost recovery, and I anticipate this will be achieved through the provisions of chargeable services. I have no further detail at the moment on costs, as this is something that will be formally consulted on alongside subordinate legislation.

I welcome any views that stakeholders or Senedd members may have on this issue.

Recommendation 30. The Minister should explain her understanding of the meaning of a project of “real substance” in section 122, and set out her position on the level of fine that may be given for an offence under this section.

I accept this recommendation.

To demonstrate that the applicant is ‘considering a project of real substance’ the applicant, could, by way of example, provide the following information:

- Whether the applicant has given notification under section 29 of the Bill;
- Whether the applicant has requested pre-application Advice.
- Details about what stage in the pre-application consultation the Applicant has reached on the project; or,
- whether the applicant has requested a screening or scoping opinion.

In addition, to demonstrate that the proposed project is one ‘genuinely requiring entry onto the land’ the applicant should provide an explanation as to why entry is required. Evidence that the applicant may wish to provide to demonstrate this may include details about the proposed surveys and works.

There are no limits to the fine which may be imposed. However, the sentencing guidelines will provide information on the levels of fine to be imposed for a particular offence.

Our ref: JJ/PO/436/2023

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

18th December 2023

UK Emissions Trading Scheme (UK ETS) publications December 2023:

- **Free Allocation Review consultation;**
- **Future Markets Policy consultation;**
- **UK ETS Long-term Pathway; and**
- **UK ETS 2023 Review**

Dear Huw,

I am writing to update you on progress related to the UK Emissions Trading Scheme (UK ETS) following the Government Response to the “Developing the UK ETS” consultation, published in July this year. This response committed to a series of consultations to continue the development of the scheme.

The UK ETS Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive) have today published two consultation documents: Free Allocation Review; and Future Markets Policy. These consultations are key to ensuring the scheme continues to function as effectively as possible and encourage industry to transition to net zero. The Authority has also announced two other publications: the UK ETS Long-term Pathway and UK ETS 2023 Review. The Review is a retrospective assessment of how the scheme has operated thus far. The Long-Term Pathway sets a long-term trajectory of the scheme towards 2050.

The Free Allocation Review consultation is the second phase of the process of assessing free allocations, which are used as a way of protecting trade-exposed UK industry from global competitors not subject to carbon pricing (carbon leakage). The first phase looked at the top-down aspect of free allocations by the re-setting of the industry cap, thereby limiting the number of free allocations within the scheme. This was the top-down element as contained within the “Developing the UK ETS” consultation, for which a Government Response was published on 3 July. The consultation published today explores the bottom-up methodology and looks at ways to better target free allocations for those most at risk of

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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.

carbon leakage, making sure they are supported in the transition to net zero. It will allow the Authority to provide UK ETS participants with certainty over their future free allocations. This is particularly key for Wales as some of our industries, such as steel, are very trade exposed and harder to decarbonise. They currently receive high levels of support through free allocations. It is important we do not disadvantage Welsh industry; failing to do so will result in these industries relocating to countries that do not have the same climate ambitions, risking increased global emissions and an unfair transition to net zero as a result.

The Markets consultation aims to review ETS markets policy to ensure that it remains fit for purpose and is effective in managing the risks faced by an established and maturing scheme. Effective functioning of the market lies at the heart of the scheme, with auctions and trading of emissions allowances between participants generating the carbon price signal that will spur investment in decarbonisation. The consultation seeks views on the mechanisms and approaches used to keep the scheme functioning effectively.

The UK ETS Long-term Pathway is the Authority response to Mission Zero: Independent Review of Net Zero, chaired by Chris Skidmore MP. Whilst the independent review was commissioned by the UK Government, it contained recommendations for the UK ETS including setting a long-term pathway. The review received strong endorsement by all parts of the Authority regarding the importance of carbon pricing and of the central role the UK ETS will continue to play in enabling market-led delivery of net zero. The document published today therefore gives certainty that a net-zero aligned UK ETS will continue until at least 2050 and reaffirms plans to explore future development and expansion of the scheme.

Also published today is a review of the operation of the UK ETS since its launch – this review fulfils a statutory commitment. The review draws on previous consultations, market and compliance data, and an independent monitoring and evaluation study commissioned by the Authority. The Review concludes that UK ETS has been achieving its purpose and continues to be a key policy instrument for net zero. It also reiterates the Authority's commitments to build on the current operation with policy and operational improvements.

Overall, I believe that the UK ETS remains a highly influential policy lever in achieving net zero in Wales and provides a crucial platform for encouraging businesses to invest in and adopt decarbonisation technologies. The Government Response to the "Developing the UK ETS" also committed to further consultations on expanding the scheme, which the Authority intends to publish in due course. I will of course write to you again when these are published. Collectively, the information gathered will aid us in refining the scheme, allowing us to create more robust mechanisms that will incentivise innovation, drive emission reductions, and secure a resilient, sustainable future for Wales.

I am copying this letter to Llyr Gruffydd, Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref qA1762325

Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
Welsh Parliament
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19 December 2023

Dear Huw,

Thank you for your letter of 28 November requesting more information on the Elections and Elected Bodies (Wales) Bill, following my appearance at the Legislation, Justice and Constitution Committee on 20 November. I have provided the detail below.

1. You stated that some of the regulation-making powers in the Bill are more curtailed, particularly in areas where they relate to the creation of offences. Could you explain whether your consideration of a justice impact assessment during the Bill's development resulted in any changes to its provisions?

The Justice Impact Assessment for the Bill considered two areas where offences were created or impacted upon. This included the new offence which was part of provisions regulating how third parties may incur controlled expenditure during a regulated period and the re-drafting of the undue influence offence to clarify and modernise the language. The Justice Impact Assessment was shared with the Ministry of Justice which concurred with our assessment that the impact of both changes would have no or negligible impact on the justice system. No changes to the policy were considered necessary. Any regulations developed as a consequence of the regulation making powers included in the Bill would be subject to a separate Justice Impact Assessment and consultation with the Ministry of Justice, where those regulations are anticipated to impact on the justice system.

2. You stated that, while it is your intention that the Electoral Management Board will maintain the Welsh elections information platform, you have not specified as such on the face of the Bill as it may become apparent that a more appropriate body should undertake this function. Could you provide an example of such a body?

We consider that the EMB is likely to be the natural host for the platform, however, the EMB has not yet been established and so we should bear in mind the possibility of the EMB not

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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.

being able to host the platform, or of a better alternative being identified. Given the host will be specified in the regulations made under section 27, hosting will inevitably be for the Senedd to take into account when it considers those regulations.

The Bill has been drafted to make clear that the Welsh Ministers would be responsible for ensuring the sustainability of any platform. There is scope for the host of the platform to be revisited in the future, taking into account the fast-moving technological environment, the opportunity to learn lessons from experience, and the views of the EMB itself once established. The provisions therefore provide flexibility for the future, in particular lessons from evaluations of elections, while ensuring that a platform is provided.

3. Section 5(4) provides for pilot regulations to mirror the registration without application provisions in section 3; however, the coming into force of section 3 is not triggered by a requirement to pilot it. Could you clarify whether you considered making the ability to bring section 3 into force be conditional (for example, no earlier than the conclusion of at least one relevant pilot) and if so, why considered not doing so?

While I believe piloting automatic registration will result in the best possible system for the elector, I do not believe that the Bill should include a provision which specifically prevents the commencement of section 3 before the pilots have been completed. I have made a commitment to pilot automatic registration before commencing section 3 and will ensure that these pilots go ahead with a full and proper evaluation before rolling out the system. Therefore, such a restriction would not only be unnecessary given my commitment, but it would be predicated on the completion of a process rather than a thorough evaluation that will inform the implementation of automatic registration.

4. It appears that the Welsh Ministers can use the power under section 5 to trial the amended registration provisions introduced by section 3(2); however, there is subsequent power in section 8 to change the power in section 5(3). Could you clarify in what circumstances do you envisage such a power being used?

The power under section 8(1) enables the Welsh Ministers to make regulations to add to the list of relevant electoral matters in section 5(3), or amend or remove matters previously added through regulations. This power is to allow issues not currently considered by the Welsh Government or the Senedd to be possibly piloted in the future, subject to the scrutiny and evaluation processes set out in the Bill. Regulations may only be made under section 8(1) following the approval of the Senedd. However, this power cannot be used to change the voting system for returning Senedd Members, members of a principal council, or members of a community council.

5. Could you clarify why, by virtue of section 26 of the Bill, are you making provision to change the existing regulation-making power in section 1 of the Local Government (Wales) Measure 2011 to a direction-making power?

Section 1 of the Measure currently requires the questions and format of the survey to be set out in regulations. In reality, this has meant that any changes to the survey, either in terms of presentation or the questions included, has entailed using Welsh Ministers' regulation-making powers. This has attracted criticism about the flexibility to amend the surveys in a timely fashion and the disproportionate legislative approach which has had to be adopted in each case.

The approach proposed through the Bill is to remove this requirement and enable a more flexible and agile approach to the consideration and decisions about the survey contents

and format. This approach has been welcomed by partners, especially as the scope of the survey set out in the Measure will remain as at present.

The Bill provides for future surveys to comprise two parts. The first part will be a core set of questions which will apply to all local authorities in Wales, allowing important comparisons to be made from responses across all parts of Wales. The second part would be at the discretion of returning officers, which can reflect the local context and priorities.

6. Could you clarify which functions you envisage will be conferred on persons or categories of persons by regulations made under section 27(4), and could you clarify why those functions are not included on the face of the Bill?

The detailed rules underpinning the Welsh elections information platform will be set out in regulations made under section 27. Although the Government's intention is that the Welsh Ministers should be ultimately responsible for ensuring the platform is established, the involvement of other stakeholders will be crucial in ensuring the platform operates fully. The purpose of section 27(4) reflects that situation: in addition to being used to specify the operational host of the platform, it may also be necessary embed elements of the platform into existing elements of the electoral process. The balance between what is on the face of the Bill and will be in regulations ensures flexibility to take account of the fast-moving legal and technological context, with the appropriate scrutiny in place. The balanced approach has been specifically welcomed by civil society organisations.

7. Could you clarify which functions you envisage will be conferred on persons by regulations made under section 29(8), and could you clarify why those functions are not included on the face of the Bill?

Section 29 of the Bill provides for financial assistance schemes to be made available to groups of people prescribed in regulations who are seeking to stand for elected office. One such scheme (section 29(2)) will be for disabled people, building on the pilot Access to Elected Office Fund. Section 29(1) enables other such schemes to be put in place by Welsh Ministers when evidence identifies barriers of additional costs that are experienced by individuals of a particular group of underrepresented persons which prevent them from standing for elected office.

Section 29(8) provides for Welsh Ministers to set out the detailed arrangements for each separate financial assistance scheme including those who are to administer the scheme, the components of the scheme and the reporting arrangements required for the purpose of audit. As individual schemes will target different barriers to participation it is appropriate the details are set out in regulations rather than on the face of the Bill. This will enable greater flexibility to ensure the details of each scheme underpins its purpose and enables actions to be taken to address the barriers identified.

8. The regulation-making power in section 41 is subject to the negative procedure. Given that the power can be used to amend primary legislation, please can you explain why it is not subject to the affirmative resolution?

While officials have worked closely with the Local Democracy and Boundary Commission for Wales (the Commission) to ensure the timescales for conducting reviews as introduced in the Bill are realistic, this provision provides Welsh Ministers with the flexibility required to amend the review period (if necessary) in light of the Commission's experiences in completing electoral arrangement reviews after the Bill receives Royal Assent.

The ability of Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantively affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021 – and we therefore consider the use of the negative procedure to be appropriate and proportionate.

9. There appears to be a new regulation-making power contained in section 51 of the Bill which does not appear in the table of delegated powers in the EM. Please can you describe the power, how it will be used and the reasons for the procedure chosen?

I apologise for the omission. Section 51 enables Welsh Ministers to amend the review period for the conduct of community electoral arrangement reviews. It is a similar provision to that set out in section 41 of the Bill and ensures consistency of approach between the different types of review.

Amending the review period and re-setting the start date of a review period is a technical detail which may be necessary in the event of a disruption to a review programme. Examples of situations which could trigger the use of this power include a public health emergency, a change in the date for local government elections or to provide greater synergy between the review periods for both principal area and community electoral arrangements.

The ability of the Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantially affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting community electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021.

The intention is that the negative procedure will also apply to changes to the review period, as it applies to the Commission, in regulations made by the Welsh Ministers under section 41 of the Bill. Accordingly, we consider that the use of the negative procedure to make changes to the review period for community electoral arrangement reviews under section 51 of the Bill is also appropriate and proportionate, as to do otherwise would create an anomaly where the review period for the Commission could be revised using the negative procedure and that for principal councils would be required to use the affirmative procedure. The effect of that would be to require a more detailed regulatory making procedure to change the review period for community electoral arrangement reviews than would be required for principal area electoral arrangement reviews.

10. You also stated that you intend to improve the accessibility of the law in respect of devolved elections. Could you therefore clarify why provisions in respect of disqualification from being a Member of the Senedd are included within this Bill, instead of within the Senedd Cymru (Members and Elections) 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 (Wales) 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.

During the discussion, I was also asked to confirm the position in relation to the method and process of counting at a Welsh election, from a manual to an electronic count. I can confirm that this can be undertaken through secondary legislation. For Welsh Local Government Elections this is enabled through section 36A of the Representation of the People Act 1983. For Senedd Elections this is enabled through sections 13 and 157 of the Government of Wales Act 2006.

I hope that this letter has sufficiently responded to your queries, and I look forward to receiving the Committee's report on the Bill in due course.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

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

Mick Antoniw MS
Counsel General and Minister for the Constitution

28 November 2023

Dear Mick,

Elections and Elected Bodies (Wales) Bill

Thank you for attending the meeting of the Committee on 20 November to give evidence in respect of the Elections and Elected Bodies (Wales) Bill. To assist our scrutiny of the Bill, we would be grateful if you could provide further detail about some matters.

1. You stated that some of the regulation-making powers in the Bill are more curtailed, particularly in areas where they relate to the creation of offences. Could you explain whether your consideration of a justice impact assessment during the Bill's development resulted in any changes to its provisions?
2. You stated that, while it is your intention that the Electoral Management Board will maintain the Welsh elections information platform, you have not specified as such on the face of the Bill as it may become apparent that a more appropriate body should undertake this function. Could you provide an example of such a body?
3. Section 5(4) provides for pilot regulations to mirror the registration without application provisions in section 3; however, the coming into force of section 3 is not triggered by a requirement to pilot it. Could you clarify whether you considered making the ability to bring section 3 into force be conditional (for example, no earlier than the conclusion of at least one relevant pilot) and if so, why considered not doing so?
4. It appears that the Welsh Ministers can use the power under section 5 to trial the amended registration provisions introduced by section 3(2); however, there is a

subsequent power in section 8 to change the power in section 5(3). Could you clarify in what circumstances do you envisage such a power being used?

5. Could you clarify why, by virtue of section 26 of the Bill, are you making provision to change the existing regulation-making power in section 1 of the Local Government (Wales) Measure 2011 to a direction-making power?
6. Could you clarify which functions you envisage will be conferred on persons or categories of persons by regulations made under section 27(4), and could you clarify why those functions are not included on the face of the Bill?
7. Could you clarify which functions you envisage will be conferred on persons by regulations made under section 29(8), and could you clarify why those functions are not included on the face of the Bill?
8. The regulation-making power in section 41 is subject to the negative procedure. Given that the power can be used to amend primary legislation, please can you explain why it is not subject to the affirmative resolution?
9. There appears to be a new regulation-making power contained in section 51 of the Bill which does not appear in the table of delegated powers in the EM. Please can you describe the power, how it will be used and the reasons for the procedure chosen?
10. You also stated that you intend to improve the accessibility of the law in respect of devolved elections. Could you therefore clarify why provisions in respect of disqualification from being a Member of the Senedd are included within this Bill, instead of within the Senedd Cymru (Members and Elections) Bill?

During the session you also agreed to provide a note outlining the Welsh Ministers' existing powers to make secondary legislation to provide for the electronic counting of votes in devolved elections.

I would be grateful to receive your response by 19 December 2023.

I am copying this letter to the Chair of the Local Government and Housing Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies
Chair



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

E-bost: seneddljc@senedd.wales

19 December 2023

Dear Huw

I am grateful to your Committee's officials for drawing our attention to the fact that a reply had not been received to a letter from you of September 2022. I apologise that a reply did not reach you; outlined below is a response, initially drafted at the time, to points raised in your letter.

1. Could you provide further information about the changes the Regulations would make to the exceptions in the United Kingdom Internal Market Act 2020 and the impact this would have on devolved functions and the ability of the Senedd to legislate?

As noted in my letter dated 22 August 2022, the effect of these Regulations is to amend Schedule 2 (Services Exclusions) to UKIMA. The regulations:

- Amend the wording of the existing social services exclusions to clarify the scope;
- Add new exclusions to Part 1 (mutual recognition) for gas, electricity, water supply and sewerage services, waste sector services, qualifications-awarding services and heat network services; and
- Remove existing exclusions for financial services, postal services, electronic communications services, services of temporary work agencies, and services of a statutory auditor from their respective entries in Part 1 (mutual recognition) and Part 2 (non-discrimination).

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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 proposed removal of existing exclusions (for example postal services, financial services) do not relate to devolved matters and there is no direct impact on devolved competence.

2. Can you clarify why you did not engage with Members before making the decision to consent?

At the time when the consent request came to us, there was insufficient time to engage Senedd members as the UK Government aimed to lay the regulations in July of that year. However, I did try to inform you at the earliest opportunity that I had given my consent. We have made a commitment to ensure the Senedd is informed, but on this occasion, there were extenuating circumstances due to the tight turnaround.

3. It appears that the Scottish Government has used the consultation run by the UK Government to seek exclusions from the 2020 Act. Did the Welsh Government respond to this consultation or consider it an avenue to seek exclusions from the Act?

We were consulted by the UK Government in the course of their consultation to seek exclusions from the UKIMA. Rather than providing a formal response to the consultation, officials engaged across the Welsh Government and did not identify areas for exclusion. This is in the context of our position that the UK Internal Market Act 2020 does not constrain the ability of the Senedd to legislate. The UK Government confirmed they engaged directly with Welsh stakeholders in relation to their consultation.

4. At the time of issuing this letter the Regulations have yet to be made. Could you inform the Committee and Senedd Members when the Regulations are made?

The [Regulations](#) were laid before the House of Commons and the House of Lords on the 20th July 2023.

Yours sincerely,



Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Vaughan Gething MS
Minister for Economy

22 September 2022

Dear Vaughan

**The United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Services)
Regulations 2022**

Thank you for your letter of 22 August in which you confirm that you have given your consent for the Secretary of State for Business, Energy and Industrial Strategy to make the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Services) Regulations 2022 (the Regulations).

The Committee has agreed that I should write to you to seek clarification on a number of matters. I would be grateful for a response to the following questions by 29 September 2022:

1. Could you provide further information about the changes the Regulations would make to the exceptions in the United Kingdom Internal Market Act 2020 and the impact this would have on devolved functions and the ability of the Senedd to legislate?
2. Can you clarify why you did not engage with Members before making the decision to consent?
3. It appears that the Scottish Government has used the consultation run by the UK Government to seek exclusions from the 2020 Act. Did the Welsh Government respond to this consultation or consider it an avenue to seek exclusions from the Act?

4. At the time of issuing this letter the Regulations have yet to be made. Could you inform the Committee and Senedd Members when the Regulations are made?

Your sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Agenda Item 7.7



Department for Levelling Up, Housing & Communities

Rt Hon Michael Gove MP

Secretary of State for Levelling up, Housing & Communities

Minister for Intergovernmental Relations

2 Marsham Street

London

SW1P 4DF

Clare Adamson MSP
Convener, Constitution, Europe, External
Affairs and Culture Committee

19th December 2023

Dear Clare,

Thank you for your letter of 7 November 2023, following the 27 October meeting of the Inter-Parliamentary Forum.

As you know, Common Frameworks are jointly agreed ways of working, and no one government is in a position to respond to a recommendation for a change to the programme without the consensus of all parties. My officials have therefore engaged with devolved administration officials regarding the position set out below.

I share the view that mutual transparency between Government and the devolved administrations is crucial to both sound intergovernmental working and for effective scrutiny of intergovernmental working. As you observe, the management of the regulatory picture across the UK needs good intergovernmental working, given that a substantial part of the regulatory portfolio is within devolved competence. This is exactly why the Common Frameworks programme is so important, and why I am both so pleased to see, and encourage, the embedding of the programme across the four governments, in my capacity as Minister for Intergovernmental Relations.

In terms of Common Frameworks reporting, the agreed annual reporting for fully implemented Frameworks will provide a key tool for enabling the scrutiny of the programme by both legislatures and indeed the Inter-Ministerial Standing Committee. The second report for the Hazardous Substances Common Framework will be issued in due course. Furthermore, almost all Common Frameworks will be reviewed on their first year of full operation, and most review reports (including any plans for amending a Common Framework) will be shared with the legislatures.

Any decision to report to legislatures on the provisional Common Frameworks would require the agreement of constitutional ministers in the Government and the devolved administrations. This was the case previously when agreement was reached for annual reporting on fully implemented Frameworks. As you are aware, however, the Northern Ireland Executive is not currently in a position to provide this. Though Common Frameworks have been operating provisionally for some time, my department is currently conducting an evaluation of the entire programme, which is likely to be published in the Spring. This has involved significant input from both the relevant Government and devolved administrations departments, which would be duplicated by a further request for reporting. It is preferable to focus current resources on further embedding Frameworks into business as usual policy decision-making within the four governments. This does not, however, preclude individual administrations updating their

respective legislatures on the operations of individual Frameworks where required through the usual processes.

The Government is working closely with the Northern Ireland Civil Service and relevant partners to deliver the return of the Northern Ireland Executive. Officials have been working to ensure that Common Frameworks that have been scrutinised in all legislatures are able to be provided to the Executive (and other governments) for final agreement as soon as that happens. Once that has occurred the reporting period will commence, and reports will be provided after that twelve month period expires.

With every good wish,

A handwritten signature in black ink, appearing to read "Yours, Michael", with a long horizontal stroke at the end.

RT HON MICHAEL GOVE MP
Secretary of State for Levelling Up, Housing & Communities
Minister for Intergovernmental Relations



The Scottish Parliament
Pàrlamaid na h-Alba

Rt. Hon Michael Gove MP,
Secretary of State and Minister for
Intergovernmental Relations

The Scottish Parliament
EDINBURGH
EH99 1SP

By email

CEEAC.Committee@parliament.scot

7th November 2023

Dear Secretary of State,

Common Frameworks Reporting

The Interparliamentary Forum held its fourth meeting in the Scottish Parliament on 27th October and we agreed the statement published here: [aaa.pdf \(parliament.scot\)](#)

We discussed on-going challenges of intergovernmental relations including operation of the UK Internal Market Act, and the scrutiny of intergovernmental working. We noted the increased need for effective intergovernmental working in managing the regulatory environment across the UK outside of the EU continues to raise substantial challenges in reaching agreement between the governments of the UK

We further note that while there has been some progress in addressing these challenges through increased transparency in the reporting of intergovernmental activity, there remain a number of scrutiny gaps. Across each of our legislatures, concerns have been raised in relation to the transparency and future scrutiny of Common Frameworks.

We recognise there is an existing intergovernmental agreement to provide an annual report for each Framework once these have been fully implemented. However, only one Framework has been fully agreed and there has been no reporting on the operation of the other Frameworks.

We agreed to write to you (cc'd to the Cabinet Secretary for the Constitution, External Affairs and Culture and the Counsel General and Minister for the Constitution) requesting that annual reports be provided on provisional Frameworks in addition to those fully agreed.

We would welcome a response by 1 February 2024 which we will consider at the next meeting of the Forum.

Yours sincerely

A handwritten signature in black ink that reads "Clare Adamson". The signature is written in a cursive, slightly slanted style.

Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee

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

Agenda Item 7.8

Llywodraeth Cymru
Welsh Government

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

Email - Llywydd@senedd.wales

22 December 2023

Dear Elin,

The UK Government introduced the Victims and Prisoners Bill to the House of Commons on 29 March 2023. The Bill completed its passage through the House of Commons on 4 December 2023 and will enter House of Lords Committee Stage on 24 January 2024.

On introduction the Bill included a wide range of measures, including placing the Victims' Code on a statutory footing, issuing guidance in relation to Independent Domestic Violence Advisors and Independent Sexual Violence Advisors, as well as introducing the role of Independent Public Advocates. These measures were considered to be within competence of the Senedd and I laid a Legislative Consent Memorandum (LCM) on 19 May 2023 setting out the Welsh Government's position on these provisions.

My officials have been engaging with officials in the Home Office and the Ministry of Justice throughout the passage of the Bill and monitoring amendments. During the House of Commons Report Stage 151 government and non-government amendments were tabled and accepted. Officials only had sight of the amendments to the Bill once they had been tabled. Whilst my officials have continued to consider if these amendments fall within competence of the Senedd or substantially change the advice set out in the LCM laid on 19 May, it has not been possible to analyse these and lay a supplementary LCM within the two-week window set out in Standing Orders.

It is expected that further amendments will be made to the Bill during the House of Lords Committee Stage, including potential Government amendments to modify or overturn the previously accepted non-Government amendment related to the Infected Blood Inquiry. We are also continuing to liaise with UK Government on the issues previously subject to legislative consent memoranda outlined above, and expect further amendments on some of those issues during Committee Stage.

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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.

I therefore expect to lay a further supplementary LCM on the Bill following Committee Stage in the Lords, setting out the latest situation on relevant amendments ahead of the expected legislative consent motion debate. Given the timescales, that supplementary LCM will also cover any relevant amendments made at Commons Report Stage. Our current expectation is for the consent motion debate to take place in late February.

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

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first name.

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

Rt Hon Jacob Young MP
Minister for Levelling Up

Llywodraeth Cymru
Welsh Government

PSJacobYoung@levellingup.gov.uk

22 December 2023

Dear Jacob

I am writing in response to your letter of 27 November 2023.

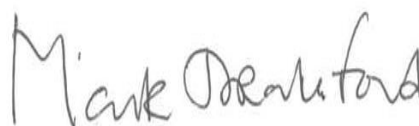
We remain of the view that the ground covered by 'levelling-up' is substantially devolved and actions by the UK Government to deliver on these missions creates confusion and inefficiency. In Wales we already have a comprehensive legislative framework for long-term systemic policy making through the Well-being of Future Generations (Wales) Act 2015. We have a set of seven long-term wellbeing goals that provide a legally binding common purpose not just for Government but 47 other public bodies serving communities across Wales. The Welsh Government has set out its detailed objectives for improving the economic, social, environmental and cultural well-being of Wales in our Programme for Government.

We continue to believe that the UK Government should pass on to the Welsh Government resources available for devolved responsibilities which you have aimed to deliver through the Shared Prosperity, Levelling Up funds and smaller schemes like the Long term Plan for Towns. Your refusal to do so has led, we believe, to an ineffective and wasteful approach.

It is unfortunate that the UK Government persists in using the UK Internal Market Act to bypass devolved governments and the scrutiny of our legislatures to spend directly in devolved areas of responsibility. This has created duplication, poor value for money and a confused funding landscape which fails to meet the distinct needs of Welsh communities.

I would draw your attention to the reports of the relevant Senedd Committee's on the Levelling-up and Regeneration Bill, in particular the report of the Legislation, Justice and Constitution Committee and their recommendations on Part 1 Levelling-up Missions. I have copied this letter to the Chair of the Legislation, Justice and Constitution Committee given their continued interest in the implementation of Part 1 and its affect on Wales.

Yours sincerely



MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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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.

Agenda Item 7.10



Department for
Business & Trade

Kevin Hollinrake MP
Parliamentary Under Secretary of State
Department for Business and Trade

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United Kingdom

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Welsh Parliament
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W: www.gov.uk

Our ref: MCB2023/06590

January 2nd 2024

Dear Huw,

Thank you for your correspondence of 1st November to Defra Ministers, regarding consent procedures between the UK and Welsh Governments on statutory instruments made under the Retained EU Law (Revocation and Reform) Act 2023. I am responding because of my role leading the REUL SI programme.

I can address your committee's first three questions together. Last year in May, the Secretary of State for Business and Trade and the Minister for Intergovernmental Relations wrote to the Counsel General to confirm that UK Government Ministers did not normally intend to use the powers under the REUL Act in devolved areas without the agreement of the Welsh Government. They added that where a UK Minister intends to exercise the powers in devolved areas, agreement would be sought via exchange of letters. This commitment covered all UK Ministers, and as such there is no need for departmental specific arrangements, although the Brexit Opportunities Unit (Now the Smarter Regulation Directorate) have made sure all departments are aware of this commitment and the process for meeting it.

On questions four and five raised by your committee, I should like to emphasise that the UK Government remains committed to the devolution settlement and, although the Sewel Convention and related procedures and practices only apply to primary legislation, we take seriously any commitments to seek the agreement of the Welsh Government.

Given the close working between our respective officials on the content of SIs before ministers are approached for consent, we hope that the Welsh Government will usually feel able to provide agreement to SIs when this is sought.

However, in the unlikely event that such agreement is not reached, our first port of call would be to understand the reasons why, and to explore alternative ways forward together.

This letter is also copied to Lord Benyon, Rebecca Pow MP, the Secretary of State for Wales and the Minister for Intergovernmental Relations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin', with a stylized, cursive script.

Kevin Hollinrake

Parliamentary Under Secretary of State (Minister for Enterprise, Markets and Small Business) at the Department for Business and Trade



Department
for Environment
Food & Rural Affairs

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Huw Irranca-Davies

Our ref: PO2023/21461/SW

seneddLJC@senedd.wales

14 December 2023

Dear Huw Irranca-Davies,

Thank you for your email of 1 November 2023 to Rebecca Pow MP and the Rt Hon Lord Benyon, about the Retained EU Law (Revocation and Reform) Act 2023. I apologise for the delay in responding.

The issues you have raised fall within the responsibility of Department for Business and Trade. We have therefore, transferred your letter to the DBT Correspondence Section, for the department to reply to you directly.

If you wish to contact the Department directly you can find their contact details here:
<https://www.gov.uk>

Yours sincerely,

Sharon Watkins
Ministerial Contact Unit

The Rt Hon Lord Benyon,
Minister of State (Minister for Biosecurity, Marine and Rural Affairs)

Rebecca Pow MP,
Parliamentary Under Secretary of State (Minister for Environmental
Quality and Resilience)

1 November 2023

Dear both,

Retained EU Law (Revocation and Reform) Act 2023

The Legislation, Justice and Constitution Committee monitors matters relevant to devolution in Wales and constitutional and external affairs which have an impact on Welsh devolution.

We have closely monitored the UK Parliament's scrutiny and passing of the Retained EU Law (Revocation and Reform) Bill – now 2023 Act - and, in parallel, considered the Welsh Government's legislative consent memoranda for the Bill.

Under the terms of an Inter-institutional relations agreement we have in place with the Welsh Government, in recent weeks we have received correspondence which has informed us that you have separately written to Welsh Ministers seeking their consent before Regulations are made, covering devolved areas, under powers in the 2023 Act.

On 1 September 2023, Julie James MS, Minister for Climate Change, wrote to us in respect of consent being sought by the Rt Hon Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs, for the making of the Fluorinated Greenhouse Gases (Amendment) Regulations 2023. We wrote to the Minister for Climate Change on 15 September with a series of questions, and received her response on 27 September.

On 13 September 2023, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, wrote to us in respect of consent being sought by Rebecca Pow MP, Minister for Environmental Quality and Resilience, for the making of the Plant Protection Products (Miscellaneous Amendments)

Regulations 2023. We wrote to the Minister for Rural Affairs and North Wales, and Trefnydd on 22 September with a series of questions, and received her response on 3 October.

You may appreciate that one of the reasons for our interest in these matters is that the 2023 Act contains no requirement for UK Ministers, when exercising their powers under the 2023 Act, to seek the consent of the Welsh Ministers if and when making regulations containing provision within the devolved competence of the Welsh Ministers as defined by paragraph 2(3) of Schedule 4 to the 2023 Act.

In a letter to us on 12 October 2023, following our request for further information, Mick Antoniw MS, Counsel General and Minister for the Constitution, told us "No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act".

Given that the letters from the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd appear to be examples of a working consent-seeking process between UK Ministers in the Department for Environment, Food and Rural Affairs (DEFRA) and relevant Welsh Ministers, we would welcome clarity and any details you may be able to provide from your perspective as DEFRA Ministers.

I would be grateful if you could provide a response to the questions we ask the annex to this letter by 21 November 2023.

I am copying this letter to the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies
Chair



Annex

1. Have you, as Ministers in the Department for Environment, Food and Rural Affairs (DEFRA), entered into a localised agreement and/or arrangement with relevant departments in the Welsh Government about the terms of when and how you will engage with and seek the informal consent of Welsh Ministers before making regulations in devolved areas under the 2023 Act?
2. If a DEFRA-specific agreement and/or arrangement is in place with Welsh Government departments, are you able to provide us with the specific details?
3. Are you aware of any other UK Government departments having entered into similar agreements and/or arrangements with the Welsh Government?
4. In her letter to us on 27 September 2023, in relation to the Fluorinated Greenhouse Gases (Amendment) Regulations 2023, the Minister for Climate Change said “If Welsh Ministers had refused consent, or not confirmed their decision in the requested timescales, the Regulations would not have been laid before the UK Parliament.” This could be interpreted as the Welsh Ministers having a power of veto over whether UK Ministers proceed with their regulatory intentions. What is your view on this matter and, in particular, is this your understanding of the terms under which you sought consent for the making of these Regulations?
5. In her letter to us on 3 October 2023, in relation to the Plant Protection Products (Miscellaneous Amendments) Regulations 2023, the Minister for Rural Affairs and North Wales, and Trefnydd said “Whilst there is not a legal requirement to seek consent, the UK Government have sought the Welsh Ministers consent in accordance with the convention on legislating in devolved areas.” This appears to apply the terms of the Sewel Convention to the making of subordinate legislation. What is your view on this matter and, in particular, is this your understanding of the terms under which you sought consent for the making of these Regulations?



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/3095/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
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Cardiff
CF99 1SN
SeneddLJC@senedd.wales

02 January 2024

Dear Huw,

Written Response by the Welsh Government to the report of the Legislative Consent Memorandum on Economic Activity of Public Bodies (Overseas Matters) Bill.

I would like to thank the members of the Legislation, Justice and Constitution Committee for their time in considering the complex issues involved and for producing a fully comprehensive report on the legislative consent memorandum for the Economic Activity of Public Bodies (Overseas Matters) Bill.

I am pleased to see the Committee's conclusions are in line with ours. I will continue to take steps to press UK Government on the matters concerning the compatibility of the Bill with international law and the European Convention on Human Rights which are of significant importance.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

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

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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.

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Agenda Item 11

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

Document is Restricted



Ein cyf/Our ref MA/CG/2145/23

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

11th December 2023

Dear Huw,

Following the introduction of the **Senedd Cymru (Members and Elections) Bill** and the **Elections and Elected Bodies (Wales) Bill** into the Senedd, please find attached a copy of a joint schedule of amendments for the two Bills.

The document has been produced to address comments made by the committee on the two Bills during Stage 1 scrutiny, and to aid the Committee's understanding of the joint effects of the Elections and Elected Bodies (Wales) Bill and the Senedd Cymru (Members and Elections) Bill (subject to their enactment) on the following pieces of legislation:

- Political Parties, Elections and Referendums Act 2000;
- Government of Wales Act 2006;
- Local Government (Democracy) (Wales) Act 2013; and
- Local Government and Elections (Wales) Act 2021.

This document only covers legislation that would be amended by both Bills (if enacted). For legislation that would be amended by just one of the Bills (if enacted), please refer to the separate explanatory memorandums.

This schedule will be updated as necessary during the passage of the legislation.

I am copying this letter to the chairs of the Reform Bill Committee and the Local Government and Housing Committee.

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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.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

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