

Agenda – Legislation, Justice and Constitution Committee

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| Meeting Venue: | For further information contact: |
| Committee Room 3, Senedd | P Gareth Williams |
| Meeting date: 5 February 2024 | Committee Clerk |
| Meeting time: 13.30 | 0300 200 6565 |
| | SeneddLJC@senedd.wales |

Hybrid

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Residential Outdoor Education (Wales) Bill: Evidence Session

(13.30 – 14.30)

(Pages 1 – 6)

Sam Rowlands MS, Member in charge of the Bill

Manon Huws, Legal Services, Senedd Cymru

Jennifer Cottle, Legal Services, Senedd Cymru

Gareth Rogers, Bill Manager, Senedd Cymru

Dr Dave Harvey, Senedd Member Support Staff

[Residential Outdoor Education \(Wales\) Bill, as introduced](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)–05–24 – Paper 1 – Briefing paper

LJC(6)–05–24 – Paper 2 – Letter from Sam Rowlands MS to the Chair of the Children, Young People and Education Committee, 23 January 2024

Break



(14.30 – 14.35)

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(14.35 – 14.40)

(Page 7)

Attached Documents:

LJC(6)–05–24 – Paper 3 – Draft report

Affirmative Resolution Instruments

3.1 SL(6)449 – The Non–Domestic Rating (Multiplier) (Wales) Regulations 2024

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

(14.40 – 14.45)

Made Negative Resolution Instruments

4.1 SL(6)447 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2024

(Pages 8 – 10)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–05–24 – Paper 4 – Draft report

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

(14.45 – 14.50)

5.1 SL(6)440 – The Agricultural Holdings (Units of Production) (Wales) Order 2024

(Pages 11 – 13)

Attached Documents:

LJC(6)-05-24 – Paper 5 – Report

LJC(6)-05-24 – Paper 6 – Welsh Government response

5.2 SL(6)441 – The Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024

(Pages 14 – 20)

Attached Documents:

LJC(6)-05-24 – Paper 7 – Report

LJC(6)-05-24 – Paper 8 – Welsh Government response

5.3 SL(6)444 – The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024

(Pages 21 – 24)

Attached Documents:

LJC(6)-05-24 – Paper 9 – Report

LJC(6)-05-24 – Paper 10 – Welsh Government response

6 Instruments that raise issues to be reported to the Senedd under Standing Order 21.7 – previously considered

(14.50 – 14.55)

6.1 SL(6)435 – Part 8 Code of Practice – Role of Director of Social Services

(Pages 25 – 31)

Attached Documents:

LJC(6)-05-24 – Paper 11 – Report

LJC(6)-05-24 – Paper 12 – Welsh Government response

7 Inter-Institutional Relations Agreement

(14.55 – 15.00)

7.1 Correspondence from the Minister for Economy: United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023

(Pages 32 – 34)

Attached Documents:

LJC(6)–05–24 – Paper 13 – Letter from the Minister for Economy, 30 January 2024

LJC(6)–05–24 – Paper 14 – Letter to the Minister for Economy, 18 January 2024

8 Papers to note

(15.00 – 15.05)

8.1 Correspondence from the Counsel General and Minister for the Constitution: Welsh Government response to the Committee's report on the Senedd Cymru (Members and Elections) Bill

(Pages 35 – 42)

Attached Documents:

LJC(6)–05–24 – Paper 15 – Letter from the Counsel General and Minister for the Constitution, 26 January 2024

8.2 Correspondence from the Counsel General and Minister for the Constitution to the Reform Bill Committee: Welsh Government response to the Committee's report on the Senedd Cymru (Members and Elections) Bill

(Pages 43 – 62)

Attached Documents:

LJC(6)–05–24 – Paper 16 – Letter from the Counsel General and Minister for the Constitution to the Reform Bill Committee, 26 January 2024

8.3 Correspondence from the Counsel General and Minister for the Constitution to the Finance Committee: Welsh Government response to the Committee's report on the Senedd Cymru (Members and Elections) Bill

(Pages 63 – 68)

Attached Documents:

LJC(6)-05-24 – Paper 17 – Letter from the Counsel General and Minister for the Constitution to the Finance Committee, 26 January 2024

8.4 Welsh Government consultation on reform to the Welsh tribunals: summary of responses

[A new tribunal system for Wales: Summary of response to consultation](#)

8.5 Correspondence from the Chair of the House of Lords Delegated Powers and Regulatory Reform Committee: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill

(Pages 69 – 70)

Attached Documents:

LJC(6)-05-24 – Paper 18 – Letter from the Chair of the House of Lords Delegated Powers and Regulatory Reform Committee, 30 January 2024

LJC(6)-05-24 – Paper 19 – Letter to the Chair of the Delegated Powers and Regulatory Reform Committee, 26 January 2024

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

(15.05)

10 Residential Outdoor Education (Wales) Bill: Consideration of evidence

(15.05 – 15.15)

11 Local Government Finance (Wales) Bill: Draft report

(15.15 – 16.15)

(Pages 71 – 100)

Attached Documents:

LJC(6)-05-24 – Paper 20 – Draft report

LJC(6)-05-24 – Paper 21 – Letter from the Local Government and Housing Committee, 31 January 2024

LJC(6)-05-24 – Paper 22 – Letter from the Minister for Finance and Local Government, 18 January 2024

LJC(6)-05-24 – Paper 23 – Letter to the Minister for Finance and Local Government, 18 December 2023

12 SICM(6)4 – The Social Housing (Regulation) Act 2023

(Consequential and Miscellaneous Amendments) Regulations 2024

(16.15 – 16.25)

(Pages 101 – 103)

[Statutory Instrument Consent Memorandum](#)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-05-24 – Paper 24 – Legal Advice Note

LJC(6)-05-24 – Paper 25 – Letter from the Minister for Climate Change, 19 January 2024

13 Legislative Consent Memorandum on the Animal Welfare (Livestock Exports) Bill

(16.25 – 16.35)

(Pages 104 – 112)

Attached Documents:

LJC(6)-05-24 – Paper 26 – Legal Advice Note

LJC(6)-05-24 – Paper 27 – Briefing paper from the RSPCA, 17 January 2024

14 International agreements

(16.35 – 16.45)

(Pages 113 – 123)

Attached Documents:

LJC(6)-05-24 – Paper 28 – Research Briefing

15 Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks

(16.45 – 16.50)

(Pages 124 – 135)

Attached Documents:

LJC(6)-05-24 – Paper 29 – Draft letter to the Chair of the Business Committee

LJC(6)-05-24 – Paper 30 – Letter from the Llywydd and Chair of the Business Committee, 29 January 2024

LJC(6)-05-24 – Paper 31 – Letter to the Business Committee, 22 December 2023

16 Forward Work Programme

(16.50 – 16.55)

(To Follow)

Attached Documents:

LJC(6)-05-24 – Paper 32 – Forward Work Programme

Jayne Bryant
Chair of Children, Young People and Education Committee
Senedd Cymru

23 January 2024

Dear Jayne,

Residential Outdoor Education (Wales) Bill

I am writing with regard to the recent written evidence paper that was provided to the Committee by the Minister for Education and Welsh Language.

It is worth noting at the outset that I fully respect the Minister's entitlement to have a view on the Bill, and the purpose of me writing today is not to question the Minister's overall position on the Bill. However, I have read the Minister's paper in detail and there are, I believe, some factual inaccuracies or misrepresentations of what the intention of the Bill is and what it does.

I thought it would therefore be helpful to write to the Committee ahead of the session with the Minister to help clarify some of those issues, and to hopefully help the scrutiny process. I am, of course, attending CYPE Committee myself on 1 February, and would be happy to explore these areas further at that time.

The need for legislation

Consideration of whether the Bill is required to deliver its stated aims is a vital piece of the scrutiny process. Unfortunately, the Minister's assertions on whether there is a need for the Bill seems to miss the core aim of the Bill, which is to make the provision of residential outdoor education a statutory requirement.

The Minister states that ‘The Bill is unnecessary as schools already have the legal powers to provide residential outdoor education if they wish’. However, the Minister also concedes in the paper that ‘It is a matter for schools as to whether they chose to provide residential outdoor education (ROE) or not. There is nothing in legislation that prevents or requires it’.

As clearly set out in the Explanatory Memorandum (EM) that accompanies the Bill, the intention of the Bill is to move ROE away from being an enrichment to the curriculum, which is often viewed as a ‘nice to have’, to being an entitlement of the education offer. The effect of the Bill is to make ROE part of the curriculum and whether primary legislation is needed must focus on this, but this does not seem to be reflected in the Minister’s paper.

Furthermore, during the Minister’s oral evidence session with the Legislation, Justice and Constitution Committee on 22 January, a specific question was asked on whether the legislation was required. The Minister’s response was unclear. At the outset of the meeting he indicated that making ROE itself compulsory could be done using existing regulation making powers, whereas making it compulsory to offer the opportunity would require legislation. At the conclusion of the meeting, when asked if he believed there is a non-statutory means of delivering the objectives of the Member in charge, he stated “not on the compulsory side of things”. There appears to be a contradiction during the course of the Minister’s evidence in Committee and a lack of consistency with what is included in the evidence paper to CYPE Committee.

As this is such a fundamental question, it is vital that there is clarity on the Minister’s position here.

The Minister’s paper also questions the Bill’s approach as to whether pupils will be compelled to attend ROE. I know that there was some discussion of this in the LJC Committee regarding whether the Bill’s purpose is to require that an offer of ROE is made to pupils or to make it a requirement of the Curriculum for Wales. The Bill does both. Pupils will be entitled to ROE and schools must provide it as part of the curriculum. However, the Bill requires that the guidance the Welsh Government issues must provide that it is not compulsory for pupils to attend ROE, for example if they really do not want to do so or it is not in their best interests.

Section 42 of the Curriculum and Assessment (Wales) Act 2021 and the associated regulations also assist in this area. I appreciate that the Minister referred to this as a “blunt instrument” so it may assist the Committee to have further information as to why the Minister makes this assessment of his own regulation making power. I

realise that cumulatively this provides pupils with a right to opt out from that aspect of the Curriculum for Wales and that may have caused some confusion but I believe the legal effect of this is clear.

Placing a statutory duty on local authorities or the Minister?

The Minister's paper, on several occasions, states that the intention of the Bill was to place a statutory duty on **local authorities** to ensure that young people receiving maintained education are provided with the opportunity to experience ROE. The paper states that because the Bill doesn't place any duties on local authorities (and instead places them on Welsh Ministers) it does not meet the purpose as set out in the EM.

I am particularly concerned that in making this assertion, the Minister has clearly based his thinking on the information contained in the original explanatory memorandum tabled at the start of the process (August 2022) and not on the Bill or the detailed Explanatory Memorandum introduced by me on 24 November 2023. At paragraph 6.3 of his paper, the Minister quotes from paragraph 3 of the EM upon introduction, which describes what my proposal was at the time of the 'leave to proceed' debate in October 2022. Upon reading the EM further, however, it would have been apparent that this changed as the Bill was developed, as I explain below.

When I entered the Ballot, my proposal had intended that the duties would be placed on local authorities. However, during the development of the Bill, and in designing the best method to deliver the main policy objectives, it was decided that the Bill should instead place a duty on the Welsh Ministers to **'ensure pupils in maintained schools are provided with residential outdoor education'** rather than on local authorities directly.

This change in how the policy objectives would be delivered is explained in the detailed EM that accompanies the Bill (see para 8 and para 117 as examples of where this is mentioned). In particular, footnote 140 on page 58 specifically explains the change in thinking. Footnote 140 states:

"Whilst not directly resulting from the consultation, a significant change to the proposals consulted is that the Bill places the duty on the Welsh Ministers to ensure pupils in maintained schools are provided with residential outdoor education rather than on local authorities as was originally set out in the consultation document. This was due to the level of detail that will need to be considered for the Bill's implementation."

Another concern is that paragraph 6.9 of the Minister's paper states that it is not appropriate to place a duty on the Welsh Ministers to provide residential outdoor education. Again, I believe this misreads / misrepresents the intention of the Bill, which actually places a duty on Welsh Ministers to **ensure it is provided**, not to provide it themselves. However, in paragraph 6.14 of the Minister's paper, there does seem to be an acknowledgement that the intention is for the Welsh Ministers to use their powers to facilitate other bodies to deliver ROE.

It is disappointing that the Minister does not seem to understand the important change in how the policy objectives are being delivered through the Bill (i.e. the deliberate intention to not place duties directly on local authorities). It is also concerning that the Minister has read the Bill as placing a duty on Welsh Ministers to deliver ROE, which it clearly does not do. To be clear, when the Welsh Ministers carry out their duty under the Bill, ROE would be included on the curriculum so at that point there would be a duty upon schools to provide ROE as part of the curriculum.

Effectiveness of the Bill

The Minister's paper makes a clear statement that the Bill is drafted in such a way that its legal effect is defective, but does not give any clear explanation as to why that is the case. If there are areas of the Bill that the Minister considers to be defective, it would be better for that to be clearly explained, so that those areas can be considered during the scrutiny process.

The paper also states that the amendments the Bill seeks to make to the Curriculum and Assessment (Wales) Act 2021 are not appropriate as they do not fit with the legislative scheme or the principles of that Act. Again, there is no explanation of why that is considered to be the case.

Guidance making powers

The Minister states that he does not consider it appropriate to use the same guidance making power which is used to issue discretionary guidance on the Curriculum for Wales (section 71 of that Act) to put a duty on the Welsh Ministers to issue guidance on Residential Outdoor Education.

In drafting the Bill, this has been considered and my understanding is that there is no legal difficulty with the Bill including a power to issue guidance on some matters (i.e. Welsh Ministers may issue guidance), and a duty to issue guidance on other matters (i.e. Welsh Ministers must issue guidance). This is not an inconsistent approach, it is simply taking a different approach for different things.

As an additional point, paragraph 6.25 of the Minister's paper makes reference to the "4-day requirement" in the context of guidance. A previous draft of the Bill that was published for consultation included reference to the course of ROE being comprised of at least 4 nights and 5 days in guidance. However, the Bill as introduced makes the duration clear on the face of the Bill and does not refer to it as part of the guidance. I am particularly concerned that in making this reference, the Minister has clearly based his thinking on a previous draft of the Bill and not the Bill as introduced.

Finance

The paper from the Minister states that the Bill will add to the financial burden on schools and local authorities. What the paper seems to omit is that one of the key aims of the Bill, as set out in Section 2, is to provide for the Welsh Ministers to pay local authorities an amount sufficient to enable the functions relating to ROE to be carried out. The intention, therefore, is that there should not be any additional financial burden on schools or local authorities.

I fully acknowledge that there may be additional costs to be met from the Welsh Government budget. The Minister has raised this in the Plenary statement following the Bill's introduction on 29 November, in LJC Committee on 22 January, and in the written paper to CYPE Committee. The Minister has continually asserted that any additional costs arising from the Bill, would need to be taken from the existing Education and Welsh Language portfolio budget.

The Bill itself, while requiring Welsh Ministers to pay local authorities a sufficient amount, does not require that to come directly through the Education and Welsh Language portfolio budget. The absolute intention of the Bill is that there should be no cut to existing education budgets, as I fully appreciate the importance of maintaining those budgets to meet the current priorities.

There are other matters raised in the Minister's paper that I do not necessarily agree with, and would be happy to explore those further with the Committee. What I have set out above are, I believe, more crucial to the Committee's scrutiny, and I hope some of the clarification I have provided will help that scrutiny.

Yours sincerely



Sam Rowlands MS

Member of the Welsh Parliament for North Wales

Copied to:

Huw Irranca-Davies, Chair of the Legislation, Justice and Constitution Committee
Peredur Owen Griffiths, Chair of the Finance Committee



Statutory Instruments with Clear Reports 05 February 2024

SL(6)449 – [The Non-Domestic Rating \(Multiplier\) \(Wales\) Regulations 2024](#)

Procedure: Affirmative

The Non-Domestic Rating (Multiplier) (Wales) Regulations 2024 set the non-domestic rating multiplier for Wales for the financial year 2024-25. They reflect the decision announced on 19 December 2023 by the Welsh Government to increase the multiplier by 5%, rather than using growth in the Consumer Prices Index ("CPI") of 6.7%.

Parent Act: Local Government Finance Act 1988

Date Made:

Date Laid:

Coming into force date: 23 February 2024



Agenda Item 4.1

SL(6)447 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2024

Background and Purpose

This Order amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 (“the **2018 Order**”), which designates bodies in relation to the Welsh Ministers. The purpose of such designation is so that information relating to the resources expected to be used by those bodies can be included within a Budget motion of the Senedd.

The effect of this Order, according to its Explanatory Note, is that 4 additional bodies are designated, the names of some designated bodies are changed, and the company numbers for 10 previously designated bodies are now included.

Procedure

Negative.

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

Technical Scrutiny

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

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

While the Explanatory Note indicates that the effect of this Order is to designate an additional 4 bodies, it appears to designate the following 5 new bodies:

1. Children’s Commissioner for Wales;
2. FWC IFW Debt GP Limited;
3. FWC SWIF Debt GP Limited;
4. NE Commercial Property (GP) Limited; and
5. The Citizens Voice Body for Health and Social Care, Wales.



The Government is therefore asked to clarify whether the above bodies are additional designations in relation to the Welsh Ministers for the purposes of section 126A of the Government of Wales Act 2006.

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

In the Schedule to this Order, in the Welsh text, the body “Transport for Wales” is referred to as “Trafnidiaeth Cymru” followed by the same company number as found in the English text. This is in contrast to the reference in that Schedule to “Transport for Wales Rail Ltd”, which is referred to by the English name alone in both language texts followed by the same company number.

However, the details found for “Transport for Wales” on the register of Companies House do not include a Welsh language name for the company. In this regard, it does not appear that the Welsh language name “Trafnidiaeth Cymru” was formally registered with Companies House when the name of this company was changed in April 2016, even though it is known by that trading name in Welsh.

The Government is therefore asked to confirm whether the designated body should have been listed as “Transport for Wales” in the Welsh text of the Schedule in the same manner as “Transport for Wales Rail Ltd” (which also only has an English language name on the register of Companies House) given that this is the general approach when referring to registered company names in the Welsh text of legislation.

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.

In the new Schedule to this Order, the list of designated bodies includes “**Her** Majesty’s Chief Inspector of Education and Training in Wales”, with the associated footnote stating that the reference to this body is construed as “**His** Majesty’s Chief Inspector of Education and Training in Wales” due to the effect of sections 10 and 23 of the Interpretation Act 1978.

The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2023 (“the **2023 Order**”) inserted a reference to “Her Majesty’s Chief Inspection of Education and Training in Wales” into the 2018 Order. In its [report](#) on the 2023 Order, the Committee expressed its view that, following the death of Her Late Majesty The Queen and her succession by King Charles III, it appears that “**His** Majesty’s Chief Inspector of Education and Training in Wales should be inserted instead. In response to that report, the Government stated that the reference was “correctly inserted”.



The Committee notes that the “His Majesty” formulation when referring to this body has since been used in other Welsh legislation, specifically in a list of contracting authorities found in Schedule 1 to the Social Partnership and Public Procurement (Wales) Act 2023, and in other references found in the Explanatory Notes of S.I. 2024/27 (W. 10) and S.I. 2023/919 (W. 144).

The Government is therefore asked to explain the continued reference to “Her Majesty” in the Schedule to this Order.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

29 January 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee

SL(6)440 – The Agricultural Holdings (Units of Production) (Wales) Order 2024

Background and Purpose

Certain agricultural tenancies carry succession rights. In these cases, under the Agricultural Holdings Act 1986, a close relative of the deceased or retiring tenant can apply to the Agricultural Land Tribunal ('ALT') for a direction as to whether the relative is entitled to succeed to a tenancy. One of the tests in establishing a right of succession involves satisfying the ALT that the applicant does not already occupy a "commercial unit of agricultural land" elsewhere. If this were the case, the close relative would not be eligible for automatic succession.

This Order sets out figures for agricultural incomes which are associated with various farming activities and are used in determining whether or not the land in question is a "commercial unit of agricultural land" during the relevant period.

The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2023, which covers the period from 12 September 2022 to 11 September 2023. This Order covers the period from 12 September 2023 to 11 September 2024.

Procedure

Negative.

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

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(x) that there appears to have been unjustifiable delay in publishing it or laying it before the Senedd.

Paragraphs 3 to 6 of the Explanatory Memorandum sets out the following matters of special interest to this Committee:

"3. The Welsh Ministers are required under the 1986 Act, to prescribe by Order, such units of production relating to agricultural land as is considered appropriate, for a twelve-month period specified in the order. The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2023 which covers the period from 12 September 2022 to 11 September 2023. Given the ALT cannot decide relevant succession cases without the relevant



figures, there must be a UPO to cover the 12 month period from 12 September 2023 to 11 September 2024.

4. *Units of Production Orders historically always contain an element of retrospectivity due to the availability of the base statistics from DEFRA which then have to be manipulated by Welsh Government to produce the relevant Welsh figures. These figures did not become available until 13 September 2023. (Emphasis added).*
5. *Cases which have progressed to the ALT from 12 September 2023 have been put on hold until such a time as the Order is made. There are currently six applications which would be affected by a new Order.*
6. *The legislation will need to apply retrospectively from 12 September 2023 to the coming into force date of the Order. This is expressly permitted by Schedule 6, Paragraph 4b of the Agricultural Holdings Act 1986 which provides the Minister shall by order for any period of 12 months specified in the order determine in relation to any prescribed units of production the amount which is to be regarded as the net annual income from that unit in that period."*

The Committee notes that several succession cases brought forward by individuals across Wales have effectively been put on hold since September 2023 as they have had to wait for the new figures provided by this Order to resolve their claims. The Committee acknowledges that before the Order is drafted, the Welsh Government must wait for the relevant data from DEFRA. However, this data was received on 13 September 2023. It is not clear why, by the time this Order comes into effect, that a further five months have elapsed during which time individuals have been unable to progress their succession cases.

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 29 January 2024 and reports to the Senedd in line with the reporting point above.



Government Response: *The Agricultural Holdings (Units of Production) (Wales) Order 2024*

Technical Scrutiny point 1:

The Government has noted the LJC Committee's concerns, however availability of the data in relation to England, which informs the development of the legislation, was not available from Defra until 13 September 2023. Welsh Government officials then used this data to produce the relevant Welsh figures, completing this process on 18 October 2023. The Order then must go through the usual legal scrutiny which can take up to 12 weeks. The Order was made on 08 January and laid on 10 January 2024, as soon as the Senedd returned after Christmas recess.

Agenda Item 5.2

SL(6)441 – The Firefighters’ Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024

Background and Purpose

This Order amends Schedule 2 to the Firemen’s Pension Scheme Order 1992 (which sets out the Firefighters’ Pension (Wales) Scheme) and Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007 (which sets out the New Firefighters’ Pension Scheme (Wales)) to extend the period during which persons who were employed in Wales as retained firefighters have access to a pension scheme.

This Order also amends the Firefighters’ Compensation Scheme (Wales) Order 2007 to allow awards to be made in relation to injury sustained while a person is performing certain duties other than fire-fighting under a temporary secondary employment with the same fire and rescue authority. In those cases, any injury will be treated as if it were sustained under the person’s primary employment, and consequently an award will be based on service and pay under that primary employment. The amendments also provide that where a person is performing duties under a secondary retained employment with the same fire and rescue authority, any injury will be treated as if it were sustained under the person’s regular service employment, meaning that an award will be based on the person’s service and pay under that regular service contract.

Procedure

Negative.

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

Technical Scrutiny

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In article 3(1) of the Order, there is a difference between the English and Welsh texts in terms of the reference to the heading of Schedule 2 of the Firemen’s Pension Scheme Order 1992.

The English text refers to “*the Firefighters’ Pension Scheme*”, whereas the Welsh text refers to “*Cynllun Pensiwn y Dynion Tân **1992***” (emphasis added).



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

In Schedule 1 to the Order, in paragraph 1(2)(a), the new definitions are described as being inserted “*at the appropriate place*” in rule 2(1) of the New Firefighters’ Pension Scheme (Wales). However, in the Welsh text, the definitions have not been listed in alphabetical order. The second definition “*cyfnod cyflogaeth arbennig*” (“*special employment period*”) should appear before the first definition “*cyfnod cyfyngedig estynedig*” (“*extended limited period*”).

This has the potential to confuse the instruction to insert the definitions in the appropriate place in rule 2(1) of the New Firefighters’ Pension Scheme (Wales) in the Welsh text.

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

In Schedule 1 to the Order, in paragraph 6(3), in the new rule 5C(7), there is a difference between the English and Welsh texts.

In the English text, it states “*Where the authority **do not** hold records of that person’s pay for that period...*” (emphasis added). However, in the corresponding Welsh text, those words are translated as meaning “*Where the authority **do** hold records of that person’s pay for that period...*” (emphasis added). This means that both language texts have the opposite meaning and contradict each other.

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

In Schedule 1 to the Order, in paragraph 6(3), in the new rule 5C(8), reference is made to “*a whole-time regular **competent** firefighter*” (emphasis added). This is the only occasion that “*regular **competent** firefighter*” (emphasis added) is used, rather than the defined term “*regular firefighter*” (as defined in the New Firefighters’ Pension Scheme (Wales)).

Further information is required as to whether the use of this undefined term is intentional and, if so, why the term has not been defined for the purposes of the New Firefighters’ Pension Scheme (Wales).

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

In Schedule 1 to the Order, in paragraph 7(3), the opening words state that the subsequent amendments numbered as paragraphs (a) to (c) are made “*In rule 16...*” (of Part 12 of the New Firefighters’ Pension Scheme (Wales)). However, in paragraph 7(4), a further amendment is made to another paragraph in the same rule but without identifying that the paragraph to be amended is also found in rule 16 of Part 12.

Therefore, the structure of the paragraph is incorrect and paragraph 7(4) should have been numbered as paragraph (d) of paragraph 7(3) in Schedule 1 to this Order. The numbering of



the following sub-paragraphs in paragraph 7 would also need to be adjusted to follow this re-numbering.

A similar error also occurs in paragraph 7(6) and (7) of Schedule 1 to the Order, where sub-paragraph (7) should have been numbered as paragraph 7(6)(d), with the subsequent sub-paragraphs re-numbered to facilitate this correction.

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

In Schedule 2 to the Order, in the heading of paragraph 1, there is a difference between the English and Welsh text. The English text refers to “Part 1” but in the Welsh text it is translated as “Schedule 1”.

Merits Scrutiny

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

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

The name used to refer to the pension scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 is inconsistent in both the English and Welsh texts.

The correct legal name of the scheme is the Firefighters’ Pension (Wales) Scheme, as renamed by the Fire and Rescue Services Act 2004 (Firefighters’ Pension Scheme) (Wales) Order 2004.

However, to use examples in the English text, in the Explanatory Note to the Order the Firefighters’ Pension (Wales) Scheme is referred to as “*the Firefighters’ Pension Scheme (Wales) 1992*”. Whereas in footnote (1) on page 4 of the Order, the Scheme is referred to as “*the 1992 Firefighters’ Pension Scheme*”.

This Order is complex and technical in nature and it is considered that the use of different names to refer to the same pension scheme is likely to cause confusion for the reader.

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

The Explanatory Memorandum (“EM”) states as follows, at paragraph 2.1:

“The Committee will wish to note that neither the Firefighters’ Pension (Wales) Scheme Order 1992 [sic] nor the Firefighters’ Compensation Scheme (Wales) Order 2007 was created bilingually, hence the form of the 2024 Orders amending those earlier orders. Welsh Ministers have determined that it would not be proportionate to revoke and remake the 1992 Order or the 2007 Order bilingually.”

By way of clarification (aside from the substantive point explained in the EM), it should be noted that the reference above to the “*Firefighters’ Pension (Wales) Scheme Order 1992*”



should instead be a reference to the Firemen's Pension Scheme Order 1992, which was made monolingually. As explained, the Firefighters' Compensation Scheme (Wales) Order 2007 was also made monolingually. The Firefighters' Pension Scheme (Wales) Order 2007 was made bilingually.

Welsh Government response

A Welsh Government response is required in relation to reporting points 1 to 7.

Committee Consideration

The Committee considered the instrument at its meeting on 29 January 2024 and reports to the Senedd in line with the reporting points above.



Government Response: *The Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024*

Technical Scrutiny point 1: The Welsh Government notes that there is a difference between the English and Welsh texts in terms of the reference in parenthesis to the heading of Schedule 2 of the Firemen's Pension Scheme Order 1992. The English text is correct, and the Welsh text should instead read "*Cynllun Pensiwn y Dynion Tân*" without the "1992" following it.

Given that the particular scheme referred to is the one set out in a 1992 Order, and is commonly referred to as "the 1992 scheme", or similar, we do not consider that there is any scope for either a difference in legal effect between the English text and the Welsh text, nor any scope for confusion arising from the difference.

Technical Scrutiny point 2: The Welsh Government notes that in Schedule 1 to the Order, in paragraph 1(2)(a), the definition for "*cyfnod cyfyngedig estynedig*" ("*extended limited period*") comes before the definition for "*cyfnod cyflogaeth arbennig*" ("*special employment period*") and that the list is not therefore strictly in alphabetical order.

The likelihood of a reader being confused about where the appropriate place is to make the insertions is however very slim. Other than the issue identified above, the list in paragraph 1(2)(a) is otherwise in alphabetical order in the Welsh text; and with reference to the English text, a reader would see that the equivalent list in the English text is also in alphabetical order. Moreover, the list of definitions in rule 2(1) of the New Firefighters' Pension Scheme (Wales) in the Welsh text is in alphabetical order. We therefore consider that it is relatively clear that the new definitions should be inserted in alphabetical order.

Technical Scrutiny point 3: The Welsh Government notes that the text of the Welsh and English provisions of new rule 5C(7) (inserted by paragraph 6(3) of Schedule 1 to the Order) produce opposite meanings. The English text identified is correct, and the equivalent Welsh text should read "*Where the authority **do not** hold records of that person's pay for that period...*" (emphasis added).

The Welsh text will be amended accordingly at the next available opportunity.

Technical Scrutiny point 4: The Welsh Government notes that in Schedule 1 to the Order, in paragraph 6(3), in new rule 5C(8), reference is made to "*a whole-time regular **competent** firefighter*" (emphasis added), whereas elsewhere the term "regular firefighter" is used.

The term "regular firefighter" as defined in the New Firefighters' Pension Scheme (Wales) encapsulates persons matching that description, at any grade. A "regular

competent firefighter” is intended to refer to the grade “competent firefighter” held by persons matching the description of “regular firefighter”. A “competent firefighter” is the grade that is reached once a trainee firefighter completes their introductory training and gains a certain level of initial experience. Reaching that grade also entitles a firefighter to a higher rate of pay, and the purpose of this provision is to put beyond doubt that it is that rate of pay which should be used to calculate pensionable pay in the absence of evidence that another rate is appropriate. The term “competent firefighter” is used by all Fire and Rescue Services in the UK and is defined in the “Grey Book” of standard terms and conditions for firefighters agreed at a UK level between employers and unions. By contrast, the term “firefighter” could be taken to mean anyone in that grade (including trainees and those undergoing development), or anyone employed in firefighting at any grade, both of which would be unclear in this context.

We acknowledge that it may have been clearer for the provision to refer to “*pensionable pay of a whole-time regular firefighter **at the grade of competent firefighter** employed in a similar role...*” (emphasis added) to ensure consistency of the use of the term “regular firefighter”. In those circumstances, “competent firefighter” would not need to be defined as such a grade is universally applied by fire and rescue authorities in Wales. However, in considering the wider scheme and the commonly understood term for the grade “competent firefighter”, we consider that a reasonable interpretation of this provision would read it in accordance with the intention set out in this paragraph.

Technical Scrutiny point 5: The Welsh Government notes that in Schedule 1 to the Order, paragraphs 7(4) and 7(7) do not explicitly state which rule they amend. We acknowledge that 7(4) and 7(7) could instead have been 7(3)(d) and 7(6)(d), respectively (and accordingly the numbering following them should have been different).

However, we consider that it is sufficiently clear which rules paragraphs 7(4) and 7(7) amend when reading the provisions in their context (rule 16(5) and 18(8) respectively).

Technical Scrutiny point 6: The Welsh Government notes that there is a difference in the headings for paragraph 1 of Schedule 2 to the Order, between the Welsh and English texts. The reference to “*Part 1*” in the English text is correct, and the Welsh translation should reflect that.

The Welsh text will be amended accordingly at the next appropriate opportunity.

Merit Scrutiny point 7: The Welsh Government notes that the pension scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order is described inconsistently in a number of places in the different texts, and that the correct name of the scheme is the Firefighters’ Pension (Wales) Scheme.

We acknowledge that the references to that scheme are incorrect in the Explanatory Note, and that in footnote (1) on page 4 of the Order, a different shortened term is used, but that the scheme is not otherwise incorrectly specified in the body of the Order.

We consider the likelihood that this may cause confusion to be low.

SL(6)444 – The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024

Background and Purpose

The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 (“these Regulations”) prescribe the grounds on which a direction may be given under section 167A of the Education Act 2002 (“section 167A direction”) prohibiting a person from taking part in the management of an independent school in Wales, or placing a restriction on a person’s ability to do so. The Regulations also make provision about the procedure for giving a section 167A direction, the circumstances in which a section 167A direction may be varied or revoked and provision about appeals in respect of section 167A directions.

Section 167A directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or is subject to a relevant finding in respect of a relevant offence, or has engaged in relevant conduct, if the appropriate authority (the Welsh Ministers) considers that the person is therefore unsuitable to take part in the management of an independent school (regulation 2). Section 167A of the Education Act 2002 provides the “appropriate authority” with the powers to issue a direction. An appropriate authority means a registration authority or such other public authority as may be prescribed. The registration authority is the Welsh Ministers and therefore the appropriate authority for the purposes of the section 167A direction is the Welsh Ministers.

Regulation 2 prescribes the grounds on which a section 167A direction may be given and describes what amounts to a relevant offence, relevant finding, and relevant conduct for this purpose. Regulation 2 also provides that references to convictions and cautions include those that are spent provided there has been an order made excluding the operation of provisions of the Rehabilitation of Offenders Act 1974, which prohibit spent convictions and cautions being used as a ground to exclude a person from any office, profession, occupation or employment.

Before making a section 167A direction, the appropriate authority must give the person an opportunity to make representations as to why the direction should not be given and notice of that opportunity (regulation 3). Regulation 3 makes provision about the giving of the notice and the period within which representations may be made. All reasonable steps must be taken to notify a person in respect of whom a section 167A direction has been made.

The appropriate authority may vary or revoke a direction where a person seeks to have it revoked on one of the grounds set out in regulation 5, or in the absence of variation or revocation being sought, where new information comes to light or where there has been a



material change in circumstances of the person subject to the direction, provided in all cases that the appropriate authority considers it appropriate to vary or revoke (regulation 4).

Under regulation 5, a person subject to a section 167A direction may seek to have it varied or revoked on the grounds that the conviction, caution or finding in question has been quashed, that the conviction or caution in question is spent or becomes protected, or that a period of five years has passed since the finding in question was made. A person subject to a direction on conduct grounds may seek to have it varied or revoked on the grounds that new information has come to light or where there has been a material change in circumstances of the person subject to the direction.

Section 167B(1) of the Education Act 2002 provides for a right of appeal against decisions in respect of section 167A directions. Regulation 6 contains a restriction on the power of the First-tier Tribunal to entertain appeals in relation to section 167A directions which are given on the grounds of convictions. Regulation 7 provides for the First-tier Tribunal's powers on allowing an appeal in relation to a section 167A direction. Where the First-tier Tribunal considers that the decision to give the direction, or the decision not to vary or revoke it, is not appropriate it may order the appropriate authority to vary or revoke the direction.

Regulation 8 sets out the circumstances in which a person subject to a direction under section 142 of the Education Act 2002 immediately before the coming into force of section 167A of the Education Act 2002 will be treated as being subject to a section 167A direction starting with the day the Regulations come into force.

These Regulations come into force on 14 February 2024 and are laid as part of a suite of regulations with the Independent School Standards (Wales) Regulations 2024 and the Independent Schools (Provision of Information) (Wales) Regulations 2024.

Procedure

Negative

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

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The term “the appropriate authority” is used throughout these Regulations, but has not been defined and given a meaning. The meaning given by the definition of “the appropriate



authority" in section 167A(6)(b) of the Education Act 2002 is not implied into these Regulations because the Legislation (Wales) Act 2019 does not contain a provision corresponding to section 11 of the Interpretation Act 1978 (see *Writing Laws for Wales*, 4.12). In addition, the meaning given to the term in the Explanatory Note and in footnote (1) on page 4 will not define "the appropriate authority" for the purposes of these Regulations as they are not an operative part of the instrument. Therefore, the term "the appropriate authority" should have been defined in regulation 1(2) because it is used throughout these Regulations.

Merits Scrutiny

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

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

We note the complexity of these Regulations, and the potential difficulty in interpreting and applying them due to their content and the nature of the drafting. As such, we are pleased to note paragraph 62 of the Explanatory Memorandum, which states, "*Guidance will be published for independent schools alongside the Regulations coming into force in early 2024.*"

Welsh Government response

A Welsh Government response is required in relation to reporting point 1.

Committee Consideration

The Committee considered the instrument at its meeting on 29 January 2024 and reports to the Senedd in line with the reporting points above.



Government Response: *The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024*

Technical Scrutiny point 1: The Welsh Government notes the Committee Report and agrees that it would have been helpful to refer to the definition in section 167A(6)(b) of the Education Act 2002. The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 Regulations will be amended to address this point at the next available opportunity.

SL(6)435 – Part 8 Code of Practice – Role of Director of Social Services

Background and Purpose

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017 (“the 2017 Regulations”) were enacted to set out the specific information to be included in the annual reports of local authorities relating to their social services functions, and headings under which the information required was to be included.

The Part 8 Code of Practice – Role of Director of Social Services (“the Part 8 Code”) issued under Part 8, section 145(1) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) sets out the power to issue codes. Section 145(3) of the 2014 Act requires local authorities to act in accordance with any relevant requirements contained in a code issued under section 145(1) and to have regard to any guidelines contained in it.

The revision to the Part 8 Code allows the opportunity to issue new guidance to local authorities in preparing their annual reports to bring them in line with the corporate self-assessment report required under the Local Government and Elections (Wales) Act 2021.

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023 amend the 2017 Regulations to update the information that must be included in annual reports and headings under which the information required is to be provided. This will align with the requirements of the revised Part 8 Code.

Procedure

Draft Negative

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

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

The following points are identified for reporting under Standing Order 21.7 in respect of this code.

1. At the beginning of the Code, there is a statement stating that this Code revokes the Part 8 Code that was issued according to the English text “in March 2016”. However, in



the Welsh text, it states that the previous Code was issued “ym **16** mis Mawrth 2016” which includes an additional “16” but does not make grammatical sense. Therefore, there is a difference between the English and Welsh texts due to the additional “16” in the translation.

2. The Welsh Government’s website states that the published Code was first published and last updated on 24 May 2019, so there is some confusion when identifying the version of the Code for revocation. In this regard, it is the convention to include all the necessary details including the publication date, version and ISBN that will help identify publications such as a Code.
3. In the preamble, in paragraph 1, the Social Services and Well-being (Wales) Act 2014 is defined as “the Act”. However, in paragraphs 2 and 3 of the Code, and the heading of Chapter 3 of the Code, the definition is not always used but the title of that Act is repeated in full.
4. In the English text, the title of the Act is incorrect in paragraph 1 as there should be a hyphen in the spelling of “Wellbeing”. In both language texts, the title of the Act is also stated incorrectly in the first sentence of paragraph 2 as the year “2014” is missing (although the definition should be used in paragraph 2 on each occasion).
5. In paragraph 4, there is a reference to “Section 147” but it does not identify where that provision is found by using the words “of the Act” afterwards. Elsewhere, the references do include those words or the full title of an Act in the paragraph when identifying the specific act where a section is found, e.g., “section 8 **of the Act**” in paragraph 15, and “section 27 **of the Children Act 2004**” in paragraph 49.
6. In paragraph 9, the English text refers to “a code of practice **issued** under section 145 of the Act”. In the Welsh text, “issued” has been translated as “a gyflwynir” which suggests the meaning of “presented” or “submitted” rather than “issued”. Previously, in the revocation statement at the beginning of the Code and in paragraphs 1 and 6, the word “gyhoeddwyd” or a grammatical variant “Cyhoeddir” has been used as the translation of “issued” in the same context which does convey the meaning of “issue” (as would “dyroddir” which is used in the Act). Therefore, the translation of “issued” in paragraph 9 is also inconsistent with that found in those earlier paragraphs in the Welsh text of the Code or found in the Act. The same problem occurs later in paragraphs 15, 41, 43, 52 and 82 of the Code in similar contexts.
7. In paragraph 15 and elsewhere in the Code, in the Welsh text, “role” has been translated as “swyddogaeth” when referring to “the role of the director of social services”. However, “role” has previously been translated as “rôl” in the title of this Code and in the previous Code along with the associated Appointed Day Order for that Code– SI



2016/414 (W. 132). Therefore, the choice of word is inconsistent with that found in the Welsh text of the title of both the present and previous Codes. It is true that “swyddogaeth” can convey the meaning of “role” as noted in Geiriadur Prifysgol Cymru, but it is also used as the translation of “function(s)” in the Welsh text of the Code. As a result, it means that it is more difficult to distinguish between “role” and “function” in the Welsh text of the Code. Consequently, it would seem preferable if “rôl” was used as the translation of “role” in this context in the Code.

8. In paragraph 45(d), the English text states “experiencing abuse **of** neglect” but in the Welsh text it has been translated as meaning “experiencing abuse **or** neglect”. Therefore, there is a difference in meaning between the English and Welsh text. The drafting of other provisions in the English text such as paragraph 45(c) suggest that the Welsh text is correct.
9. In paragraphs 81, 85 and in Annex 2, the term “well-being” has been translated as “lles” in the Welsh text. However, “llesiant” is the word that is used as the translation for “well-being” in the Welsh text of the Social Services and Well-being (Wales) Act 2014, and elsewhere in this Code. Therefore, it is inconsistent with the terminology of the Act and of the rest of the Code. In addition, it is also potentially confusing for the reader of the Welsh text because “lles” is used as the translation of “welfare” in other places in this Code such as the entries in Annex 1 under the Mental Health Act 1983, the Mental Health (Scotland) Act 1984 and the Children Act 1989, and in Annex 2 in the entry for “Well-being”.
10. In Annex 1, in the first column under “Enactment”, specific provisions of the enactment are noted or the phrase “The whole Act” is used. However, in the entries for “Adoption Act 1976” and “Adoption and Children Act 2002” no specific sections are noted and the phrase “The whole Act” is not used, so it is unclear whether the functions are found in the whole of those Acts or any specific provisions in them.
11. In Annex 1, in the first or second column, the phrase “the Act” is used in the entries for the “Children Act 1989”, “Education Act 1996” and “Mental Capacity Act 2005” when appearing to refer to those particular Acts. However, the term “the Act” has previously been defined as meaning the Social Services and Well-being (Wales) Act 2014 in paragraph 1 of this Code. Therefore, the use of the phrase “the Act” could be the cause of potential confusion in these entries in Annex 1 as it is already a defined term for a different Act.
12. In Annex 1, in the first column, there is an entry noted as “**This** Act” which appears to be referring to the Social Services and Well-being (Wales) Act 2014. However, the Social Services and Well-being (Wales) Act 2014 has already been defined as “**the** Act” in paragraph 1 of this Code. Therefore, the defined term “**The** Act” should be used in the



first column of the entry rather than "**This** Act". In addition, "this Act" has also been used in the second column of the entry for "Public Health (Control of Disease) Act 1984" when appearing to refer to that Act rather than to the Social Services and Well-being (Wales) Act 2014 which adds to the confusion.

13. In Annex 1, in the second column for the entry "Mental Health Act 1983", there is a slight difference between the English and Welsh text. The English text refers to "approved mental health **professionals**" but the translation of that term does not include a word that corresponds to "professionals" in the Welsh text.
14. The Explanatory Memorandum states "*The Part 8 Code of Practice – Role of Director of Social Services ("the Part 8 Code") issued under Part 8, section 145(1) of the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") sets out the various requirement for the annual report.*" This may cause confusion for the reader as section 145 of the 2014 Act sets out the power to issue codes and it is section 144A of the 2014 Act that sets out the requirements for the annual report.

Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 22 January 2024 and reports to the Senedd in line with the reporting points above.



Government Response: Part 8 Code of Practice – Role of Director of Social Services

The Government is most grateful to the Committee for the time that has been afforded and the attention to detail that has been given to scrutinising the draft Code of Practice.

The Government acknowledges the matters raised. However, it respectfully submits that, albeit matters for correction, these are minor editorial points that do not change the operation or effect of the Code. Indeed, the matters raised in relation to the draft Code all relate to text that has been in publication since the previous Code of Practice was issued and brought into force in 2016.

Given this observation, the Government proposes to the Committee that the Government makes the editorial corrections, as outlined in further detail below, prior to issuing the Code of Practice. The Government considers this a pragmatic and proportionate response that will ensure the Code of Practice is published without imprecision or unnecessary delay.

Scrutiny points 1 and 2:

The previous Code was laid before the Senedd on 28 January 2016 and issued on 16 March 2016, it had not been revised subsequently. The English and Welsh text will be amended to include the date of issue and the ISBN.

Scrutiny point 3:

The defined term “the Act” will replace the full title of the Social Services and Well-being (Wales) Act 2014 at paragraphs 2 and 3 of the Code, and the heading of Chapter 3 of the Code. The Welsh text will be translated to the equivalent.

Scrutiny point 4:

In the English text, in paragraph 1, a hyphen will be added to the incorrectly spelt word “wellbeing” in the title of the Act. In both texts, the defined term “the Act” or “y Ddeddf” will be used in the first sentence of paragraph 2 (replacing the full title of the Act and rectifying the error relating to the omission of “2014” from the title of the Act).

Scrutiny point 5:

In paragraph 4, following the reference to “Section 147”, the words “of the Act” will be added to identify where the provision is found.

Scrutiny point 6:

In the Welsh text, “a gyflwynir dan adran 145” will be substituted with “a ddyroddir o dan adran 145”. Paragraphs 15, 41, 43, 52 and 82 will be corrected in a similar context.

Scrutiny point 7:

In paragraph 15 and elsewhere in the Code, in the Welsh text, “role” when referring to “the role of the director of social services” will be translated as “rôl” to be consistent with the title of the Code and the previous Code along with the Appointed Day Order for that Code.

Scrutiny point 8:

In paragraph 45(d) of the English text, “experiencing abuse of neglect” will be replaced with “experiencing abuse or neglect”, the equivalent of the Welsh text.

Scrutiny point 9:

In paragraphs 81, 85 and Annex 2, the term “well-being” will be translated to “llesiant”.

Scrutiny point 10:

Schedule 2 to the Social Services and Well-being (Wales) Act 2014, which is replicated at Annex 1 of the Code, does not note any specific sections or use the phrase “The whole Act” in the entries for “Adoption Act 1976” and “Adoption and Children Act 2002”.

Scrutiny point 11:

In Annex 1, in the first or second column:

1. At the entry for the “Children Act 1989”, “the Act” (the defined term currently used in the Code for the Social Services and Well-being (Wales) Act 2014) will be replaced with a newly defined term the “**1989 Act**” to avoid any ambiguity as to the Act being referred to in the extract i.e. by substituting “The whole Act” with “The whole 1989 Act”, and substituting “within the meaning of the Act” with “within the meaning of the 1989 Act”.
2. Likewise, at the entry for the “Education Act 1996”, “the Act” will be replaced with a newly defined term the “**1996 Act**”.
3. At the entry for the “Mental Capacity Act 2005”, “the Act” will be replaced with a newly defined term the “**2005 Act**”.

The Welsh text will include the equivalent defined terms.

Scrutiny point 12:

In Annex 1, in the first column, where referring to the Social Services and Well-being Wales Act 2014, “This Act” will be replaced with “The Act” and the Welsh text will be amended to the equivalent.

Scrutiny point 13:

In Annex 1, in the second column for the entry “Mental Health Act 1983”, in the Welsh text, the words “penodi **gweithwyr** iechyd meddwl sydd wedi’u cymeradwyo” are used as a translation of the words “approved mental health **professionals**” in the English text. The word “proffesiynol” was not included in the sentence in question as it is omitted from the Welsh version of Schedule 2 to the Social Services and Well-being (Wales) Act 2014. To note, the contracted form of “wedi’u” used in the draft Code will be replaced with “wedi eu” in the Code to be issued so that it corresponds with the 2014 Act (in Welsh: “gweithwyr iechyd meddwl sydd **wedi eu** cymeradwyo”; In English: “approved mental health professionals”).

Scrutiny point 14:

The Code of Practice was issued under section 145(1) of the Social Services and Well-being (Wales) Act 2014 and the Code sets out the various requirements for the annual report. The view of the Welsh Government is that there is a very low risk of causing confusion to the reader by using the phrase as currently drafted, and that if any confusion is indeed caused, the implication of this would be very minor given that the requirements of section 144A are detailed at section 3 of the Explanatory Memorandum.

In addition to the changes made as a result of the Committee's report, subsequent minor changes have been identified and will also be corrected upon issuing of the Code, these are as follows:

1. In paragraph 8, “February 2016” will be substituted with “December 2023” to clarify that the table contained in Annex 1 has been updated since the previous Code was issued. The equivalent correction will be made to the Welsh text.
2. In paragraph 13 of the Welsh text, the second “cymdeithasol” will be amended to “cyhoeddus” (in the context of “public services” as opposed to “social services”) to correspond with the English text.

Formatting and typographical corrections will also be addressed prior to publication.



Huw Irranca-Davies MS
Chair
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Welsh Parliament
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30 January 2023

Dear Huw,

Thank you for your letter of 18 January 2024, regarding further information on the United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023.

While both administrations oppose the attack on devolution the UK Internal Market Act represents, the Welsh and Scottish Governments will take different approaches. I can only comment on the approach adopted by the Welsh Government.

We look at each request on a case-by-case basis, providing consent or not based on its merits. In this case, we agreed there was no policy reason to withhold consent for a reserved area with no direct impact in areas of devolved competence.

As noted in my previous letter, we have made a commitment to ensure the Senedd is informed where we are proposing to consent to regulations.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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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.

Vaughan Gething MS
Minister for Economy

18 January 2024

Dear Vaughan,

The United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023

Thank you for your response of 19 December 2023 to my letter of 22 September 2022 in respect of the above Regulations, which my Committee noted at its meeting of 8 January 2024. While we are grateful for the information you provided, we would welcome further detail in respect of some matters in order to gain a better understanding of the position.

We note that the explanatory memorandum to the Regulations states:

"Welsh Ministers consented to the instrument. However, consent from all Devolved Governments has not been provided within the period of one month beginning the day on which it was sought. In reliance on section 18(9) of UKIMA, the Secretary of State may make the instrument without that consent. As this instrument is made without the consent of these Governments, the Secretary of State has published an explanatory statement in accordance with section 18(10) of UKIMA."

In her explanatory statement made on 20 July 2023, the Secretary of State for Business and Trade said that while consent from all devolved governments had not been "received, she intended to proceed with making the regulations as they are "important to ensuring that the scope of application of the market access principles in Part 2 of the UKIM Act better reflects how services are currently regulated across the UK".

I would be grateful if you could:

- indicate the nature of any discussions held between the Welsh Ministers and the Scottish Ministers in respect of the regulations and clarify, if you are able to, whether the Scottish Government refused consent, or did not issue a response to the Secretary of State's request;
- further explain the Welsh Ministers' decision to consent to the instrument, in light of the consent of the Scottish Government not being received by the UK Government, and, if relevant, explain why the Welsh Ministers reached a different decision;
- indicate if you had any discussions with the UK Government about the Regulations in the 12 months or so between giving consent and the Regulations being laid, and if so, the nature of those discussions.

I acknowledge your explanation that there was insufficient time to engage Members of the Senedd before making the decision to consent to this instrument. However, I would be grateful if you could commit to undertake such engagement in the future in the absence of any extenuating circumstances.

Please could you provide a response to this letter by 31 January 2024.

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

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

Alun Davies MS
Temporary Chair
Legislation, Justice and Constitution Committee

Llywodraeth Cymru
Welsh Government

26 January 2024

Dear Alun,

Senedd Cymru (Members and Elections) Bill

Thank you for the Legislation, Justice and Constitution Committee's report in relation to the Senedd Cymru (Members and Elections) Bill published on 19 January 2024. Please see my responses to the set of recommendations within the report in Annex 1.

As the Bill will be considered by a Committee of the Whole Senedd at Stage 2, I anticipate that a significant number of Members will have an interest in it. With this in mind, I am providing a written response to Committee reports in advance of the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Reform Bill Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,



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

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

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

Annex 1

| Recommendation | Response |
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| <p>Recommendation 1. The Counsel General 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.</p> | <p>Accept</p> <p>This recommendation is accepted, and actioned through the response detailed below.</p> |
| <p>Recommendation 2. The Counsel General should publish the Welsh Government's assessment of the Bill's impact on the European Convention on Human Rights two working days before the Stage 1 debate</p> | <p>Noted</p> <p>The Explanatory Memorandum which accompanies the Bill contains a statement by me, as the Member in Charge, that the provisions of the Bill are within the legislative competence of the Senedd. One of the competence tests is that provisions must not be incompatible with the Convention rights. This statement is therefore confirmation that I am satisfied that the provisions of the Bill are compatible with the Convention Rights.</p> |
| <p>Recommendation 3. The Counsel General should write to the Committee to provide details of the timetable for the preparation, scrutiny and implementation of the re-statement of the National Assembly for Wales (Representation of the People) Order 2007 (the Conduct Order), required for the Senedd general election in 2026.</p> | <p>Accept</p> <p>I will write to the Committee on this matter in due course.</p> |
| <p>Recommendation 4. The Counsel General should confirm whether or not, in his opinion, the reservation in relation to section 25(1)(a) of the Government of Wales Act 2006 would prevent its restatement in the Bill.</p> | <p>Accept</p> <p>The general restrictions to legislative competence are contained within Part 1 of Schedule 7B of the Government of Wales Act 2006 ("GoWA 2006). Paragraph 7(1) of Schedule 7B provides that the provisions of GoWA are protected from modification by an Act of the Senedd. None of the exceptions to that restriction apply to section 25(1)(a) of GoWA and as such it is protected from modification subject to the general exceptions from the restrictions.</p> <p>Part 2 of Schedule 7B provides for general exceptions to the restrictions. Paragraph 13(1)(a) does not prevent an Act of the Senedd restating the law (or restating it with</p> |

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| | <p>such modifications as are not prevented by Part 1).</p> <p>However, please see further my responses to recommendations 5 and 6.</p> |
| <p>Recommendation 5. The Counsel General should table an amendment to section 4 of the Bill for the purpose of achieving a consolidation (and subject to recommendation 4 a re-statement) of section 25 of the Government of Wales Act 2006, within the boundaries of the Senedd's legislative competence.</p> | <p>Reject</p> <p>Please see my response to Recommendation 6.</p> |
| <p>Recommendation 6. If recommendation 5 is not achievable because of restrictions in the Government of Wales Act 2006, rather than it being a drafting choice, the Minister should provide a detailed explanation of why this is the case.</p> | <p>Accept</p> <p>In my view section 25 should not be consolidated within the Senedd Cymru (Members and Elections) Bill, but rather remain a provision of GoWA 2006. The legislative framework governing Senedd Cymru is provided for in Parts A1 and 1 of GoWA 2006. The Presiding Officer (and Deputy Presiding Officer) provisions contained within section 25 are an integral part of this framework. There are numerous references and cross-references to these office holders and their functions and responsibilities throughout GoWA 2006.</p> <p>The approach taken at section 4 of the Bill (additional Deputy Presiding Officer) is distinguishable from that taken at sections 8 (General Elections) and 9 (Vacant seats). Section 8 of the Bill substitutes section 6 to 9 GoWA 2006 and section 9 substitutes a new section 11; this is reflective of a significant proposed change in the electoral system which will move from a Mixed Member System to a fully closed proportional list system. In contrast, the current provisions governing the Presiding Officer and the Deputy Presiding Officer are, in essence, unaffected. The proposed amendments to section 25 GoWA are limited to providing for the election of an additional Deputy Presiding Officer and the consequences of this event.</p> <p>Whilst it is accepted that this is achieved through a series of amendments to the text of section 25, the overall effect of those amendments is nonetheless limited as described.</p> |

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| | <p>Upon section 4 of the Senedd Cymru (Members and Election) Bill coming into force, section 25 GoWA 2006 will read as amended, as can be seen in the relevant section of schedule of amendments included in the Explanatory Memorandum. A wholesale substitution of section 25 GoWA 2006 would not result in a significant difference for the end user. It is also arguable as to whether- in terms of clarity and accessibility of law- a wholesale substitution would be beneficial, in this instance, given that the existing approach provides for the amendments to be discernible as such; representing an addition to, rather than a change of, an established provision.</p> <p>There are no omissions to the current provisions of section 25 GoWA 2006.</p> |
| <p>Recommendation 7. A majority of the Committee considers that the Counsel General should table an amendment to the Bill to leave out section 5(b).</p> | <p>Reject</p> <p>The inclusion of the power in section 5(b) provides for future-proofing, enabling the Government to react quickly and flexibly to circumstances, without utilising primary legislation for the purpose of increasing the legislative limit by one or two Ministers. This could be necessary due to the devolution of further powers, or otherwise circumstances whereby an increase is merited.</p> |
| <p>Recommendation 8. The Counsel General should take account of our comments on section 7 of the Bill and its constitutional propriety, and accordingly, consider tabling an amendment to leave out section 7 of the Bill.</p> | <p>Reject</p> <p>Should the Business Committee accept recommendation 42 of the RBC report, such work is not incompatible with section 7 of the Bill. In the event that this work has been completed by the end of this Senedd, the seventh Senedd could simply reject the motion provided for in section 7. Please also see my more detailed response to recommendations 41 and 42 of the Reform Bill Committee's report, and my response to recommendation 9 below.</p> |
| <p>Recommendation 9. If the Counsel General decides to retain section 7 in the Bill he should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and set out in detail why it is constitutionally appropriate for the Welsh Government to ask the Sixth Senedd to</p> | <p>Accept</p> <p>The only duty being imposed by section 7 is on the Presiding Officer to table a motion within a specific timescale on the issue of job-sharing. It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in</p> |

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| <p>pass legislation which would impose duties on the Seventh Senedd and its Presiding Officer, in so doing breaching the principle that an Act of a Parliament should not constrain the freedom of action of a future Parliament</p> | <p>section 110(3)(a)(b) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd's legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 7 constrain the freedom of action of a future Parliament.</p> <p>The Special Purpose Committee was clear in its recommendations that further consideration should be given, on a cross-party basis, to exploring the feasibility and legislative challenges associated with enabling election on the basis of job sharing. In the absence of any clear public commitment by the Senedd to consider this issue in detail across a broad range of offices, section 7 of the Bill provides a pathway for this work to be taken forward at an appropriate time in the future.</p> <p>As requested, we have copied this response to all Members.</p> |
| <p>Recommendation 10. The Counsel General should justify why new section 49J (to be inserted by Schedule 2 of the Bill) of the Local Government (Democracy) (Wales) Act 2013 (to be renamed by virtue of section 11 of the Bill) requires that regulations, to implement recommendations of the Local Democracy and Boundary Commission for Wales (to be renamed by virtue of section 12 of the Bill) for Senedd general elections held after 1 April 2030, must be laid within six months and accordingly, to explain why a period of 4 months as used in relation to UK general elections was not chosen.</p> | <p>Noted</p> <p>I have accepted recommendation 31 of the Reform Bill Committee and will bring forward an amendment to reduce the period for regulations to be made from 6 months to 4 months.</p> |
| <p>Recommendation 11. The Counsel General should take account of our comments on the constitutional propriety of section 19 of the Bill and consider whether section 19 is an appropriate provision to include in the Bill.</p> | <p>Noted</p> <p>I note the committee's comments on section 19. As the Bill emanated from the recommendations of the Special Purpose Committee, it is appropriate that the</p> |

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| | <p>Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 19 provides a mechanism for the next Senedd to give consideration to this. Please see my more detailed response to recommendation 41 of the Reform Bill Committee.</p> |
| <p>Recommendation 12. If the Counsel General decides to retain section 19, he should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and explain why he believes that a committee of the Seventh Senedd would not on its own initiative be better placed to undertake appropriate post-legislative scrutiny and in so doing determine its own terms of reference and timeframe for that work.</p> | <p>Accept</p> <p>As with section 7, the only duty being imposed by section 19 is on the Presiding Officer to table a motion within a specific timescale on the issue of post-legislative review. It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in section 110(3)(a)(b) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd's legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 19 constrain the freedom of action of a future Parliament.</p> <p>Given the nature of the reforms, it is important that a post-legislative review is undertaken. As the Bill emanated from recommendations made of the Special Purpose Committee on Senedd Reform, which were endorsed by the Senedd, the Welsh Government remains of the view that it would be appropriate for the Senedd to have a lead role in any review of the legislation's operation and effect.</p> |
| <p>Recommendation 13. The Counsel General should write to the Committee setting out in detail how the Welsh Government has ensured that the elements of a healthy democracy have been incorporated into the preparation and drafting of the Bill.</p> | <p>Accept</p> <p>The underpinning purpose of the Bill is to strengthen Welsh democracy, making the Senedd a more effective legislature for, and on behalf of, the people of Wales by:</p> |

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| | <ul style="list-style-type: none"> • Increasing the capacity of the Senedd from 60 to 96 members, enabling it to more effectively: <ul style="list-style-type: none"> ○ hold the Welsh Government to account, ○ scrutinise, oversee, and improve policy, legislation and spending; and ○ represent, respond to, and serve the people of Wales. • Removing the disproportional “first-past-the-post” system, requiring all candidates to be elected from proportional lists. • Increasing the frequency with which voters can remove or renew a government’s mandate, by reducing the length of Senedd terms from five to four years. • Preventing political interference in the determination of Senedd constituency boundaries, by delegating the responsibility to the independent Democracy and Boundary Commission Cymru, with no opportunities for either Welsh Government or the Senedd to amend. • Ensuring that candidates for election to the Senedd and Members of the Senedd are resident in Wales, meaning that lawmakers in the Senedd are subject to those laws that they make. |
| <p>Recommendation 14. The Counsel General should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and explain why he did not include a mechanism for the Welsh Ministers to report on the operation and effect of this Bill (if and when enacted), similar to provisions included in previous legislation</p> | <p>Accept</p> <p>As I have set out in my response to the Reform Bill Committee (RBC), it is important to note that this Bill emanated from recommendations made by the Special Purpose Committee on Senedd Reform, subsequently endorsed by the Senedd,</p> |

The Welsh Government remains of the view that it would be appropriate for the Senedd to have a lead role in any review of the legislation's operation and effect, as opposed to Welsh Ministers.

I have, however, accepted the RBCs recommendation that Welsh Ministers should be under a duty to respond to a report of the Senedd following such a review. Whilst Welsh Ministers would, by convention, respond to the report – and so such an amendment is not strictly necessary - I will aim to bring forward an amendment to this effect.

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

David Rees MS
Chair
Reform Bill Committee

26 January 2024

Dear David,

Senedd Cymru (Members and Elections) Bill

Thank you for the Reform Bill Committee's Report in relation to the Senedd Cymru (Members and Elections) Bill published on 19 January 2024. Please see my responses to the set of recommendations within the report in Annex 1.

As the Bill will be considered by a Committee of the Whole Senedd at Stage 2, I anticipate that a significant number of Members will have an interest in it. With this in mind, I am providing a written response to Committee reports in advance of the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,



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

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

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

Annex 1

| Recommendation | Response |
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| <p>Recommendation 1. By majority, we recommend that the Senedd should agree the general principles of the Senedd Cymru (Members and Elections) Bill, but, throughout their ongoing scrutiny of the Bill, Members of the Senedd should have regard to the issues highlighted in our report....Page 39</p> | <p>Noted</p> <p>This recommendation is for the Senedd. As such, no specific response is provided, though the Welsh Government welcomes the recommendation.</p> |
| <p>Recommendation 2. If the Bill passes Stage 1, the Senedd Commission should write to us in advance of Stage 2 proceedings to outline what the differences in the financial estimates would be if the estimates had been based on the 2023-24 Determination rather than the 2022-23 Determination. The Member in charge should then incorporate these estimates into the revised Explanatory Memorandum and Regulatory Impact Assessment to be laid after Stage 2..... Page 55</p> | <p>Noted</p> <p>This recommendation is for the Senedd Commission. As such, no specific response is provided here. but the Welsh Government will discuss the matter further with the Senedd Commission regarding any implications on the Explanatory Memorandum/Regulatory Impact Assessment.</p> |
| <p>Recommendation 3. In its response to our report, the Senedd Commission should provide information about any interaction between the proposals in the Senedd Cymru (Members and Elections) Bill (if passed) and the Cardiff Bay 2032 accommodation project. This should include information about how any increase in the number of Members would affect the potential costs of the 2032 project. If it is not possible to provide cost estimates at this stage, the Senedd Commission should provide an indication in its response of when the information may be available. The Senedd Commission should also commit to keeping the Senedd, and the public, updated on these matters. Page 57</p> | <p>Noted</p> <p>This recommendation is for the Senedd Commission. As such, no specific response is provided here.</p> |
| <p>Recommendation 4. The Business Committee should, as part of its procedural review prior to the 2026 election, consider whether any changes are required to Standing Orders to ensure that the appropriate procedures are in place to facilitate any election of an additional Deputy Presiding Officer under section 25(1A) of the Government of Wales Act</p> | <p>Noted</p> <p>This recommendation is for the Senedd's Business Committee. As such, no specific response is provided here.</p> |

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| <p>2006 (to be inserted by section 4 of the Bill).Page 63</p> | |
| <p>Recommendation 5. The Business Committee should, as part of its procedural review prior to the 2026 election, make use of the power in section 25(2) of the Government of Wales Act 2006 to specify that in English the Presiding Officer and Deputy Presiding Officer are to be known by the titles of Speaker and Deputy Speaker respectively.... Page 64</p> | <p>Noted</p> <p>This recommendation is for the Senedd's Business Committee. As such, no specific response is provided here.</p> |
| <p>Recommendation 6. By majority, we recommend that the Member in charge should bring forward amendments at Stage 2 to remove section 5(b) of the Bill (the power for the maximum number of Welsh Ministers to be increased by regulations). Page 73</p> | <p>Reject</p> <p>The inclusion of the power in section 5(b) provides for future-proofing, enabling the Government to react quickly and flexibly to circumstances, without utilising primary legislation for the purpose of increasing the legislative limit by one or two Ministers. This could be necessary due to the devolution of further powers, or otherwise circumstances whereby an increase is merited.</p> |
| <p>Recommendation 7. If the Member in charge does not accept our Recommendation 6, he should bring forward amendments at Stage 2 to provide that regulations under section 51(3) of the Government of Wales Act 2006 (to be inserted by section 5 of the Bill) to increase the maximum number of Welsh Ministers may not be made unless they have been approved by a supermajority of Members representing at least two-thirds of the total number of Senedd seats. ... Page 73</p> | <p>Accept</p> <p>The application of a supermajority will generally be incompatible with the intention of subordinate legislation to enable a Government to react quickly and flexibly to circumstances.</p> <p>However, in considering this recommendation, I am mindful that this power has a corresponding impact upon the capacity of the Senedd. For this reason, I will develop an amendment to give effect to the Committee's recommendation. The acceptance of this recommendation is therefore framed by the particular nature of this Constitutional Bill and the narrow circumstances associated with this power.</p> |
| <p>Recommendation 8. If the Member in charge does not accept our Recommendation 6, he should bring forward amendments at Stage 2 to provide that regulations under section 51(3) of the Government of Wales Act 2006 (to be inserted by section 5 of the Bill) to increase the maximum number of Welsh Ministers may not be made unless they include within them a sunset provision that results in the expiry of the regulations (and thereby the resetting of the limit as it stands in primary legislation) before the appointment of any Welsh Ministers by the First Minister nominated by the Senedd</p> | <p>Reject</p> <p>Welsh Government officials have explored the potential for amendments of this nature. However, this process has identified that such amendments would likely impact on Section 48 of the Government of Wales Act 2006. Section 48 is protected from modification by paragraph 7(1) in Schedule 7B to the Government of Wales Act 2006. As such, I do not intend to bring forward amendments to give effect to this recommendation.</p> |

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| <p>following the next ordinary or extraordinary general election.....Page 74</p> | |
| <p>Recommendation 9. In his response to our report the Member in charge should explain the Welsh Government's rationale for not reducing the length of local government terms at the same time as it is reducing the length of Senedd terms. The Member in charge's response should also outline what plans the Welsh Government has to engage with local authorities in Wales on this point, and what legislative mechanisms would be required to make any changes to the length of local government terms....Page 88</p> | <p>Accept</p> <p>Further to raising the question of local government terms in the Welsh Government's 2022 White Paper on Electoral Administration and Reform, where the majority of responses supported continuing with a five year term, when four year terms were proposed for the Senedd discussions were held with the leadership of the WLGA which indicated local government's preference was still to continue with five year terms.</p> <p>The length of term for local elected members is set out in sections 26 (principal councils) and section 35 (town and community councils) of the Local Government Act 1972 and primary legislation would be required to change it. To ensure local elections can be moved to avoid clashes with other elections or at times of national or local crisis, Welsh Ministers have powers, following appropriate consultation, to change the date of an ordinary local government election in section 37ZA of the Representation of the People Act 1983.</p> <p>These powers were previously used to move the ordinary election of members to the Isle of Anglesey Council from May 2012 to May 2013 and also, prior to the Local Government and Elections (Wales) Act 2021 amending the 1972 Act to enable five-year terms, to move all local government elections from May 2021 to May 2022 to avoid a clash with Senedd elections.</p> |
| <p>Recommendation 10. Without delay, the Welsh Government should commence consultation on reducing the length of time between principal, town and community council elections from five to four years, with a view to making this change unless there is strong evidence to the contrary.....Page 88</p> | <p>Reject</p> <p>As set out in the response to recommendation 9, local government term lengths were previously consulted on as part of the 2022 White Paper on Electoral Administration and Reform, and the Minister for Finance and Local Government has engaged with local government leadership, who are content that the current five-year terms remain appropriate for local government.</p> |

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| | Local government includes town and community councils and their democratic health is currently the subject of a review by an independent working group. |
| Recommendation 11. The Member in charge should, in consultation with the Auditor General for Wales and Future Generations Commissioner for Wales, undertake further work to estimate the cost implications of section 3 (frequency of ordinary general elections) on the requirements of the Well-being of Future Generations (Wales) Act 2015, and update the Regulatory Impact Assessment after Stage 2.....Page 88 | Accept |
| Recommendation 12. The Senedd Commission should, as part of its Senedd Reform Programme, consider whether any changes are required to the processes for undertaking Senedd-led (or Senedd Commission-led) public appointments to account for more frequent electoral cycles.....Page 89 | Noted This recommendation is for the Senedd Commission. As such, no specific response is provided here. |
| Recommendation 13. In his response to our report the Member in charge should outline what consideration has been given to the term lengths for Welsh Government-led public appointments in light of the proposed move to four-year Senedd terms, particularly those for which there is agreement that the Senedd may hold pre-appointment hearings....Page 89 | Accept Consideration has been given to the term lengths of Welsh Government-led public appointments in light of the proposed move to four-year Senedd terms. No legislative implications have been identified as a result of this consideration. Further consideration is continuing to be given as to any practical implications arising for individual public appointments, in light of the proposed move to four-year Senedd terms. |
| Recommendation 14. The Member in charge should work with all political parties represented in the Senedd to reach agreement on how the Bill could be amended at Stage 2 to ensure the electoral system provides greater voter choice and improved accountability for future Members to their electorates.Page 120 | Noted I note the recommendation of the Committee, however, I remain confident that the proposals in the Bill, which largely give effect to the recommendations of the Special Purpose Committee on Senedd Reform (SPC), will command the necessary supermajority within the Senedd. I also note the Committee's recommendations 15 and 50 in relation to the ballot paper and recall, which would both go some way to providing a stronger voice for voters and improve |

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| | <p>accountability for Members to their electorates.</p> |
| <p>Recommendation 15. The Member in charge should bring forward amendments at Stage 2 to include a requirement on the face of the Bill that ballot papers must include the names of all candidates, including the names of candidates standing on lists submitted by registered political parties..... Page 121</p> | <p>Accept</p> <p>The Conduct Order¹ currently requires the ballot paper in respect of party lists in regional elections to set out the names of party list candidates, as well as those of individual candidates. It is the intention that the new Conduct Order will continue to impose this requirement in respect of party lists submitted in constituencies in the new regime. However, I recognise that a requirement on the face of the Bill to the effect that the names of all candidates are on the ballot paper will reassure Members and the electorate on this point, and officials will seek to develop amendments to this effect.</p> |
| <p>Recommendation 16. The Member in charge should bring forward amendments at Stage 2 to ensure the Bill includes provision that enables all vacancies arising between elections to be filled, including vacancies left by Members elected as independents or by Members elected to represent parties whose candidate lists contain no further eligible or willing candidates.... Page 121</p> | <p>Reject</p> <p>The frequency with which Senedd seats become vacant in any circumstances is comparatively rare. Applying the vacancy rate that occurred across the first five Seneddau to a 96 Member Senedd - sitting for four years - would indicate 4-5 vacancies per term.</p> <p>To date, no regional seat that has become vacant has remained so. All have been filled by a candidate on a party's list. Allowing eight candidates to stand on a party's list allows candidates that are not returned at a general election to fill vacancies that may arise.</p> <p>Retaining a vacancy, in the unlikely scenario of a Party's list becoming exhausted, is considered the most appropriate solution, as it will most closely retain the balance of representation at the last election, and therefore continues to best represent voters' intentions at that election.</p> <p>A number of the jurisdictions referred to by the Committee in its consideration of this</p> |

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| | <p>issue retain vacant seats in the event of a party's list becoming exhausted.</p> |
| <p>Recommendation 17. The Business Committee should, as part of its procedural review prior to the 2026 election, consider whether any changes are required to Standing Orders, conventions or practices to mitigate the impact on Senedd business, including the committee system, either of vacancies that cannot be filled or of changes in the political composition of the Senedd between general elections.....Page 121</p> | <p>Noted</p> <p>This recommendation is for the Senedd's Business Committee. As such, no specific response is provided here.</p> |
| <p>Recommendation 18. In his response to our report the Member in charge should provide clarity on who will be responsible for leading, driving and coordinating national and local public information and awareness-raising campaigns about the electoral reforms, and in particular the new electoral system.....Page 122</p> | <p>Accept in principle</p> <p>Welsh Government officials have convened a Senedd Electoral Reform Delivery Board with key partners, and further engagement on this point will be pursued through that forum.</p> <p>A number of organisations have statutory responsibilities in this respect, including the Senedd Commission, the Electoral Commission and Local Authorities. The Electoral Management Board will also have a role to play if the Elections and Elected Bodies (Wales) Bill is passed by the Senedd. While it is important that individual statutory duties and powers are respected, there is a common desire to ensure national and local public information and awareness-raising campaigns about electoral reform are planned and co-ordinated effectively and efficiently, to avoid duplication and ensure the intended outcomes of such campaigns are maximised.</p> <p>I will provide an update to Members in due course.</p> |
| <p>Recommendation 19. The Member in charge should provide assurances to electoral administrators and returning officers that the Welsh Government will provide the financial and other support and resources required for the implementation of the provisions in the Bill.... Page 122</p> | <p>Accept</p> <p>I am happy to provide such assurances. Supporting the successful implementation of this legislation, and the Elections and Elected Bodies (Wales) Bill, if passed by the Senedd, will be a priority over a number of years. Welsh Government officials are working closely with the electoral community – including through the Senedd Electoral Reform Delivery Board – on how to best achieve that.</p> |

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| <p>Recommendation 20. The Member in charge should bring forward amendments at Stage 2 to new section 4(1)(c) to be inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by section 13 of the Bill to reduce the number of members (other than the chair and deputy chair) of the Democracy and Boundary Commission Cymru to no more than five....Page 138</p> | <p>Noted</p> <p>The increase in the maximum number of Commissioners provided for by the Bill reflects not only the conferral of functions relating to Senedd boundary reviews, which is a function that currently does not exist, but also the transfer of the functions of the Independent Remuneration Panel, and the establishment of the Electoral Management Board (via the Elections and Electoral Bodies Bill).</p> <p>The maximum proposed number of Commissioners is lower, at nine, than the combined current maximum of the LDBCW and IRP (total of twelve). The Committee's report compares the proposed number of Commissioners with that of Boundaries Scotland, which has fewer functions to those proposed for the DBCC.</p> <p>However, I will engage in further discussions with the LDBCW to identify if a reduction in the maximum number of Commissioners would materially impact upon their ability to deliver their statutory responsibilities.</p> |
| <p>Recommendation 21. The Member in charge should undertake further work with the Local Democracy and Boundary Commission for Wales to:</p> <ul style="list-style-type: none"> ▪ Establish the number of additional commissioners to be recruited (including the specific skills, responsibilities and timing of such appointments). ▪ Ensure that consideration is given to the geographical diversity of commissioners. ▪ Identify any requirements for additional secretariat support.Page 138 | <p>Accept</p> <p>Work is already underway on these matters as part of an Implementation Project Board set up between Welsh Government officials, LDBCW Commissioners and Secretariat and Independent Remuneration Panel Members. Discussions with the organisations have taken place throughout the development of both the Senedd Cymru (Members and Elections) and Elections and Elected Bodies Bills.</p> |
| <p>Recommendation 22. The Member in charge should bring forward amendments at Stage 2 to provide on the face of the Bill that appointments to the Democracy and Boundary Commission Cymru roles of chair, deputy chair, commissioners and chief executive must be conducted through the public appointments process....Page 138</p> | <p>Accept in Principle</p> <p>As the recommendations of the DBCC will be implemented automatically, with no role for either Welsh Government or the Senedd to amend, I agree that it is vitally important that the members of DBCC are appointed in an open, impartial and transparent way, as provided for by the public appointments process. As is indicated in the Committee's</p> |

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| | <p>report, appointments of LDBCW Commissioners are already undertaken through the public appointments process and subject to the oversight of the Commissioner for Public Appointments. The Bill as introduced does not change this, therefore I will give further consideration as to what further safeguards or clarification may be provided.</p> <p>To note, however, the Chief Executive is an employee of the body corporate of the Commission, and so is recruited through fair and open competition, as any other Chief Executive of an Arms Length Body (rather than through the public appointments process).</p> |
| <p>Recommendation 23. The Member in charge should bring forward amendments at Stage 2 to extend the list of persons disqualified from appointment to the Democracy and Boundary Commission Cymru to other persons employed in Welsh Government or in party political roles, and to ensure there are similarly robust safeguards in place to prohibit party political activity while in post....Page 139</p> | <p>Accept in principle</p> <p>I will seek to bring forward amendments at Stage 2 to give effect to this recommendation.</p> |
| <p>Recommendation 24. The Member in charge should consider whether the terms “a member of the staff of Senedd Cymru” and “a person appointed to assist a Member of the Senedd with the carrying out of the Member’s functions” to be inserted into the renamed Democracy and Boundary Commission Cymru etc. Act 2013 by sections 14(1)(b), 14(2) and 16(1)(b)(ii) of the Bill are sufficiently clear and consistent with the terminology used in other legislation.....Page 139</p> | <p>Accept</p> <p>I will consider whether the terms are sufficiently clear and consistent with terminology used in other legislation.</p> |
| <p>Recommendation 25. The Business Committee should, as part of its procedural review prior to the 2026 election, consider appropriate models of accountability for the Democracy and Boundary Commission Cymru in respect of its functions in relation to Senedd constituency boundaries, including the potential use of the Llywydd’s Committee. The accountability model put in place should include the option for a relevant Senedd committee, if it wishes to do so, to hold pre-appointment hearings as part of the processes for appointing the chair and chief executive of the Democracy and Boundary Commission Cymru. Page 51</p> | <p>Noted</p> <p>This recommendation is for the Senedd’s Business Committee. As such, no specific response is provided here.</p> |

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| <p>and Boundary Commission Cymru.....Page 140</p> | |
| <p>Recommendation 26. If the Bill passes Stage 1, the Member in charge should write to us no later than five working days after the general principles motion has been agreed setting out his views on each of the recommendations for technical changes to Schedules 1 and 2 made by the Local Democracy and Boundary Commission for Wales in its written evidence to us. This letter should include an indication for each recommendation made by the LDBCW of whether or not he agrees with the LDBCW that the change is needed, the reasons for his view, and confirmation of whether or not he intends to bring forward amendments to give effect to the recommendation.Page 164</p> | <p>Accept</p> <p>I will write to the Committee within the timescale of the recommendation, setting out views on LDBCW's suggested technical changes included in their written evidence.</p> |
| <p>Recommendation 27. The Member in charge should bring forward amendments at Stage 2 to new section 49C to be inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by paragraph 1 of Schedule 2 to the Bill to provide that the impact on the Welsh language is one of the local ties that should be taken into account by the DBCC when determining the Senedd's constituency boundaries. Page 164</p> | <p>Accept in Principle</p> <p>I recognise the importance that the Welsh language plays in building and maintaining community links, and the impact that constituency boundaries can have on those communities.</p> <p>I will give consideration as to the most appropriate way of giving effect to this objective through the legislative instructions that DBCC must follow in undertaking its reviews.</p> <p>It is worth noting that the LDBCW in previous local government reviews has considered the Welsh language as an aspect of local ties, and the DBCC may decide to do so again for Senedd reviews. The Secretariat of the Boundary Commission for Wales has also previously stated in evidence to a UK Parliament Committee that the Commission considers the Welsh language as a community tie, in a discussion on local ties.</p> |
| <p>Recommendation 28. By majority, we recommend that the Member in charge should bring forward amendments at Stage 2 to new section 49C(1) to be inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by paragraph 1 of Schedule 2 to the Bill to reduce the</p> | <p>Reject</p> <p>While UK parliamentary boundary reviews now apply a statutory 5% variance from the UK electoral quota, this is not a long-established rule. This statutory electorate</p> |

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| <p>permissible variance from ± 10 per cent.Page 165</p> | <p>UK Parliamentary Boundary review is the first implemented review to have used this variance range.</p> <p>In terms of boundary reviews for the Scottish Parliament, constituencies should be “as near the electoral quota as is practicable” therefore no numerical variance is in place.</p> <p>Introducing a smaller variance away from the electoral quota would also likely mean more change in Senedd constituency boundaries between the 2026 and 2030 Senedd elections and less flexibility for the DBCC to take into account other factors as part of its reviews.</p> <p>A 10% variance is therefore considered appropriate for multi-member constituencies, allowing the DBCC to balance broader factors alongside the importance of maintaining a level of parity of representation.</p> |
| <p>Recommendation 29. The Member in charge should bring forward amendments at Stage 2 to new section 49C(3) to be inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by paragraph 1 of Schedule 2 to the Bill to provide that the calculation of the electoral quota should include electors and attainers....Page 165</p> | <p>Reject</p> <p>The Bill provides that the DBCC must use the most recent local government electoral register (published under section 13(1)(a) of the Representation of the People Act 1983) as at the review date, for calculating the electoral quota. This version of the register is considered the most appropriate for use in calculations, as it is this version that is subsequently collated by the ONS and is therefore subject to a number of checks.</p> <p>This version of the register does not include details of those under 16, however, restrictions included in the Senedd and Elections (Wales) Act 2020, prohibit Electoral Registration Officers from publishing, supplying or disclosing a young person’s information except in limited circumstances. Consequently, I cannot accept the recommendation, as details of attainers are not included in the version of the register which is considered on balance to be the most appropriate to use for boundary reviews.</p> |
| <p>Recommendation 30. The Member in charge should bring forward amendments at Stage 2 to new section 49I(1) to be</p> | <p>Reject</p> |

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| <p>inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by paragraph 1 of Schedule 2 to the Bill to provide an earlier date by which the final reports of the DBCC must be published and sent to the Welsh Ministers in order to avoid a coincidence with the 1 December deadline that already applies for the publication by electoral registration officers of the revised register of electors following the annual canvass.....Page 165</p> | <p>As a full boundary review is expected to take around two and a half years to complete, bringing the final report deadline forward from 1 December would make delivery challenging. If the date was brought forward then it is possible that the 2030 boundary review would need to start in advance of the 2026 Senedd election, causing confusion for voters and the public.</p> <p>In addition, the DBCC final report being published does not mean that any new boundaries included within them exist in law on the date that the report is published. This does not happen until they are implemented by regulations, several months later. EROs may therefore prefer to not amend their registers until regulations implementing the new boundaries have been made and exist in law.</p> |
| <p>Recommendation 31. The Member in charge should bring forward amendments at Stage 2 to new section 49J(1)(b) and (3) to be inserted into the Democracy and Boundary Commission Cymru etc. Act 2013 by paragraph 1 of Schedule 2 to the Bill to reduce the period within which Welsh Ministers must bring forward regulations to give effect to the DBCC's recommendations from six months to four months.....Page 166</p> | <p>Accept I will seek to bring forward amendments to give effect to this recommendation</p> |
| <p>Recommendation 32. The Member in charge should bring forward amendments at Stage 2 to Schedules 1 and 2 to the Bill to provide that the DBCC must consult the Welsh Language Commissioner on the proposed name or names of Senedd constituencies (and on any changes to the proposed name or names), and have regard to any representations made.....Page 166</p> | <p>Accept in part</p> <p>The Bill places a duty on the DBCC to engage with the Welsh Language Commissioner on the orthography of proposed names of constituencies for communication through the medium of Welsh. The policy intention is that this would also include any proposed monolingual names, but further consideration will be given to tabling an amendment to make this clear on the face of the Bill.</p> <p>This would take place in advance of the initial and second (and final) reports being published and therefore in advance of the formal consultation periods beginning. Given this timing in the review, the duty to engage is limited to technical comments on orthography. The DBCC will be required to have regard to</p> |

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| | <p>the Welsh Language Commissioner's comments made as part of this engagement. I will give this further consideration.</p> |
| <p>Recommendation 33. The Member in charge should bring forward amendments at Stage 2 to Schedules 1 and 2 to the Bill to provide that each Senedd constituency should be given a monolingual name (unless the DBCC considers that there are specific reasons why bilingual names are appropriate).Page 167</p> | <p>Accept</p> <p>I will bring forward an amendment so that the DBCC must give a single monolingual name to Senedd constituencies if acceptable for communication through the medium of both Welsh and English.</p> <p>If the DBCC considers a monolingual name is not acceptable for communication through the medium of both Welsh and English, then the DBCC must propose a name for the Senedd constituency for communication through the medium of Welsh, and a name for the Senedd constituency for communication through the medium of English.</p> |
| <p>Recommendation 34. The Member in charge should bring forward amendments at Stage 2 to Schedules 1 and 2 to the Bill to provide that if a constituency is to be given a single monolingual name, that name may only be in the Welsh language. Page 167</p> | <p>Accept in Principle</p> <p>In response to recommendation 33 I intend to bring forward an amendment so that the DBCC must give a single monolingual name to Senedd constituencies, if the DBCC consider it acceptable for communication through the medium of both Welsh and English.</p> <p>This means that the DBCC would not propose a non-Welsh name as the monolingual name, as the DBCC would not consider it acceptable for use in communicating through the medium of Welsh. It is therefore not considered necessary for the legislation to state that the monolingual name must be in Welsh. I will, however, consider how best to give effect to this recommendation in developing the amendment referenced above.</p> |
| <p>Recommendation 35. The Member in charge should bring forward amendments at Stage 2 to Schedules 1 and 2 to the Bill to provide that the Welsh Language Commissioner's role in respect of the orthography of proposed constituency names applies to all proposed constituency names (or changes to those names) whether the proposals are for the purpose of</p> | <p>Accept in Part</p> <p>The Bill already provides for the DBCC to engage with the Welsh Language Commissioner on the orthography of proposed constituency names for communication through the medium of Welsh in advance of the publication of the initial report (and at relevant points thereafter). The</p> |

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| <p>of identifying the constituency through the medium of Welsh, the medium of English, or a monolingual name for communication through either language.....Page 167</p> | <p>policy intention is that this requirement would also cover any monolingual names for communication through either language, however further consideration will be given to tabling an amendment to make this clear on the face of the Bill.</p> |
| <p>Recommendation 36. The Member in charge should bring forward amendments at Stage 2 to Schedules 1 and 2 to the Bill to provide that the Democracy and Boundary Commission Cymru must implement any recommendations made by the Welsh Language Commissioner in respect of the orthography of proposed constituency names. In line with our Recommendation 35, this should include the orthography of names for communication through the medium of Welsh and the medium of English, and any monolingual names for communication through either language.... Page 168</p> | <p>Reject</p> <p>The legal responsibility to name Senedd constituencies is with the DBCC (taking into account the expert advice received from the Welsh Language Commissioner and balancing it with the views received from others as part of the wider consultation periods).</p> <p>By requiring the DBCC to implement any recommendations of the Welsh Language Commissioner, the function of naming constituencies is effectively transferred from DBCC to Welsh Language Commissioner. Such a duty would also mean that any representations made by potential constituents as to naming could not be considered by the DBCC.</p> <p>However, I recognise (drawing on the experience of local government boundary reviews) that there may be benefit in having broad consensus amongst key stakeholders with regard to the principles and conventions of a naming policy established in advance of a Senedd boundary review. Officials will further explore options in respect of a process by which the DBCC would need to consult with stakeholders such as the Welsh Language Commissioner, and publish a naming policy at the commencement of a review.</p> |
| <p>Recommendation 37. The Member in charge should commit to including a requirement for candidates to provide their electoral register reference on the nomination papers prescribed in the order made under section 13 of the Government of Wales Act 2006. As part of the review and consultation to inform the making of the order, the Member in charge should undertake a data protection impact assessment to ensure that any appropriate steps may be taken in respect of those who are eligible for anonymous registration. Page 180 Pack Page 56</p> | <p>Accept in principle</p> <p>The Conduct Order will set out the exact processes and declarations that a candidate must make as part of their nomination process.</p> <p>It is currently intended that the Conduct Order will require a candidate to state the name of the Local Authority in which they are registered in the register of local government electors, as part of their consent to nomination.</p> |

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| | <p>Requiring a candidate to provide their electoral registration number raises – as the Committee acknowledges – potential issues in respect of those individuals who are eligible for anonymous registration.</p> <p>As returning officers will take the information on the nomination papers “at face value” - i.e. they would not check to confirm that the declarations made are correct – it is considered that requiring them to make the declaration as set out above achieves the intent behind this recommendation.</p> |
| <p>Recommendation 38. The Member in charge should bring forward amendments at Stage 2 to section 6 of the Bill to provide an appropriate grace period for a Member to appeal their removal from the register of electors at an address in Wales to prevent them being unseated as a result of their accidental removal from the register. Page 181</p> | <p>Noted</p> <p>I note the committee’s recommendations and will give further consideration to any further safeguards or assurances can be provided.</p> |
| <p>Recommendation 39. The Member in charge should bring forward amendments at Stage 2 to provide a mechanism for a reserve candidate who would otherwise be eligible to take up a vacancy arising during a Senedd term to become registered in the register of local government electors at an address within a Senedd constituency. The mechanism should include provision for a reasonable time period within which the prospective Member would be required to meet the qualification.....Page 181</p> | <p>Accept in principle</p> <p>I will explore options to enable a “reserve candidate” who would otherwise be eligible to take up a vacancy arising during a Senedd term to become registered in the register of local government electors at an address within a Senedd constituency.</p> |
| <p>Recommendation 40. The Member in charge should bring forward amendments at Stage 2 to prevent a person whose main residence is outside Wales from satisfying the residency requirement in section 6 of the Bill if they are on the electoral register at an address in Wales by means of a second home.Page 182</p> | <p>Accept in principle</p> <p>I agree that it is important that only people who are genuinely resident in Wales are able to stand as candidates in Senedd Elections, and to sit as Members of the Senedd.</p> <p>As the guidance issued to Electoral Registration Officers by the Electoral Commission sets out, merely owning a second property in Wales would not allow an individual to stand for election, or sit as a Member, and it is unlikely that owning a second property which is visited only for recreational purposes would meet the residency qualification. Such an individual would still need to be able to demonstrate to an electoral registration officer a degree of permanency at an address in order to be</p> |

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| | <p>deemed “resident”, and so be eligible for electoral registration.</p> <p>If someone is able to demonstrate that they are sufficiently “resident” in Wales, so that an Electoral Registration Officer deems that they are eligible to be registered, it is appropriate for that individual to be able to stand for election to the Senedd. Each circumstance should continue to be considered by Returning Officers on a case by case basis, and it is important that any disqualification criteria remains objectively clear to candidates, parties, administrators and – ultimately – a court.</p> |
| <p>Recommendation 41. The Member in charge should bring forward amendments at Stage 2 to remove sections 7 (review of possible job-sharing of offices relating to the Senedd) and 19 (review of operation of Act etc. after 2026 general election) from the Bill on the basis that the provisions are constitutionally problematic and legally unnecessary.Page 196</p> | <p>Reject</p> <p>Should the Business Committee accept recommendation 42, such work is not incompatible with section 7 of the Bill. In the event that this work has been completed by the end of this Senedd, the seventh Senedd could simply reject the motion provided for in section 7. Please see my more detailed response to recommendations 8 and 9 of the Legislation, Justice and the Constitution Committee’s report.</p> <p>As the Bill emanated from the recommendations of the Special Purpose Committee, it is appropriate that the Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 19 provides a mechanism for the next Senedd to give consideration to this.</p> <p>For both provisions, the Bill does not seek to restrict the autonomy of a future Senedd – the next Senedd would be entitled to vote for or against the given motions as it chooses under usual procedure.</p> |
| <p>Recommendation 42. The Business Committee should consider either proposing the establishment of a new committee in the Sixth Senedd to explore the extent to which persons should be able to jointly hold the offices listed in section 7(3) of the Bill, including the extent to which a person should be able to temporarily hold such an office while the person elected or appointed to that office is unavailable, or asking an existing Senedd committee with a relevant remit to undertake such work. If such work is undertaken by a Senedd committee, the Business Committee should schedule time</p> | <p>Noted</p> <p>This recommendation is for the Senedd’s Business Committee. The Welsh Government does not consider its rejection of recommendation 41 to be incompatible with the Business Committee taking this recommendation forward. In the event that this work has been completed before the seventh Senedd, that Senedd could simply reject the motion provided for in section 7.</p> |

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| <p>in Plenary for debate of the outcomes by the Senedd...Page 197</p> | |
| <p>Recommendation 43. The Member in charge should bring forward amendments at Stage 2 to require the Welsh Ministers to review and report on the operation of the Senedd Cymru (Members and Elections) Act 2024. The outcomes of this review will inform decisions to be taken by future Seneddau and their committees whether, and if so, when and how, they consider it appropriate to conduct post-legislative scrutiny.Page 198</p> | <p>Reject</p> <p>As the Bill emanated from recommendations made of the Special Purpose Committee on Senedd Reform, which were endorsed by the Senedd, the Welsh Government remains of the view that it would be appropriate for the Senedd to have a lead role in any review of the legislation’s operation and effect.</p> |
| <p>Recommendation 44. If the Member in charge does not accept our Recommendation 41, he should bring forward amendments at Stage 2 to remove section 19(2)(b) (which requires the motion tabled by the Presiding Officer to propose that the committee established to review matters relating to the review of the Act and the extent to which elements of a healthy democracy are present in Wales must complete a report on the review no later than twelve months after the first meeting of the Senedd after the 2026 election).Page 199</p> | <p>Reject</p> <p>A 12 month deadline is necessary to provide sufficient time following publication of the review for the seventh Senedd, if it so wishes, to pursue any legislative changes arising from the review and seek their implementation ahead of the 2030 Senedd election.</p> <p>Should the next Senedd wish to provide for a different deadline this can be achieved by way of an amendment to the motion tabled by the Llywydd under section 19.</p> |
| <p>Recommendation 45. If the Member in charge does not accept our Recommendation 41 or Recommendation 44, he should bring forward amendments at Stage 2 to section 19(2)(b) to replace the current requirement that the motion tabled by the Presiding Officer must specify that the committee’s work is to be completed within twelve months of the first meeting after the 2026 election with provision that the motion may include a proposed deadline by which the committee’s report is to be completed.....Page 199</p> | <p>Reject</p> <p>A 12-month deadline is necessary to provide sufficient time following publication of the review for the Seventh Senedd, if it so wishes, to pursue any legislative changes arising from the review and seek their implementation ahead of the 2030 Senedd election.</p> <p>Should the next Senedd wish to provide for a different deadline this can be achieved by way of an amendment to the motion tabled by the Llywydd under section 19.</p> |
| <p>Recommendation 46. By majority, we recommend that, if the Member in charge does not accept our Recommendation 41, he should bring forward amendments at Stage 2 to remove section 19(2)(a)(ii) (which requires the motion tabled by the Presiding Officer to propose that a committee carries out a review of the extent to which elements of a healthy democracy are present in Wales).....Page 200</p> | <p>Reject</p> <p>The impact of the legislative and electoral changes provided for by the Bill will extend beyond the specific effect of the legislative provisions themselves. It is important that the review also considers any wider impact on the elements of healthy democracy in Wales. Examples are provided of potential areas that could be considered as part of a review of the extent to which elements of a healthy democracy are present in Wales are provided in the Explanatory Memorandum.</p> |

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| <p>Recommendation 47. If the Member in charge does not accept our Recommendation 41, he should bring forward amendments at Stage 2 to insert into section 19 provision equivalent to section 7(5) requiring the Welsh Ministers to respond to the report and recommendations made by a committee established pursuant to a motion under section 19(1).....Page 200</p> | <p>Accept</p> <p>Should the next Senedd decide to establish the committee to review the operation and effect of the Act, and that committee produces a report, then the Welsh Ministers would, by convention, respond to the report. Therefore, while such an amendment is not strictly necessary, I will aim to bring forward an amendment to this effect.</p> |
| <p>Recommendation 48. The Welsh Government should work with the Independent Remuneration Board of the Senedd, the Senedd Commission, the Electoral Commission, registered political parties, and such other stakeholders as it considers appropriate, to review the public resources and funding available to registered political parties in Wales for the purposes of policy development, and the extent to which the eligibility and allocation of such resources and funding reflect devolved responsibilities, parties' electoral support in Wales and their representation in the Senedd. In conducting this review, which should be completed and published in sufficient time to enable the outcomes to be implemented with effect from the start of the Seventh Senedd in 2026, consideration should be given to funding levels, governance arrangements, and any issues relating to the Senedd's legislative competence. Page 205</p> | <p>Noted</p> <p>I will give further consideration to this recommendation in conjunction with the relevant bodies.</p> |
| <p>Recommendation 49. As it prepares for the implementation of the reforms in the Bill, the Independent Remuneration Board of the Senedd should review the Political Parties Support Allowance and consider any other relevant provision that could be provided through its Determinations. During this process, it should consider in particular the extent to which the support available is equivalent to the level and types of support available elsewhere, including Short Money and Cranborne Money in the UK Parliament. The outcomes of this work should be implemented with effect from the start of the Seventh Senedd in 2026. ..Page 205</p> | <p>Noted</p> <p>This recommendation is for the Independent Remuneration Board of the Senedd. As such, no specific response is provided here.</p> |
| <p>Recommendation 50. The Standards of Conduct Committee should work with the Standards Commissioner, registered political parties, and such other</p> | <p>Noted</p> |

stakeholders as it considers appropriate, to develop options for strengthening individual Members' accountability. This should include consideration of issues including recall of Members, disqualification arrangements and the sanctions available to the Standards of Conduct Committee when a complaint about a Member is upheld. Public consultation on potential options should be completed before the end of the Sixth Senedd in 2026. Page 210

This recommendation is for the Senedd's Standards of Conduct Committee. As such, no specific response is provided here.

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

Agenda Item 8.3


Peredur Owen Griffiths MS
Chair
Finance Committee

Llywodraeth Cymru
Welsh Government

26 January 2024

Dear Peredur,

Senedd Cymru (Members and Elections) Bill

Thank you for the Finance Committee's report in relation to the Senedd Cymru (Members and Elections) Bill published on 19 January 2024. Please see my responses to the set of recommendations within the report in Annex 1.

As the Bill will be considered by a Committee of the Whole Senedd at Stage 2, I anticipate that a significant number of Members will have an interest in it. With this in mind, I am providing a written response to Committee reports in advance of the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Reform Bill Committee, the Chair of the Legislation, Justice and Constitution Committee and all Members of the Senedd for information.

Yours sincerely,



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

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

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

Annex 1

| Recommendation | Response |
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| <p>Recommendation 1. The Committee recommends that, if significant changes are made to the Bill during its passage through the Senedd, the Minister undertakes the necessary modelling of potential costs and that these should be updated in a revised Regulatory Impact Assessment.Page 14</p> | <p>Accept</p> |
| <p>Recommendation 2. The Committee recommends that the Minister models the anticipated savings as a result of this Bill, to quantify the impact of scrutiny benefits, with specific reference to the improved scrutiny of legislation and budgets in the Senedd, and for this information to be included in a revised Regulatory Impact Assessment.Page 14</p> | <p>Noted</p> <p>I welcome the opportunity to undertake further modelling on the anticipated savings as a result of this Bill, to quantify the impact of scrutiny benefits, with specific reference to the improved scrutiny of legislation and budgets in the Senedd. However, undertaking such an exercise to a robust standard will not be compatible with the timescales associated with the passage of the Bill through the Senedd, which are themselves necessary for the reforms to be delivered in time for the 2026 election.</p> <p>I am also mindful that a number of academic studies have previously examined the challenge of assessing parliamentary impact.</p> <p>Outside the context of this Bill, understanding the impact of scrutiny is more properly a matter for the Senedd, and Senedd committees when it comes to the effectiveness of committee scrutiny.</p> <p>For example, in May 2021 Professor Diana Stirbu commented that: "One of the biggest hurdles in developing a coherent framework for evaluation of committees' work is that not everything can be easily quantifiable and measurable. For instance, the 'deterrent' effect of committees' work has been mentioned by many in our interviews, but this is generally difficult to measure. One can evidence through a qualitative study of</p> |

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| | <p>narratives and perceptions of Government ministers and the bureaucracy supporting them in relation to the indirect effect of committees' work. White emphasises the importance of using both qualitative and quantitative sources to evidence effectiveness of committees."¹ However, in the same report Professor Stirbu identified a number of measures by which the effectiveness of Committees could be determined over the long term.</p> <p>The Welsh Government is willing to engage with any work that Senedd committees, and/or the Chairs' Forum, might wish to undertake to better understand committee impact in future.</p> |
| <p>Recommendation 3. The Committee recommends that the Senedd Commission continues to present costs relating to Senedd reform as ring-fenced within its annual budget documentation to ensure clarity and transparency.Page 15</p> | <p>Noted</p> <p>This recommendation is for the Senedd Commission. As such, no specific response is provided here.</p> |
| <p>Recommendation 4. The Committee recommends that the Minister, in consultation with the Senedd Commission, undertakes further modelling of Commission staff costs to include the minimum and maximum pay scales to provide a range of costs, and for this information to be included in a revised Regulatory Impact Assessment..... Page 28</p> | <p>Accept in principle</p> <p>I believe the approach taken in the Regulatory Impact Assessment provides a more accurate representation of likely costs.</p> <p>The Regulatory Impact Assessment provides costs at a point in time and in a consistent way across organisations. Figures providing a range of staff costs could potentially be provided as a standalone annex and discussions are in hand with the Senedd Commission.</p> |
| <p>Recommendation 5. The Committee recommends that the Minister, in consultation with the Senedd Commission, undertakes modelling work to understand the impact of an increase in committees, beyond the three additional committees estimated in the Regulatory Impact Assessment, on the scrutiny benefits arising from the Bill and that this information should be included in a revised Regulatory Impact Assessment..... Page 28</p> | <p>Noted</p> <p>Ultimately these are operational decisions for a future Senedd/Business Committee to determine the number, role etc of committees. Assumptions were made in order to provide an indication in the Regulatory Impact Assessment of possible costs, but not with the intention to bind a future Senedd.</p> <p>I am content to discuss this matter further with the Senedd Commission.</p> |

¹ Professor Diana Stirbu, Power, Influence and Impact of Senedd Committees: Developing a framework for measuring committees' effectiveness, May 2021, <https://senedd.wales/gen-ld14672-e.pdf>; page 70.

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| <p>Recommendation 6. The Committee recommends that the Minister, in consultation with the Senedd Commission, undertakes a cost-benefit analysis on the number of additional committees that may be required and that this information should be included in a revised Regulatory Impact Assessment. Page 28</p> | <p>Reject</p> <p>Ultimately these are operational decisions for a future Senedd/Business Committee to determine the number, role etc of committees. Assumptions were made in order to provide an indication in the Regulatory Impact Assessment of possible costs, but not with the intention to bind a future Senedd.</p> |
| <p>Recommendation 7. The Committee recommends that the Minister, in consultation with the Senedd Commission, undertakes a review of the current configuration of Members’ offices in Tŷ Hywel, to include:</p> <ul style="list-style-type: none"> • an assessment and cost-benefit analysis on the use of open-plan working; • and an assessment of the energy use. Page 29 | <p>Noted. This is a matter for the Senedd Commission. As such, no specific response is provided here.</p> |
| <p>Recommendation 8. In light of the new electoral system which may result in uplifts to Members’ travel, residential accommodation and staff costs, the Committee recommends that the Minister, in consultation with the Senedd Commission, reassesses these costs and provides a range rather than using the average costs of current Members, and for this information to be included in a revised Regulatory Impact Assessment. Page 29</p> | <p>Accept in principle</p> <p>The Welsh Government will discuss the matter further with the Senedd Commission, particularly in terms of any impact on the Regulatory Impact Assessment.</p> |
| <p>Recommendation 9. The Committee recommends that the Minister, in consultation with the Senedd Commission, updates the cost estimates relating to Members in the Regulatory Impact Assessment:</p> <ul style="list-style-type: none"> • using the financial information from the latest available Determination on Members’ Pay and Allowances; and • includes the additional salary to leaders of a political group (not in the government) for each Member in their group (up to the maximum allowed for in the Determination). Page 29 | <p>Accept in principle</p> <p>Regulatory Impact Assessment provides costs at a point in time and in a consistent way across organisations. If new determination figures to be calculated, we would propose including as standalone annex.</p> <p>The Welsh Government accepts the recommendation to include additional salary for leaders of political group but this should use the 2022-23 Determination for consistency with other figures in the Regulatory Impact Assessment.</p> |
| <p>Recommendation 10. The Committee recommends that the Minister, in consultation with the Senedd Commission, undertakes further work to</p> | <p>Noted. This is a matter for the Senedd Commission. As such, no specific response is provided here.</p> |

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| <p>assess the impact that different demographics of newly elected Members will have on the Members' Pension Scheme. Page 29</p> | |
| <p>Recommendation 11. The Committee recommends that the Minister, in consultation with the Senedd Commission, provides further clarity on the schedule of work that will be undertaken on the Senedd and Tŷ Hywel estates, should the Bill not be agreed. Page 29</p> | <p>Noted. This is a matter for the Senedd Commission. As such, no specific response is provided here.</p> |
| <p>Recommendation 12. The Committee recommends that the Minister provides evidence to confirm the assertion that no additional Welsh Government staff will be required, as a result of an increase in the Senedd's membership.Page 32</p> | <p>Accept</p> <p>The Regulatory Impact Assessment attempts to provide the best estimate of likely costs as a result of the Senedd Cymru (Members and Elections) Bill. However there are some unknown factors which, when subsequent decisions have been taken, could impact on the estimates (either in terms of costs or savings).</p> <p>It is normal practice for the Government to re-prioritise resources to address new priorities and respond to challenges without the need to expand the size of the civil service (for example the Covid-19 pandemic). Current resources provide for the existing responsibilities of the Welsh Government and it is anticipated additional resources would only be needed, for example, if there were to be a change in devolved responsibilities.</p> |
| <p>Recommendation 13. The Committee recommends that the Minister undertakes further work to assess the impact that a maximum increase in the number of Welsh Ministers will have on the number of Members available to undertake a scrutiny role and the effect this will have on the potential savings referred to by the Minister through improved scrutiny.....Page 32</p> | <p>Accept</p> <p>For all the scenarios set out in the Bill EM/RIA relating to an increase in the number of Welsh Ministers, the proportion of executive to the Senedd reduces.</p> <p>In proportionate terms, the Welsh Government (12 Ministers plus the First Minister and Counsel General) currently constitutes 23.3% of the Senedd's 60 Members. In an enlarged Senedd, a Welsh Government of 17 Ministers, along with the First Minister and Counsel General, would constitute 19.8% of the Senedd's 96 Members.</p> <p>A Welsh Government of 19 Ministers, along with the First Minister and Counsel General, would constitute 21.9% of the Senedd's 96 Members. Therefore the maximum limit on the number of Welsh Ministers provided for in</p> |

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| | <p>section 5 ensures that the increase in the number of Members of the Senedd is greater than that of the executive in any event.</p> |
| <p>Recommendation 14. The Committee recommends that the Minister undertakes further work to understand the level of volatility in membership from one Senedd to the next and associated cost implications, including the impact on the Members' Pension Scheme, in light of the move to a four-year election cycle.</p> | <p>Accept in principle</p> <p>I am content to give further consideration to this recommendation with a view to providing further analysis. Given the scope of the recommendation, any such work will need to be undertaken in consultation with the Senedd Commission.</p> |
| <p>Recommendation 15. The Committee recommends that the Minister provides clarity on the potential costs identified to the Welsh Government, Auditor General for Wales and the Future Generations Commission resulting from a four-year election cycle..... Page 38</p> | <p>Accept</p> |
| <p>Recommendation 16. The Committee recommends that the Minister provides an update on costs once all the relevant boundary changes have been completed, to enable the Committee or a future finance committee to understand the full financial impact of the Bill. Page 38</p> | <p>Accept</p> |



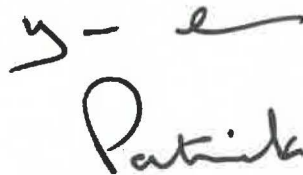
30 January 2024

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

Re Huw,

Data Protection and Digital Information Bill

Thank you for your letter of 26 January regarding your report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No.3) on the Data Protection and Digital Information Bill. It is very helpful that you have drawn your concerns to our attention, and we will fold them into our consideration of the Bill to the extent that they fall within our Committee's remit.


Patrick

The Rt Hon. Lord McLoughlin CH
Chair of the Delegated Powers and Regulatory Reform Committee

The Rt Hon. the Lord McLoughlin CH
Chair, Delegated Powers and Regulatory Reform Committee
House of Lords

26 January 2024

Dear Lord McLoughlin

Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No.3) on the Data Protection and Digital Information Bill

Our report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill has been laid before the Senedd today. I have enclosed a copy of the report for your information.

I would like to draw your attention to the conclusions and recommendations in our report regarding the National Underground Asset Register (NUAR) provisions which were added to the Bill during House of Commons' Report Stage. You will note from our report that we consider the issues relating to the NUAR provisions to be serious; you will further note that the Welsh Government has "constitutional policy concerns" about the same provisions.

In the event that our report reaches you in time for your consideration of the Bill, I hope it is useful to members of your committee.

Yours sincerely,



Huw Irranca-Davies
Chair

Huw Irranca-Davies MS

Chair

Legislation, Justice and Constitution Committee

31 January 2024

Dear Huw

Local Government Finance (Wales) Bill

On 25 January 2024 we held evidence sessions with several stakeholders as part of our Stage 1 scrutiny of the Local Government Finance (Wales) Bill.

During our first session, the Chartered Institute of Taxation reiterated concerns they had set out in their written evidence, namely that “the extensive use of wide regulatory powers in this Bill undermines the essential work of the Senedd, and other interested parties, in scrutinising the government and its legislative proposals”. They added that, in their view, “secondary legislation should generally be reserved for administrative matters, and for the setting of rates”.

Given the relevance to your remit and your Committee’s own scrutiny of the Bill, we agreed to draw the discussion to your attention. Further detail is available in the Committee meeting transcript, and in the responses to our consultation on the Bill.

Yours sincerely

John

John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





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

18 January 2024

Dear Huw,

Local Government Finance (Wales) Bill

Thank you for your letter of 18 December 2023 outlining questions regarding the Local Government Finance (Wales) Bill, following my attendance at the committee's meeting on 11 December 2023.

Human rights

I can confirm that the Welsh Government has considered all the relevant articles of the European Convention on Human Rights (ECHR). Where those rights are qualified, I am satisfied that any possible interference with them can be justified on the basis that the provisions are necessary and proportionate in pursuance of a legitimate aim. In the committee's meeting, I offered to provide further assessment about sections 6 and 12.

Section 6 sets out additional conditions to be met by a charity in relation to an unoccupied hereditament before full relief from non-domestic rates can apply. I am satisfied that the provisions in this section are proportionate and lawful, having specific regard to ECHR compatibility. The provisions have a reasonable foundation as they seek to reduce the opportunity to avoid liability for non-domestic rates where there is not a genuine intention of using the property for charitable purposes (a legitimate and proportionate aim).

Section 12 applies a number of paragraphs in Schedule 9 to the Local Government Finance Act 1988 to hereditaments in Wales, to impose duties on ratepayers and potential ratepayers to notify valuation officers of information that relates to their non-domestic rates liability in respect of a hereditament, and provides for the enforcement of the duties through civil and criminal penalties. As with section 6, I am satisfied that the provisions in this section are proportionate and lawful. This includes the provisions relating to offences and penalties. The offences and corresponding penalties are clearly defined in the legislation, ensuring compatibility with the ECHR. Where penalties are imposed, ratepayers will also be entitled to a fair and public hearing by an independent and impartial court. Consistent with the approach taken to all primary legislation, the government has published a suite of

documents alongside the Bill as required by Standing Orders. These include an [integrated impact assessment for the non-domestic rates provisions](#) and an [integrated impact for the council tax provisions which, amongst other things, consider the impact on people's human rights](#).

Comparison between powers provided by the Bill and those available to UK Ministers

Substantial elements of the non-domestic rates and council tax systems have, in Wales, England and Scotland, been maintained using secondary legislation for many years. The Bill proposes some additional elements to be maintained using secondary legislation, most of which will be subject to the affirmative procedure. This will ensure we can configure the local tax systems in an agile and consistent manner, to meet the needs of Wales. A comparison of the secondary legislative powers being sought in the Bill with those in place in England and Scotland is included in **Annex A**.

In relation to non-domestic rates, the vast majority of powers to make secondary legislation provided by the Bill are the same as, or similar in their effect to, equivalent powers already in existence in England and/or Scotland. In cases where the powers provided in the Bill to Welsh Ministers go further than those in place in England, powers with a similar effect are generally available to Scottish Ministers. Whilst there are some administrative differences between the non-domestic rates system in Wales and Scotland, it is fundamentally the same tax being operated in a similar devolved context.

In relation to council tax, the powers will enable the Welsh Ministers to be more reactive and flexible in responding to socioeconomic change. It will align with the NDR system, inasmuch as regular revaluations will be placed on a statutory footing, reflecting the importance of a tax system reflecting current economic circumstances. Some powers conferred are largely technical and again will allow for the maintenance of the fundamentally robust structure of council tax to be more future proof and responsive. The difference in the mix of powers compared with England and Scotland is minimal, additionally giving Welsh Ministers the power to amend a revaluation year specified in primary legislation, a key policy aim of the Welsh Government for a fairer system. Comparatively, UK and Scottish Ministers can amend in an order when a revaluation occurs. Setting a revaluation cycle in primary legislation lays out an expectation that the revaluation will occur. This is not the case in England and Scotland. A comprehensive review of the whole range of discounts, disregards, exemptions and premiums framework is being undertaken in Wales. The Bill will provide Welsh Ministers with increased flexibility compared with the current highly restrictive legislation applying in this area. However, it remains the case that many aspects of the discounts, disregards and exemptions framework are already amendable in secondary legislation across Wales, England and Scotland.

Answers to specific questions

I can respond to the questions set out in the Annex to your letter as follows:

General

- **Question 1** - On reflection, do you consider that it would have been preferable for the Welsh Government to introduce the Bill earlier in order to incorporate the changes made in relation to Wales by the Non-Domestic Rating Act 2023 rather than relying on the UK Government and a UK Bill and the consequent LCM process?

Such an approach would not have been possible. We have introduced this Bill as soon as we could and it was essential to ensure that its development was not rushed. Our approach has ensured that the Bill is properly tailored to meet Wales' needs. The Bill is being used to deliver the vast majority of our non-domestic rates reforms which require primary legislation, where a difference in timing will not have negative consequences for Wales.

Having considered the options and approach to delivering our wider NDR reform agenda, I decided that it was optimal for certain provisions for Wales to be made within the Non-Domestic Rating Act 2023 ("the 2023 Act"). Provisions were made to ensure ratepayers in Wales were not placed at a disadvantage (for example, in relation to the provision of new reliefs) and in cases where new functions were conferred on UK Government bodies (HMRC and the Valuation Office Agency). These matters have been set out in detail in the Legislative Consent Memorandum and in response to Committees.

- **Question 2** - Do you have any concerns regarding accessibility of the law on non-domestic rates as a result of developing this Bill and simultaneously working with the UK Government on the 2023 Act?

I can confirm that I do not have any such concerns. This Bill was developed with full knowledge of what is now the Non-Domestic Rating Act 2023, so we know that both pieces of legislation work in conjunction with each other. The 2023 Act received Royal Assent prior to the introduction of our Bill.

The body of legislation relating to our non-domestic rates and council tax systems is over 30 years old and has been amended many times, so is very complex. The need for accessibility, particularly in relation to the application of the provisions, has informed the approach taken in the Bill. For example, provisions are restated in new sections where this is considered to improve the presentation of the law which will apply only to Wales.

- **Question 3** - In the Explanatory Memorandum you note that existing primary legislation on local government finance constrains the Government's ability to make timely adjustments for households, ratepayers and businesses. Could you explain which constraints you were referring to?

We have seen, especially while we been experiencing economic pressures during recent years, that the legislative frameworks for non-domestic rates and council tax are insufficiently flexible to respond to changes in circumstances for organisations and households. Pressures for organisations and households are changing constantly so we need a system which is flexible and responsive.

To give an example of current difficulties, there is currently no power in the Local Government Finance Act 1988 to amend the date of a non-domestic rates revaluation. We needed to use the Growth and Infrastructure Act 2013 to postpone the 2015 revaluation until 2017 and then the Non-Domestic Rating Lists Act 2021 to postpone the 2022 revaluation until 2023. However, the new power proposed in section 4 of this Bill would allow the revaluation date to be changed more efficiently for Wales.

The regulation-making powers will reduce the need for emergency non-legislative measures and will provide greater opportunities to deliver policy for Wales in a timely manner, without over-reliance on UK Government legislation. The answer to question 4(a) below provides further examples in relation to some of the existing constraints the Bill will address.

- **Question 4** – a) In the Explanatory Memorandum, when discussing whether substantive provisions could have been appropriately set out on the face of the Bill, you concluded that “while details might be optimised for the current circumstances – they are unlikely to stand the test of time”. What provisions are you referring to? b) Why wouldn’t a better approach be to propose primary legislation to deal with the current circumstances we are in and then bring forward another bill in the future when a need for further change has been identified?

a) There are many that fall into this category – including the provisions relating to both the non-domestic rates and council tax systems which enable us to provide support for organisations and households in accordance with changing circumstances and priorities. The Statement of Policy Intent provides full details around how we intend to use the provisions which brings to life the vast range of factors constantly evolving and impacting on both tax systems.

Taking non-domestic rates reliefs as an example, we cannot predict all changes that may be desirable in future. We have recently taken provisions in the UK Government’s Non-Domestic Rating Act 2023 for new reliefs, which could not have been delivered to the same timescale using this Bill. Many reliefs are already set out in secondary legislation and the scope for making timely changes to the overall landscape of support is, therefore, inconsistent.

In relation to the non-domestic rates multiplier, the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government’s recent Autumn Statement. Some members have called for us to mirror the approach being taken in England, by freezing the multiplier for small businesses. As things currently stand, we could not even consider a similar approach which reflects the different tax-base and needs of Wales. While we already have the power to set the single multiplier for Wales at any level using secondary legislation, we cannot prescribe different multipliers for different parts of the tax-base.

In relation to avoidance of non-domestic rates, as another example, techniques continually evolve and we want to be able to respond in a timely manner when new issues are identified. This Bill provides a framework for addressing avoidance. The inclusion of a regulation making power is necessary as we cannot predict what new avoidance behaviours will come to light in future.

b) I do not think it would be reasonable, proportionate or desirable to bring a Bill forward every time we need to make a change to the law in this area. We already use secondary legislation to maintain many aspects of the local taxation system so this Bill will create more consistency, rather than making a radical departure from established practices in this area.

- **Question 5** - The Explanatory Memorandum refers to the Bill’s proposals giving scope for “greater scrutiny within Wales”. Could you explain why you think that is the case and why it would not be more appropriate to replace using a UK Bill with a Welsh Government Bill?

Crucially, the majority of subordinate legislation making powers will follow the Senedd’s affirmative procedure. It will, therefore, be subject to scrutiny involving committees and with the same threshold for success (i.e. majority support) as primary legislation. The proposals seek to increase the Senedd’s influence within a context of pressures on time for making

primary legislation and the urgency often associated with changes which are sometimes unforeseen.

The Bill seeks to establish arrangements in which the Senedd can realistically oversee the maintenance of these local tax systems in a timely and consistent manner. Local government finance is a very technical area of the law where much of the current system is governed by subordinate legislation. The system requires regular maintenance, in many cases requiring annual updates, where it would not be appropriate or practicable to make primary legislation.

- **Question 6** - You have stated that, since 2011, the Welsh Government has needed to utilise UK Government Bills on at least 13 occasions to deliver necessary changes to our non-domestic rates and council tax systems. a) Could you explain which changes you were referring to? b) What were the reasons for the Government not taking the opportunity to propose primary legislation in the Senedd on each of those occasions?

a) Details of the occasions since 2011 where UK Government Acts have been utilised to deliver changes to council tax and non-domestic rates in Wales are outlined in **Annex B**.

b) Changes have only been made where there are shared policy goals across England and Wales, and not doing so would risk disadvantaging ratepayers and taxpayers in Wales.

- **Question 7** - In written evidence to the Finance Committee during its work on the Welsh Tax Acts etc. (Power to Modify) Bill (before it became the 2022 Act), Sir Paul Silk commented that “it is the job of the legislature to ensure that appropriate checks are kept in place and that it does not surrender its legislative role”. Why do you consider that the Senedd is not at risk of doing just that in this area of Welsh taxation if this Bill is enacted in its current form?

Within the context of this Bill, I am aiming to develop arrangements which are fit for purpose within our devolved structures and are, therefore, appropriate for Wales. Further to my response to question 5 above, I believe the arrangements proposed in this Bill will enhance the Senedd’s role considerably, compared to where we are now. It remains the case that primary legislation would be needed to change fundamental aspects of the local tax systems, such as calculating the chargeable amount of non-domestic rates before reliefs and the basic amounts of council tax. While the Bill, in some cases, makes provision for secondary legislative powers, the subject matter of the provisions are not considered to be of greater or wider significance than those already capable of being changed through subordinate legislation, in respect of the council tax and non-domestic rates systems. Substantial aspects of both systems can currently be adjusted via subordinate legislation.

- **Question 8** - Why would it not be more appropriate for significant decisions around liability for local taxes to remain with the Senedd and be subject to detailed scrutiny?

As explained in my answer to question 4(b) above, I do not think it would be reasonable, proportionate or desirable to bring a Bill forward every time we need to make a change to the law in this area. We already use secondary legislation for many aspects, including key components which affect liability for local taxes. The arrangements proposed are not, therefore, considered to undermine the Senedd’s role in deciding whether and to what extent people should be subject to devolved taxes. This Bill will create more consistency, rather than making a radical departure from established practices in this area. Use of the

affirmative procedure for making any substantive changes through secondary legislation is proposed, which places the final decisions for changes with the Senedd.

Non-Domestic Rates

- **Question 9** - In the Statement of Policy Intent for the powers to confer, vary or withdraw non-domestic rating reliefs, you note that the current powers of the Welsh Ministers are inconsistent with provisions being taken in UK Parliamentary Bills on multiple occasions to enable new reliefs in Wales. a) Why do you believe that the way to resolve this is more Henry VIII regulation-making powers for the Government? b) Why do you not consider primary legislation, scrutinised and passed by the Senedd, to be a better solution, which could be expedited where necessary?

The current system includes a number of areas which are governed by a mix of primary and secondary legislation, even in relation to the same aspects of the system. This is the case for reliefs. For example, changes to Small Business Rates Relief can largely be made via secondary legislation, whereas changes to Charitable Rates Relief would require primary legislation. There is no clear rationale for why some changes currently need to use primary legislation when the significance of those changes is limited compared with what can already be done through secondary legislation.

I think we are right to make the system more consistent with respect to the use of secondary legislation powers. This is a key area where consistency is needed to enable the system to be responsive to changing pressures. Relying more on primary legislation would move us even further away from what we are trying to achieve. It would be likely to prevent us from using limited legislative time to progress more transformative work, continue to constrain changes in this area, or result in the need to make even more use of UK Government Bills, depending on the context at any given point in time.

- **Question 10** - In relation to reliefs for occupied properties, section 5(2) of the Bill inserts a new power into paragraph 9A of Schedule 4ZA to the Local Government Finance Act 1988 for the Welsh Ministers to change the rules in paragraph 9 of the Schedule where more than one relief applies. We do not believe that the power makes reference to new Part 3A of the Schedule inserted by section 5(2). Are you content that the drafting of section 5(2) delivers its purpose? If not, do you believe that an amendment to the Bill is needed?

I am content that section 5(2) of the Bill works as intended. The power in paragraph 9A only needs to refer to Parts 2 and 3 of Schedule 4ZA.

- **Question 11** - The Statement of Policy Intent appears to justify the taking of powers to confer, vary and withdraw non-domestic rate exemptions on the basis of providing consistency between the Welsh Government's powers in this area and the new proposed powers for reliefs. a) Why do you consider this to be an appropriate basis for taking wide Henry VIII powers to specify tax exemptions? b) What potential exemptions have been identified that would justify the taking of this power?

a) There are a variety of existing ways in which a ratepayers' liability may be reduced to zero. These include the use of legislation or existing discretionary powers of local authorities to provide full relief. Exemptions are an alternative to the provision of a full relief, when it is considered that the chargeable amount of non-domestic rates for a property should be zero. The Welsh Ministers currently have a limited power to prescribe exemptions in regulations,

with very little practical effect. As all exemptions are currently set out in primary legislation (unlike reliefs), a Henry VIII power is the most appropriate way of addressing the policy intent to be able to make changes.

b) There are types of property for which an exemption from non-domestic rating on a long-term or permanent basis is considered more appropriate than a full relief. For example, when a valuation would prove difficult to carry out or when a valuation would provide no tangible benefits. This power is no more significant in its potential effect on non-domestic rates liability than other legislative and discretionary mechanisms which already exist. Whilst we have not currently identified any specific changes to exemptions, this may be the most appropriate way to address future priorities for the overall landscape of non-domestic rates support, in specific circumstances.

- **Question 12** - The Bill proposes a power to allow the Welsh Ministers to specify differential multipliers for different descriptions of properties. The Statement of Policy Intent however states that there are “no immediate plans to use this power”. How do you justify the taking of this power if you have no plans for it to be used?

Tiered multipliers exist elsewhere in the UK and these provisions would enable the Welsh Ministers to prescribe a different multiplier for a specific part of the tax-base – for example to incentivise investment or behavioural change or target support, in accordance with wider policy priorities. While we already have the power to set the single multiplier for Wales at any level using secondary legislation, we cannot prescribe different multipliers for different parts of the tax-base.

As with reliefs and exemptions, it is not possible to predict specific changes which may be desirable in future. For example, the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government’s recent Autumn Statement. Some Senedd members have called for the Welsh Government to mirror the approach being taken in England, as the Scottish Government were able to do, by freezing the multiplier for small businesses. As things currently stand, we could not even consider a similar approach, tailored as appropriate to reflect the different tax-base and needs of Wales.

- **Question 13** - Part 3A of the Tax Collection and Management (Wales) Act 2016 sets out the general anti-avoidance rule for devolved taxes. Do you consider that a better approach would be to follow that example in this Bill and specify general principles in primary legislation for determining whether non-domestic rating arrangements are artificial?

No, I do not consider that this would be a better approach, due to fundamental differences in the context for the operation of the anti-avoidance provisions in the Tax Collection and Management (Wales) Act 2016 (“the 2016 Act”) and this Bill. The provisions of the 2016 Act are applied by a single specialist organisation (the Welsh Revenue Authority) responsible for administering a number of devolved taxes. This ensures clarity and consistency across the relevant tax-bases in relation to the application of the specified principles.

In contrast, the anti-avoidance provisions in the Bill apply only to non-domestic rates, providing an opportunity to be more specific about the arrangements which will be addressed by the provisions. The provisions in the Bill will be applied by 22 local authorities (in relation to the local rating lists) and the Welsh Government (in relation to the central rating lists) in their roles administering non-domestic rates. This could result in general

principles being applied inconsistently and artificial avoidance arrangements being treated differently by different billing authorities. The approach proposed in the Bill will, therefore, ensure clarity, consistency and fairness by prescribing the arrangements which all billing authorities must counteract.

- **Question 14** - Why do you consider it to be appropriate for the Welsh Ministers to make regulations potentially restricting avoidance activity that others may feel is appropriate, without the full scrutiny of the Senedd that would be afforded to such proposals if they were included in a bill laid before the Senedd?

Avoidance of non-domestic rates has been estimated to result in the loss of £10m to £20m annually in vital funding for local services. It is not fair to the vast majority of ratepayers who pay what is due and negatively impacts upon the funding available for local government to deliver services to communities across Wales. We have a long-standing commitment to implement a range of specific actions: these include the development of anti-avoidance provisions.

Our work to address avoidance has highlighted existing limitations in the legislative framework and the need for a more adaptive approach to respond to issues that arise in the future. A carefully considered policy rationale underpins the development of our anti-avoidance provisions. Techniques to avoid tax are constantly evolving in ways that are not possible to predict and non-domestic rates is no exception. The anti-avoidance provisions in this Bill, supplemented by an appropriately limited regulation-making power, are needed to address specific avoidance behaviours identified in a timely manner. Regulations will be required to specify the precise avoidance behaviours that the Bill provisions will be used to counteract from a future point in time.

Continuing to rely on primary legislation to address individual avoidance arrangements that are identified would likely result in considerable delays to the implementation of changes, leaving the public purse exposed to revenue risk for a longer period. Regulations will be scrutinised under the affirmative procedure.

- **Question 15** - What restrictions are there on the power to specify artificial arrangements proposed in section 13 of the Bill that would protect taxpayers who engage in lawful tax planning?

To ensure there is sufficient certainty about the avoidance behaviours which will be counteracted, regulations will describe the specific artificial avoidance arrangements to be covered by the provisions. The definition of “artificial” within the Bill provides for important restrictions and a safeguard in this regard. Regulations may only specify a type of arrangement which would not constitute a reasonable course of action in relation to non-domestic rates provisions, having regard to matters prescribed within the definition. It will not be possible for regulations to counteract avoidance behaviours in unspecified or general terms, nor to undo or penalise avoidance that has occurred before regulations come into force.

The regulations will also be able to provide for an additional safeguard for the person to be treated as liable, where appropriate for the type of arrangement specified. The safeguard will enable the billing authority or the Welsh Ministers (in relation to the local and central rating lists, respectively) to determine that an arrangement is not artificial in individual cases, having regard to all the circumstances. This element of discretion will enable consideration to be given to any circumstances relevant to the individual person and could lead to a

determination that the arrangement is not artificial in that case. If an arrangement of the type specified in regulations is identified, it will, until and unless it is determined otherwise, be an artificial arrangement which must be counteracted.

The limited regulation-making power is framed within an overall structure to the provisions which makes clear the process by which identified avoidance behaviours will be described and counteracted. Consultation on specific proposals will ensure that stakeholders can be expected to know that a specified behaviour has been identified and is likely to be prevented in future, before regulations are made. Non-domestic rates are a local tax on businesses and other organisations. Avoidance arrangements are unlikely to be exploited in isolation or in the absence of professional advisers, who make it their business to understand latest policy and legislative developments so they can advise their clients accordingly.

- **Question 16** - Why are you proposing maximum fine levels in the Bill for financial penalties around artificial tax avoidance while simultaneously proposing Henry VIII powers to increase those levels, and how would you respond to the suggestion that specifying maximum levels in this way could be seen as misleading?

It is important that we are able to provide for civil penalties, where appropriate, to ensure there is a genuine deterrent to continuing specified avoidance behaviours. Without this, the effectiveness of the avoidance provisions will be compromised. The power in question will ensure the maximum penalty can be maintained at an appropriate level in the longer-term. Such a power is not unusual. For example, there is already a similar power in paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988, in relation to the penalty that can be imposed for failure to provide required information. These powers enable the maximum penalty amount to be amended if, for example, changes in the economy mean that the current amount becomes inappropriate. There will be consultation on changes and clear communication to avoid anyone being misled.

- **Question 17** - What provisions would you anticipate making in regulations in relation to the collection and enforcement of penalties, and why are those provisions not specified on the face of the Bill?

The Bill provides that, where a ratepayer continues to engage in the identified artificial avoidance arrangement after the relevant date (the later of: the day the arrangement was made, the day the regulations come into force, or a day provided for in the regulations), the billing authority will issue a notice which will, in effect, require payment of the shortfall in liability since the relevant date. It is intended that the notice will include a deadline for payment and details of the penalty which may be incurred if it is not met. If the ratepayer does not cease the arrangement and fails to pay an amount due as a consequence of making the arrangement, the billing authority will then be able to impose a civil penalty (if the regulations specify that a penalty can be imposed).

Detailed consideration was given as to whether details relating to collection and enforcement would most appropriately be set out in the Bill. The existing arrangements for collection and enforcement of non-domestic rates liability are set out in long-established secondary legislation (the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central List) Regulations 1989). When avoidance is counteracted using the Bill provisions, the liable person will be subject to the existing collection and enforcement regulations on an ongoing basis. It is considered more appropriate to amend those regulations, as required in future, to make any necessary changes to the existing collection and enforcement framework. The detail of

these changes will need to be considered when we make regulations under the anti-avoidance provisions to specify the artificial arrangements to be counteracted.

Council Tax

- **Question 18** - You refer to the power in section 17 being used to change the labelling of any band structure. Does this refer to existing powers in the Non-Domestic Rating Act 1992 which are restated by section 17 of this Bill?

Section 17 of the Bill interfaces with section 5 of the Local Government Finance Act 1992, rather than the Non-Domestic Rating Act 1992. Section 17(c) of the Bill does include a restatement of the existing section 5(4)(a) and (b) of the Local Government Finance Act 1992. Those provisions enable the Welsh Ministers to change the number of bands and the descriptions (labels) of those bands.

Section 17(c) of the Bill also provides new powers so that there is a clear basis for amending the references to “D” in the formulae provided in sections 36(1) and 47(1) of the Local Government Finance Act 1992. This is a technical amendment to provide clear authority for amending those formulae so that the system remains coherent and we are not restricted to using Band D as the main ‘reference’ or ‘mid-point’ in council tax calculations. The change in the band referred to in those formulae does not impact the amount paid for any mid-point band.

- **Question 19** - Could the powers in the Bill be used to remove the single person discount altogether, or to means test it?

Current legislation enables the Welsh Ministers to reduce or increase the percentage level for the single person discount, but not without impacting on the discount for a property with no resident or where all the residents are disregarded, which must be twice the amount. The Bill will break this restrictive link and provide Welsh Ministers with additional flexibility to add new categories of discounts, or to set conditions for discounts including new rates. Such changes would allow different rates of discounts to be set for different situations.

However, I have been clear there will be no changes to the existing council tax single person discount by this Welsh Government. The discount is retained on the face of the Bill so it cannot be removed, and I have confirmed that the discount for one-adult households will remain at 25%. The Bill would allow for the discount to be means-tested if that were a future policy preference.

- **Question 20** - The Statement of Policy Intent refers to the Bill enabling in-year changes to council tax reduction schemes. How would the power to make a national scheme address limitations on making in-year changes that the power to require local authorities to make their own schemes could not?

The current legislation requires local authorities to approve their schemes by 31 January each year for the following financial year. As a result, the Welsh Ministers can only make one statutory instrument to incorporate changes to the non-devolved benefits system and other updates for each financial year by mid-January.

Recent examples of where in-year changes have not been possible have included responding to the pandemic and to aid people from Ukraine and Afghanistan. In these instances, the Welsh Government relied on the discretionary powers of local authorities to implement these changes during the financial year in which such matters occurred, until the

next “annual legislation” could be made. There is no guarantee, either, that local authorities would use their discretion to do so.

While the Local Government Finance Act 1992 does not explicitly prevent “in-year changes” the practical effect of requiring an authority to make or amend a scheme annually is that in-year changes cannot be made. A national scheme would therefore allow the regulations to be changed more quickly (using secondary legislation) to deal with new or emergency matters.

General Provision

- **Question 21** - Section 14 of the Bill restates provisions in the Local Government Finance Act 1988 about the powers of the Welsh Ministers to make orders and regulations. Are all of the powers subject to the same Senedd scrutiny procedure as they are currently?

Section 14 generally restates provisions of section 143 of the Local Government Finance Act 1988 insofar as they apply in respect of the powers of the Welsh Ministers. It also makes provision about new powers of the Welsh Ministers.

Regulations made under paragraph 1(2) of Schedule 4ZB to the Local Government Finance Act 1988 would be subject to the negative procedure if the Bill were enacted as drafted whereas the power is currently subject to the affirmative procedure. It is appropriate for the affirmative procedure to apply as the power enables a formula for calculating chargeable amounts to be substituted. This was an oversight at the time of introduction and we will seek an amendment at Stage 2 so that the affirmative procedure continues to apply.

Paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988 is a power to amend the amount of a penalty which is currently subject to the negative procedure. Given the nature of the power it ought to be subject to the affirmative procedure. Therefore, the new section 143A(5)(n) applies the affirmative procedure to regulations made under paragraph 6AA(6).

King's consent

- **Question 22** – We were told that His Majesty the King's consent would be sought in relation to non-domestic rates provisions concerning section 5, section 7, section 10, section 12 and section 13, and “in line with normal processes”, this consent would be sought at the end of Stage 2. Is it normal practice for preliminary discussions to take place with the office of His Majesty the King on such matters?

A process is in place for corresponding with the Royal Household and setting out the provisions considered to require consent.

Coming into force

- **Question 23** - Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Our current timetable envisages the Bill being presented for Royal Assent in August 2024 if it is passed by the Senedd. The majority of provisions will be commenced in the commonly

set timeframe of two months following Royal Assent, with general provisions being commenced the day after Royal Assent in accordance with normal practice.

Sections 6 (Unoccupied hereditaments: charitable rate relief), 10 and 11 (Calculation of non-domestic rating multipliers) will come into force on 1 April 2025. For administrative reasons, it is considered optimal for these sections to be commenced at the start of a new financial year.

Section 12 (Information to be provided to valuation officer) will be commenced by statutory instrument when the Welsh Government is satisfied that ratepayers can reasonably be expected to comply with the new duties. This is expected to occur during the next rating list, which will be compiled on 1 April 2026 if the Bill is enacted as proposed.

Sections 18 and 19 will be commenced on a day appointed by the Welsh Ministers in an order made by a statutory instrument. We are awaiting the outcome of the working groups established to carry out the detailed work to review the council tax discounts and disregards. The current policy intent is that regulations will be made for the financial year commencing 1 April 2026, subject to the outcomes of the review process.

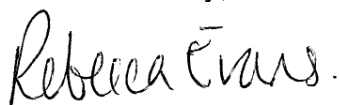
Future consolidation

- **Question 24** - The Explanatory Memorandum contains a significant Keeling Schedule. Has consideration been given to the potential consolidation of Welsh local tax legislation, or generally to making this area of law more accessible?

A comprehensive range of options for the approach to this Bill was considered. The consolidation of legislation in this area would be a resource intensive and time consuming undertaking, given the time the legislation has been in place and the many changes made to it for over the past 30 years. Accessibility of law has been a key consideration in the development of this Bill and, as such, provisions are restated in new sections where this is considered to improve the presentation of the law which will apply only to Wales.

I hope my responses to your questions will facilitate the committee's consideration of this Bill.

Yours sincerely,



Rebecca Evans AS/MS

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

Annex A

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|---|---|--|---|--|
| 4 | Provides the Welsh Ministers with a power to change a non-domestic rates revaluation year or the interval between revaluation years by regulations. | No equivalent power. | Power for the Scottish Ministers to amend the definition of “year of revaluation” in section 37(3) of the Local Government (Scotland) Act 1975. | A power with the same effect exists in Scotland. |
| 5 | Provides the Welsh Ministers with powers to confer, vary or withdraw reliefs by regulations. | Powers in relation to some reliefs in Schedules 4ZA, 4ZB and 5A to the Local Government Finance Act 1988. | Broad powers for the Scottish Ministers to prescribe rules to determine the amount payable in section 153 of the Local Government etc. (Scotland) Act 1994 and to make provision about reliefs for new and improved properties in section 14 of the Non-Domestic Rates (Scotland) Act 2020. | Powers with a similar overall effect exist in Scotland. A wide range of more specific powers exist in England (and currently in Wales) which are not consistent across the landscape of reliefs. |
| 9 | Replaces the existing limited power with a new power for the Welsh Ministers to confer, vary or withdraw exemptions by regulations. | Limited power for the Secretary of State to provide exemptions in Schedule 5 to the Local Government Finance Act 1988. | Power for the Scottish Ministers to remove exemptions in section 8D of the Valuation and Rating (Scotland) Act 1956. | Similar powers enable exemptions to be provided in England and removed in Scotland. The power for in the Bill will enable the Welsh Ministers to do both. |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|---|---|---|---|--|
| 10 | Restates the existing powers of the Welsh Ministers in relation to multipliers and inserts a new power to set differential multipliers based on the rateable value, location or description of a hereditament on a local rating list or on the rateable value of a hereditament on the central rating list. | Powers for the Secretary of State to prescribe which multiplier (standard or small business) applies to different hereditaments and to set those multipliers in Schedules 4ZA and 7 to the Local Government Finance Act 1988. | Powers for the Scottish Ministers to set the annual multiplier in section 7B of the Local Government (Scotland) Act 1975 and prescribe further rules to determine the amount payable in section 153 of the Local Government etc. (Scotland) Act 1994. | Similarities with the effect of powers in England and Scotland. |
| 13 | Provides a power for the Welsh Ministers to make regulations specifying the type of arrangement which is to be treated as artificial and whether a specific arrangement will not be treated as artificial if a determination to that effect is made. | No equivalent power. | Power for the Scottish Ministers to make anti-avoidance regulations in section 37(1) of the Non-Domestic Rates (Scotland) Act 2020. | A similar power exists in Scotland. Unlike the Scottish Ministers, the Welsh Ministers can make regulations enabling a penalty to be imposed. However, in other ways, the anti-avoidance regime in Scotland is broader than the proposed approach in Wales as the Bill sets out a specific approach to countering avoidance behaviour. |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|--|--|---|--|---|
| 17 | Restates the powers for the Welsh Ministers to substitute proportions and valuation bands. | Powers in section 5(4) of the Local Government Finance Act 1992. | Powers in section 74 of the Local Government Finance Act 1992. | In line with England and Scotland. |
| 17 | Provides new powers for the Welsh Ministers to substitute the valuation band used in council tax calculations. | No equivalent power. | No equivalent power has been identified although no equivalent council tax calculation provisions have been identified either. | Unique power for the Welsh Ministers. |
| 18 | <p>This section restates provisions relating to the single person discount and the discount where all residents of a dwelling are disregarded.</p> <p>The remainder of the provisions provide the Welsh Ministers with powers to make regulations to set the levels and prescribe conditions or criteria that must exist for the single person or other discounts to apply and prescribe categories of resident that are disregarded for the purposes of discount. This will have the effect of placing all details relating to other discounts and the conditions and descriptions of a person who is disregarded for the</p> | Limited powers in sections 11 and 11A of the Local Government Finance Act 1992. | Limited powers in section 79 of the Local Government Finance Act 1992. | <p>The existence of the single person discount and discount where all residents of a dwelling are disregarded are maintained as in England and Scotland.</p> <p>In relation to the other amendments, neither Scotland nor England are currently proposing to adopt the same policy.</p> |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|--|--|---|---|---|
| | <p>purposes of a discount all in one place within regulations.</p> <p>Preserves the effect of section 12(1) of the 1992 Act for Welsh Ministers to prescribe by regulations classes of dwellings in relation to which a billing authority may by determination either disapply or reduce a discount.</p> | | | |
| 19 | <p>Duty on the Welsh Ministers to set a national Council Tax Reduction Scheme which allows the Welsh Ministers to make in-year changes if required.</p> <p>The duty will be exercised by the Welsh Ministers to set out a national reduction scheme with a duty on local authorities to administer the scheme at a local level. The Welsh Ministers will be able to introduce in-year changes to the scheme to react to emerging situations.</p> | Powers in section 13 of the Local Government Finance Act 1992. | Powers in section 80 of the Local Government Finance Act 1992. | Broadly in line with Scotland where there is a national council tax reduction scheme. In England there remains a power to make regulations about reduced amounts. |
| 21 | The Bill provides for a regular revaluation cycle for council tax in Wales with scheduled revaluations taking place every five years. However, there might be | Powers in section 22B of the Local Government Finance Act 1992 to specify the | Power to specify a revaluation date by way of the modifications effected by section 88(3)(a) of the Local | In England and Scotland respectively, UK Ministers and Scottish Ministers may use orders to schedule revaluations. |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|--|--|---|--|------------------------------------|
| | circumstances in which it would be beneficial for the date of a scheduled revaluation to be changed – for example, in the event of a future pandemic or economic turbulence. The Bill therefore allows the revaluation year to be moved. | revaluation date. This power could also be used to amend a revaluation which had been scheduled. | Government Finance Act 1992. | |
| 21 | Current legislation specifies that a copy of the draft new valuation list has to be sent to billing authorities no later than seven months before the new list is finalised and comes into force (“compiled”). With more frequent revaluations, this deadline could become impracticable. This power would allow the Welsh Ministers to make this technical change to the draft list deadline as and when necessary. | No equivalent power. | Power to specify a revaluation date by way of the modifications effected by section 88(3)(b) of the Local Government Finance Act 1992. | In line with Scotland. |
| 23 | Enables consequential and transitional provision to be made. | In relation to non-domestic rates - powers in section 17 of the Non-Domestic Rating Act 2023. In relation to council tax - | In relation to non-domestic rates - powers in section 43 of the Non-Domestic Rates (Scotland) Act 2020. In relation to council tax - powers in section 114 of the | In line with England and Scotland. |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|--|--|--|--|--|
| | | powers in section 114 of the Local Government Finance Act 1992. | Local Government Finance Act 1992. | |
| 24 | Enables provisions in the Bill to be commenced. | <p>In relation to non-domestic rates – powers in section 19 of the Non-Domestic Rating Act 2023.</p> <p>In relation to council tax – powers in section 119 of the Local Government Finance Act 1992.</p> | In relation to non-domestic rates and council tax – section 62 of the Local Government in Scotland Act 2003. | In line with England and Scotland. |
| Paragraph 12(2)(m) of the Schedule | Allows the Welsh Ministers to make regulations about the notices which can be issued under paragraphs 4M and 5ZC of Schedule 9 to the Local Government Finance Act 1988. | The same secondary legislative power is conferred on the Secretary of State, in relation to England, in paragraph 5F(A1) of Schedule 9 to the Local | Similar secondary legislative powers exist for Scottish Ministers in section 30(12) of the Non-Domestic Rates (Scotland) Act 2020. | Broadly in line with England and Scotland. |

| Section of Local Government Finance (Wales) Bill | Effect | Equivalent power in England | Equivalent power in Scotland | Summary |
|---|---|--|---|--|
| | | Government Finance Act 1988. | | |
| Paragraph 12(2)(n) of the Schedule | Allows the Welsh Ministers to make regulations to increase or decrease the amount of any penalty issued under paragraphs 5ZC or 5ZD of Schedule 9 to the Local Government Finance Act 1988. | The same secondary legislative powers is conferred on the Secretary of State, in relation to England, in paragraph 5FB of Schedule 9 to the Local Government Finance Act 1988. | Similar secondary legislative powers exist for Scottish Ministers in section 30(8) of the Non-Domestic Rates (Scotland) Act 2020. | Broadly in line with England and Scotland. |

Occasions since 2011 where UK Government legislation has been utilised to deliver changes to council tax and NDR in Wales

| Title of legislation | Year | Purpose of legislation |
|-----------------------------------|------|---|
| The Localism Act | 2011 | <p>The general purpose of provisions was to enhance local government's freedom to act.</p> <p>Provisions amended the Business Rate Supplements Act 2009 to provide that all proposals for the imposition of a rates supplement would require approval by a ballot of all persons eligible to vote as opposed to the previous position where a ballot was only required if the supplement was to fund more than one third of the total cost of the project to which the supplement related.</p> <p>Provisions also amended section 47 of the Local Government Finance Act 1988 to replace the limited circumstances in which local authorities could provide discretionary non-domestic rates relief with a power to grant relief in any circumstances. This was subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers in its area. The amendments also required a local authority to have regard to any relevant guidance issued by Welsh Ministers when deciding whether to grant relief under section 47.</p> |
| Local Government Finance Act | 2012 | <p>Provisions amending the Local Government Finance Act 1992 to enable the Welsh Ministers to establish Council Tax Reduction Schemes in Wales (following the UK Government decision to end Council Tax Benefit).</p> <p>Provisions to enable the Welsh Ministers, by regulations, to require authorities to publish prescribed information about council tax and non-domestic rating in a prescribed manner.</p> <p>Executive powers to enable the Welsh Ministers to make regulations which introduce powers to investigate and prosecute fraud and overpayment errors similar to those which could be utilised in relation to council tax benefit fraud.</p> |
| The Growth and Infrastructure Act | 2013 | The planned 2015 non-domestic rates revaluation was moved to 2017 following an order made under powers inserted into the 1988 Act. |

| Title of legislation | Year | Purpose of legislation |
|--|------|---|
| The Enterprise Act | 2016 | Provisions to remove a barrier to the efficient administration of non-domestic rates by enabling the sharing of certain HMRC / VOA data about properties and ratepayers with local authorities in Wales. |
| Telecommunications and Infrastructure (Relief from Non-Domestic Rates) Act | 2018 | <p>The provisions for Wales introduced a five-year relief scheme for fibre broadband.</p> <p>From an economic development perspective, the intention was to stimulate investment in fibre, but also encourage competition from smaller providers in a market that tends to be monopolised by one major player.</p> |
| The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act | 2018 | Provision for changes to the valuation of non-domestic properties in common occupation for rating purposes. For timing reasons, in the end, the Bill applied to England only. |
| Non-Domestic Rating (Nursery Grounds) Act | 2018 | <p>The provision sought to ensure that plant nurseries and grounds remained exempt from non-domestic rates. It followed a Court of Appeal decision which overturned the VOA's previous approach which was to provide an exemption from non-domestic rates liability for such properties.</p> <p>The purpose was to avoid disproportionate cost impacts on the farming and food production sectors in Wales.</p> |
| Non-Domestic Rating (Lists) Bill | 2019 | <p>The Bill's purpose was to set revaluation for 2021.</p> <p>Note: the Bill fell due to UK Parliament being prorogued, but was re-introduced.</p> |
| Non-Domestic Rating (Public Lavatories) Bill | 2019 | <p>The purpose was to assign zero non-domestic rates liability to standalone public lavatories.</p> <p>The policy intention was to increase the availability of public lavatories in Wales (which aligned with Welsh Government's wider public health objectives).</p> <p>Note: the Bill fell due to UK Parliament being prorogued, but was re-introduced.</p> |
| Non-Domestic Rating (Lists) Bill | 2020 | The Bill brought forward the non-domestic rates revaluation from 2022 to 2021 and adjusted the deadline for the submission of proposed non-domestic rating lists from September to December of the preceding revaluation year. It was superseded by the Non-Domestic Rating (Lists) Act 2021. |
| Non-Domestic Rating (Public Lavatories) Act | 2021 | The purpose was to assign zero non-domestic rates liability to standalone public lavatories. |
| Non-Domestic Rating (Lists) (No.2) Bill / | 2021 | Purpose of the Bill was to postpone the non-domestic rates revaluation date from 1 April 2022 to 1 April 2023 and to adjust the deadline for the submission of proposed non-domestic rating lists from 30 September to 31 December of the preceding revaluation year. |

| Title of legislation | Year | Purpose of legislation |
|---|------|--|
| Non-Domestic Rating (Lists) Act | | |
| Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act | 2021 | Non-domestic rates Covid-related material change of circumstances appeals withdrawn (this led to regulations developed for 1 April 2023 onwards). |
| The Non-Domestic Rating Act | 2023 | <p>Various changes including the ability to introduce new reliefs prior to the Bill, allowing more information to be shared with ratepayers, and the establishment of the <i>Digitalising Business Rates</i> programme.</p> <p>The Act received Royal Assent on 26 October 2023 with the new reliefs to take effect from 1 April 2024.</p> |

Rebecca Evans MS
Minister for Finance and Local Government

18 December 2023

Dear Rebecca,

Local Government Finance (Wales) Bill: Legislation, Justice and Constitution Committee meeting, 11 December 2023

Thank you for attending our meeting on 11 December to discuss the Local Government Finance (Wales) Bill. I said that I would write to you with questions which, due to timing constraints, we were unable to ask during the meeting. These questions are enclosed in the Annex.

You also agreed to provide us with more detail on the account you have taken of human rights in preparing the Bill, in particular in relation to sections 6 and 12 (see paragraph 10 of the transcript). In addition, you agreed to provide the assessment that leads you to the conclusion that the secondary powers you are seeking in this Bill do not go significantly further than powers that are currently available to UK Ministers (see paragraph 75 of the transcript).

I would be grateful to receive a response to our questions and the additional information by Thursday 18 January 2024.

Yours sincerely,



Huw Irranca-Davies
Chair

ANNEX

General

Question 1 - On reflection, do you consider that it would it have been preferable for the Welsh Government to introduce the Bill earlier in order to incorporate the changes made in relation to Wales by the *Non-Domestic Rating Act 2023* rather than relying on the UK Government and a UK Bill and the consequent LCM process?

Question 2 - Do you have any concerns regarding accessibility of the law on non-domestic rates as a result of developing this Bill and simultaneously working with the UK Government on the 2023 Act?

Question 3 - In the Explanatory Memorandum you note that existing primary legislation on local government finance constrains the Government's ability to make timely adjustments for households, ratepayers and businesses. Could you explain which constraints you were referring to?

Question 4 – a) In the Explanatory Memorandum, when discussing whether substantive provisions could have been appropriately set out on the face of the Bill, you concluded that “while details might be optimised for the current circumstances – they are unlikely to stand the test of time”. What provisions are you referring to? **b)** Why wouldn't a better approach be to propose primary legislation to deal with the current circumstances we are in and then bring forward another bill in the future when a need for further change has been identified?

Question 5 - The Explanatory Memorandum refers to the Bill's proposals giving scope for “greater scrutiny within Wales”. Could you explain why you think that is the case and why it would not be more appropriate to replace using a UK Bill with a Welsh Government Bill?

Question 6 - You have stated that, since 2011, the Welsh Government has needed to utilise UK Government Bills on at least 13 occasions to deliver necessary changes to our non-domestic rates and council tax systems. **a)** Could you explain which changes you were referring to? **b)** What were the reasons for the Government not taking the opportunity to propose primary legislation in the Senedd on each of those occasions?

Question 7 - In written evidence to the Finance Committee during its work on the Welsh Tax Acts etc. (Power to Modify) Bill (before it became the 2022 Act), Sir Paul Silk commented that “it is the job of the legislature to ensure that appropriate checks are kept in place and that it does not surrender its legislative role”. Why do you consider that the Senedd is not at risk of doing just that in this area of Welsh taxation if this Bill is enacted in its current form?

Question 8 - Why would it not be more appropriate for significant decisions around liability for local taxes to remain with the Senedd and be subject to detailed scrutiny?

Non-Domestic Rates

Question 9 - In the Statement of Policy Intent for the powers to confer, vary or withdraw nondomestic rating reliefs, you note that the current powers of the Welsh Ministers are inconsistent with provisions being taken in UK Parliamentary Bills on multiple occasions to enable new reliefs in Wales. **a)** Why do you believe that the way to resolve this is more Henry VIII regulation-making powers for the Government? **b)** Why do you not consider primary legislation, scrutinised and passed by the Senedd, to be a better solution, which could be expedited where necessary?

Question 10 - In relation to reliefs for occupied properties, section 5(2) of the Bill inserts a new power into paragraph 9A of Schedule 4ZA to the *Local Government Finance Act 1988* for the Welsh Ministers to change the rules in paragraph 9 of the Schedule where more than one relief applies. We do not believe that the power makes reference to new Part 3A of the Schedule inserted by section 5(2). Are you content that the drafting of section 5(2) delivers its purpose? If not, do you believe that an amendment to the Bill is needed?

Question 11 - The Statement of Policy Intent appears to justify the taking of powers to confer, vary and withdraw non-domestic rate exemptions on the basis of providing consistency between the Welsh Government's powers in this area and the new proposed powers for reliefs. **a)** Why do you consider this to be an appropriate basis for taking wide Henry VIII powers to specify tax exemptions? **b)** What potential exemptions have been identified that would justify the taking of this power?

Question 12 - The Bill proposes a power to allow the Welsh Ministers to specify differential multipliers for different descriptions of properties. The Statement of Policy Intent however states that there are "no immediate plans to use this power". How do you justify the taking of this power if you have no plans for it to be used?

Question 13 - Part 3A of the *Tax Collection and Management (Wales) Act 2016* sets out the general anti-avoidance rule for devolved taxes. Do you consider that a better approach would be to follow that example in this Bill and specify general principles in primary legislation for determining whether non-domestic rating arrangements are artificial?

Question 14 - Why do you consider it to be appropriate for the Welsh Ministers to make regulations potentially restricting avoidance activity that others may feel is appropriate, without the full scrutiny of the Senedd that would be afforded to such proposals if they were included in a bill laid before the Senedd?

Question 15 - What restrictions are there on the power to specify artificial arrangements proposed in section 13 of the Bill that would protect taxpayers who engage in lawful tax planning?

Question 16 - Why are you proposing maximum fine levels in the Bill for financial penalties around artificial tax avoidance while simultaneously proposing Henry VIII powers to increase those levels, and

how would you respond to the suggestion that specifying maximum levels in this way could be seen as misleading?

Question 17 - What provisions would you anticipate making in regulations in relation to the collection and enforcement of penalties, and why are those provisions not specified on the face of the Bill?

Council Tax

Question 18 - You refer to the power in section 17 being used to change the labelling of any band structure. Does this refer to existing powers in the *Non-Domestic Rating Act 1992* which are restated by section 17 of this Bill?

Question 19 - Could the powers in the Bill be used to remove the single person discount altogether, or to means test it?

Question 20 - The Statement of Policy Intent refers to the Bill enabling in-year changes to council tax reduction schemes. How would the power to make a national scheme address limitations on making in-year changes that the power to require local authorities to make their own schemes could not?

General Provision

Question 21 - Section 14 of the Bill restates provisions in the *Local Government Finance Act 1988* about the powers of the Welsh Ministers to make orders and regulations. Are all of the powers subject to the same Senedd scrutiny procedure as they are currently?

King's consent

Question 22 - We were told that His Majesty the King's consent would be sought in relation to non-domestic rates provisions concerning section 5, section 7, section 10, section 12 and section 13, and "in line with normal processes", this consent would be sought at the end of Stage 2. Is it normal practice for preliminary discussions to take place with the office of His Majesty the King on such matters?

Coming into force

Question 23 - Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Future consolidation

Question 24 - The Explanatory Memorandum contains a significant Keeling Schedule. Has consideration been given to the potential consolidation of Welsh local tax legislation, or generally to making this area of law more accessible?

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2634/23

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

John Griffiths MS
Chair, Local Government and Housing Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

19 January 2024

Dear Huw and John,

This letter is to inform you that, in accordance with Standing Order 30A, I have laid a Statutory Instrument Consent Memorandum in the Senedd in respect of the following UK Statutory Instrument:

The Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulations 2024

The link to the Statutory Instrument Consent Memorandum can be found [here](#).

I consider the Regulations to be a relevant statutory instrument because they make provision in relation to Wales amending primary legislation, namely the Housing and Regeneration Act 2008, within the legislative competence of the Senedd and which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters that are not within the legislative competence of the Senedd.

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

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@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.

Agenda Item 13

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

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Briefing document

Animal Welfare (Livestock Exports) Bill

On December 18, the Welsh Government laid a [Legislative Consent Memorandum](#) (LCM) recommending that the Senedd supports proposals for a ban on the exportation of livestock to be applied to Wales. The confirmation of the Welsh Government's support for such a ban is very much welcome, following decades of campaigning for such action by the RSPCA. The [Animal Welfare \(Livestock Exports\) Bill](#) is a UK Government bill that seeks to create a new legal framework, prohibiting the export of relevant livestock for the purpose of slaughter or fattening for slaughter. The bill passed its second reading in the House of Commons in December, with the third reading having taken place on January 15 - it will now be passed to the House of Lords for further scrutiny. Meanwhile, the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee have both been asked to consider and report to the Senedd on the bill by March 15.

The need for a ban on live exports

Due to the significant animal welfare concerns around live exports, the RSPCA has been calling for a ban on this practice for more than 50 years. A UK-wide ban on live exports was previously unachievable as our membership of the European Union coincided with a requirement for free trade between members. Now that we have left the European Union, the UK Government has brought forward the aforementioned bill to end the future exportation of livestock for fattening and slaughter, with this being among the commitments made in the UK Conservatives' 2019 [manifesto](#).

The UK's current rules on the live exportation of animals date from 2005 and are implemented through devolved legislation such as the Welfare of Farmed Animals (Transport) (Wales) Order 2007. The rules set out the conditions for the commercial transport of animals and state that animals should not be injured or subject to unnecessary suffering while being transported. Specific limits on journey times for animals - on land and at sea - are also set out in legislation, alongside the authorisation process for transporters, vehicles and ships. The maximum journey times permitted vary according to species and the conditions of the transporting vehicle. As it stands, up to 19 hours is allowed for unweaned animals such as calves, 24 hours for horses and pigs and 29 hours for sheep and cattle. However, after these periods, if the animals are provided with a 24 hour rest period, the journey time is reset until the destination is reached.

The number of farm animals exported from the UK to Europe for slaughter or further fattening has slowly declined since 2000 - falling from 752,000 to 44,300 in 2016¹. Previously, the majority of farmed animals exported from the UK were sheep, along with a smaller number of cattle, pigs, goats and equines. However, the exportation of livestock from the UK has not happened since the UK Government first announced a prohibition on this practice in 2020. A lack of required control posts at Calais has effectively blocked the only route that was previously used to export animals directly from the UK to Europe. However, this could change if different routes were chosen or if control posts were introduced at Calais. With no ban on the exportation of livestock for fattening and slaughter purposes in place as it stands, this cruel and unnecessary practice could be legally recommenced at any time. Granting legislative consent to

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6912543/>

a ban on live exports would offer an extra layer of protection to countless farm animals in the years to come while further demonstrating Wales' commitment to animal welfare.

Animal welfare concerns around live exports

Long journey times pose several animal welfare risks such as acute stress, dehydration, exhaustion and injury. Animals can experience a range of problems as a result of being transported for long periods in sub-optimal conditions as a result of the use of inappropriate stocking densities with inadequate ventilation/temperature control systems and unsuitable feeding and watering facilities. Live exports involve complex journeys and can be associated with very long transport times, which is particularly problematic as evidence indicates that animal welfare worsens as journey times increase. According to a recently published research briefing on the [Animal Welfare \(Livestock Exports\) Bill](#), the shortest direct to slaughter export journey from GB to continental Europe in 2018 was a journey time of 18 hours. Most domestic journeys to slaughter in the UK are significantly shorter and therefore pose far less risk to animal welfare. Some journeys involving the export of live animals from the UK to Europe have been known to take up to 96 hours, during which time animals could be suffering both physically and mentally.

Other welfare concerns include the insufficient enforcement of existing rules once the animals leave the UK and the possibility that animals can be exported to countries where animal welfare standards are lower than the UK and exposed to practices that would be illegal here. Because of this, the RSPCA strongly believes that animals should only be transported when necessary and that a ban on live exports is both well-needed and long overdue.

Conclusion

The RSPCA strongly believes that all farm animals should be slaughtered as close to where they are reared as possible, resulting in any export trade being carcass-only. Being subject to long journeys in cramped conditions has the potential to cause animals to become mentally exhausted, physically injured, dehydrated and stressed, directly contradicting the Welsh Government's ambition to ensure that every animal has a good quality of life.

A ban on live exports was previously among the commitments made in the withdrawn Kept Animals Bill - a piece of legislation which had strong cross-party support in the Senedd. A focus on the welfare of farmed animals is among the Welsh Government's relevant commitments with the introduction of mandatory CCTV in abattoirs imminent. The introduction of the Sustainable Farming Scheme in 2025 also has the potential to reward farmers who adhere to high standards of animal health and welfare, with the Welsh Government having committed to restricting the use of cages for farmed animals too. The LCM relevant to a ban on live exports therefore provides an important opportunity for the Welsh Government and Members of the Senedd to further demonstrate their support for improving the lives of farm animals in Wales.

As animal welfare is a devolved matter, specific decisions relating to the enforcement of a ban on live exports - for example, giving powers of entry, inspection, search and seizure in relation to live animal export offences to a particular agency - will be made by the Welsh Government. With the Welsh Government having indicated its support for a ban on live exports and that it is appropriate for all relevant provisions to be made in the UK Government's bill, we strongly encourage the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee to support the LCM that has been laid before the Senedd.

Recommendation: To prevent the future suffering of farm animals as a result of long journeys in cramped conditions, we strongly recommend that the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee supports the LCM on live exports.

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Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

29 January 2024

**Procedures for the scrutiny of legislation relating to the United Kingdom Internal
Market Act 2020 and UK-wide common policy frameworks**

Dear Huw,

Thank you for your recent response regarding the Business Committee's consideration of procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks.

Business Committee considered your letter at our meeting on 23 January, alongside responses from the Health and Social Care Committee and the Chairs' Forum. We also considered correspondence from the Counsel General and Minister for the Constitution that sets out the Welsh Government position on these matters.

In light of the responses received, we agreed to share them with those with a close interest in these matters in order to provide an opportunity to provide any further reflections on the matter, before we return to the issue of whether to propose amendments to Standing Orders.

I enclose the correspondence received for your consideration. We intend to publish the correspondence relating to this matter once we have concluded our discussions but have not done so at this stage.

I would be grateful to receive your views by 9 February. Thank you for your attention to this important matter.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Elin Jones', is centered on the page.

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

The Rt Hon. Elin Jones MS
Y Llywydd and Chair, Business Committee

12 December 2023

Dear Elin

Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks


Thank you for your letter of 22 November 2023, and for the opportunity to comment on the Business Committee's proposals for new Standing Orders that seek to address committee recommendations concerning the potential impact of UKIMA on legislation considered by the Senedd. The Committee discussed your letter and the annexed Business Committee paper at its meeting on 6 December.

Whilst the Committee does not wish to comment specifically on the drafting of the standing orders, based on our recent experience with the Health Service Procurement (Wales) Bill, Members were supportive of the proposals to amend standing orders to ensure that explanatory documents accompanying Welsh Government legislation include an assessment of the potential impact of UKIMA on that legislation.

They were similarly supportive of the proposals to ensure that the Welsh Ministers give notification of the effect of legislation in other parts of the UK which might impact the sale of goods and services in Wales as a result of UKIMA.

I hope this is a helpful contribution to the Business Committee's work in this area.

Yours sincerely

A handwritten signature in black ink that reads "Russell George". The signature is written in a cursive style with a long horizontal stroke underneath the name.

Russell George MS
Chair, Health and Social Care Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.

Business Committee

Via e-mail

8 January 2024

Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks

Dear Business Committee

The Chairs' Forum considered your letter and proposals for procedural changes that may be required for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 (UKIMA) and UK-wide common policy frameworks at its meeting of 11 December.

Chairs were broadly content with the proposals for new Standing Orders to address recommendations made by Senedd committees concerning the potential impact of UKIMA and common policy frameworks on legislation considered by the Senedd and other parliaments within the United Kingdom.

However, Chairs were keen to leave detailed consideration of the proposals to the Health and Social Care Committee and the Legislation, Justice and Constitution Committee who had raised this issue originally with the Business Committee.

Yours sincerely,



Elin Jones MS/AS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English





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Mick Antoniw AS/MS

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



Llywodraeth Cymru
Welsh Government

Chair of the Business Committee

Welsh Parliament

SeneddBusiness@senedd.wales

18 January 2024

I am writing further to the Business Committee meeting on 14 November and its exploration of procedural considerations arising from the practical effect of the United Kingdom Internal Market Act 2020 (UKIMA) and UK-wide Common Frameworks on Senedd legislation. My officials also met with Senedd officials in December to understand the issues in more detail. I am writing to address some of the key points raised at Business Committee and to set out the Welsh Government's position.

The paper for the Business Committee considers proposals for amendments to Standing Orders (SOs) to ensure: documentation accompanying Welsh Government Bills and Subordinate Legislation includes an assessment of the impact of the UKIMA; notification of the effect of legislation in other parts of the UK which, by virtue of UKIMA, might impact the sale of goods and services in Wales; and notification of the impact on Senedd legislation of UK-wide Common Frameworks.

Proposed amendments to include an assessment of the impact of UKIMA

I understand from officials the proposals to amend Standing Orders arise from specific concerns from the Senedd about availability of information on how the practical effect of aspects of UKIMA, in particular the market access principles of mutual recognition and non-discrimination, may influence Welsh Government policy and legislation. I also note the Senedd's view that this does not relate to the Welsh Government's position that the Senedd's ability to legislate in devolved areas is not impacted by the provisions of the UKIMA. Instead, I understand the proposals relate solely to the potential impacts from some of the principles and requirements set out

in the UKIMA. To clarify, the Welsh Government's position remains that where the Senedd legislates in non reserved areas, the principles and requirements of the UKIMA will not apply and therefore the potential impacts referred to above will not apply.

The Senedd has noted the UKIMA could conceivably have an impact on the effectiveness of legislation made in Wales and has identified specific examples from the Welsh Government which have been designed to avoid these impacts¹. Information has been provided on these issues during the scrutiny process, and there is an expectation such issues should be included in the Explanatory Memorandum where appropriate.

The Welsh Government believes it is premature (and unnecessary) to amend Standing Orders for this purpose and suggests officials review guidance to ensure it is clear Explanatory Memorandums should include a discussion of any UKIMA implications where appropriate. We consider this to be a more proportionate approach given relevant considerations but recognise the position should be kept under review as more is understood about the implications of the UKIMA. Relevant considerations include:

- The UKIMA remains a contested and in parts ill-defined piece of legislation that has not yet been tested in court.
- Parts of the UKIMA are open to interpretation, creating significant uncertainty about its potential wider impact on implementation of policy and legislation.
- Very few proposals for Welsh legislation to date have substantively involved the UKIMA to warrant a new process.
- Establishing a requirement as a new SO is likely to have unintended consequences, creating additional work and diverting scarce legislative, policy and legal resources to carry out unnecessary assessments.

The Welsh Government proposes a period of monitoring over the next 12 months in line with the uncertainties and considerations above. During this time Welsh Government officials will review guidance to ensure relevant information on UKIMA is included in Explanatory Memorandums where appropriate.

Notification of the effect of legislation in other parts of the UK

I understand the Senedd does not believe there is currently a suitable Standing Order to enable Welsh Government to notify the Senedd where legislation from other UK jurisdictions would, by virtue of UKIMA, have consequences for Wales and Welsh Government policy. The example given was of the Genetic Technology (Precision Breeding) Bill. The LJCC did not agree with the Welsh Government's analysis that the effect of UKIMA on the Bill was a legislative competence issue for the purposes of Standing Order 29.

The Welsh Government's position is that there are already existing processes to notify the Senedd and we disagreed with the LJCC assessment on the use of Standing Order 29 in relation to the Genetic Technology (Precision Breeding) Bill. However, if the proposed Standing Order is redrafted to ensure it is an optional mechanism and does not create new obligations for government we would not be opposed to it being created.

The Business Committee paper referred to the potential role of the Office for the Internal Market (OIM) and the implied access Welsh Government has to the capacity and expertise of analysts in OIM. I would like to clarify the OIM is not a Welsh Government resource and, while we are able to request analysis from OIM, it is at their discretion what they decide to carry out. Furthermore, the remit of the OIM is strictly limited to economic effects of policies, and they do not consider wider matters including public health or environmental protection. The OIM cannot advise the Welsh Government of the impact of the UKIMA on our legislation.

Common Frameworks

With respect to Common Frameworks, I do not believe that a change to Standing Orders is required. The relevant Senedd committees should already be notified of new UK legislation falling under a Common Framework, which they have been, without exception, to date. I wrote to the Legislation, Justice and Constitution Committee on 2 March 2022 and accepted their recommendation on this matter.

I understand that this matter will again be discussed by Business Committee. While the matter is under consideration by the Committee, my officials will consider the practicalities of the above and work with you to find the most appropriate solution.

Yours sincerely



Mick Antoniw AS/MS

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

The Rt. Hon Elin Jones MS
Y Llywydd and Chair of the Business Committee

22 December 2023

Dear Llywydd

Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks

Thank you for your letter of 22 November 2023 enclosing a paper and proposed changes to Standing Orders to deal with the impact of the *United Kingdom Internal Market Act 2020* (the 2020 Act) and UK-wide common policy frameworks.

We are grateful for the opportunity to comment on the specific proposals being considered by the Business Committee, which aim to address recommendation 2 in our report, [The Welsh Government's Legislative Consent Memorandum on the Genetic Technology \(Precision Breeding\) Bill](#) (the Genetic Technology Bill LCM report), as well as matters raised by the Health and Social Care Committee and the Fifth Senedd's External Affairs and Additional Legislation Committee.

As the Business Committee has noted in its paper, our principal concern has centred on ensuring that the Explanatory Memorandum (EM) accompanying a Bill includes information (if applicable) about the effectiveness of the Bill in delivering its objectives (should it be passed and enacted) given the

provisions of the 2020 Act and the market access principles it introduces. Our report on the [Environmental Protection and \(Single-use Plastic Products\) \(Wales\) Bill](#) identified the broad issue as follows:

"...if businesses in England are permitted to sell green chairs, those chairs can be lawfully sold in Wales even if there is a law banning the sale of green chairs in Wales."

As such we believe that if, for example, there were to be a Bill introduced by the Welsh Government proposing to ban the sale of green chairs in Wales, the EM should draw attention to the fact that green chairs could lawfully be sold in Wales by businesses in England, if businesses in England are permitted to sell green chairs. We believe this to be an important consideration for Members scrutinising a Bill introduced by the Welsh Government.

We believe that the proposed inclusion of a new Standing Order 26.6(xiii), namely to "set out the potential impact (if any) of the 2020 Act on the effectiveness of the Bill's provisions, should it be enacted", would be beneficial in assisting committees in their scrutiny of a Bill introduced by the Welsh Government. We also believe it would contribute to ensuring that it is clear to citizens how the law applies to them in Wales, a point we made in our recent [annual report](#).

We note that the intention is to only apply this requirement to public Bills introduced by the Welsh Government. However, we would favour the Standing Orders enabling EMs to public Bills introduced by a Member of the Senedd or a Senedd Committee to set out the potential impact of the 2020 Act, which would also highlight the need to give the issue some consideration. It is likely that our scrutiny of any public Bill brought forward by a Member of the Senedd or a Committee would seek information about the impact of the 2020 Act on their proposals (where necessary), not least because the principle of seeking to determine the effectiveness of the provisions in a Bill, as a consequence of the 2020 Act, would still apply.

We adopted this approach in relation to the Bill introduced by Peter Fox MS, but would also note that the EM accompanying his Bill already explained that his proposal was limited by the 2020 Act (see [paragraph 304 of the EM](#) and our subsequent [report](#)).

We also consider that new Standing Orders 26B.9(xiv) for Hybrid Bills, Standing Orders 26C.9(x) for Consolidation Bills and Standing Order 27.1 are worth pursuing.

As regards the proposal for new Standing Order 30D, we make the following observations.

On new Standing Order 30D.1, we consider that there may be merit in making it enabling and therefore changing "must" to "may". In our Genetic Technology Bill LCM report, we effectively concluded that the UK Government's Genetic Technology (Precision Breeding) Bill did not in our view engage Standing Order 29, and that another Standing Order could have been used as means of



debating the subject matter of the Memorandum. New Standing Order 30D.1, subject to the amendment we suggest, would in our view be a useful addition to Standing Orders and provide a more appropriate vehicle to draw the Senedd's attention to, for example, England only UK Bills (like the Genetic Technology (Precision Breeding) Bill) that might impact on existing Welsh law as a consequence of the 2020 Act. The Welsh Government could table a motion to debate the issues contained in the Written Statement should it wish to do so.

On new Standing Order 30D.3(v), we think there may be merit in increasing the period specified (currently three working days) as these matters could be quite complex.

As regards new Standing Orders 30D.2 and 30D.4, these relate to recommendations arising from the External Affairs and Additional Legislation Committee in the Fifth Senedd. While increasing the transparency of matters relating to common frameworks would be beneficial, we have undertaken an oversight role in relation to their preparation and for that reason, other Committees may be better placed to consider whether the proposed Standing Orders are appropriate. From our perspective, we welcome the responses we have received from the Welsh Government when we have sought further information and clarity on these issues.

I am copying this letter to the Health and Social Care Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair