

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee Room 4, Tŷ Hywel and videoconference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 17 June 2024	0300 200 6565
Meeting time: 13.30	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

## Hybrid

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### Public meeting

(13.30 – 14.55)

#### 1 Introductions, apologies, substitutions and declarations of interest

(13.30)

#### 2 Health and Social Care (Wales) Bill: Evidence Session with the Member in charge

(13.30 – 14.30)

(Pages 1 – 17)

[Health and Social Care \(Wales\) Bill](#), as introduced  
[Explanatory Memorandum](#)

Dawn Bowden MS, Minister for Social Care

Tracy Hull, Lawyer, Welsh Government

Anthony Jordan, Head of Programme and Legislative Implementation, Social  
Services and Integration Directorate, Welsh Government

Mike Lubienski, Senior Lawyer, Welsh Government



Attached Documents:

LJC(6)-20-24 – Paper 1 – Briefing paper

LJC(6)-20-24 – Paper 2 – Letter from the Llywydd, 10 June 2024

Break

(14.30 – 14.35)

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

(14.35 – 14.40)

#### **Made Negative Resolution Instruments**

#### **3.1 SL(6)489 – The Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024**

(Pages 18 – 23)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-20-24 – Paper 3 – Draft report

#### **3.2 SL(6)490 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2024**

(Pages 24 – 25)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-20-24 – Paper 4 – Draft report

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

(14.40 – 14.45)

**4.1 SL(6)486 – The Well-being of Future Generations (Wales) Act 2015 (Public Bodies) (Amendment) Regulations 2024**

(Pages 26 – 32)

Attached Documents:

LJC(6)-20-24 – Paper 5 – Report

LJC(6)-20-24 – Paper 6 – Welsh Government response

**4.2 SL(6)487 – The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024**

(Pages 33 – 36)

Attached Documents:

LJC(6)-20-24 – Paper 7 – Report

LJC(6)-20-24 – Paper 8 – Welsh Government response

LJC(6)-20-24 – Paper 9 – Written Statement by the Cabinet Secretary for Education, 11 June 2024

**5 Inter-Institutional Relations Agreement**

(14.45 – 14.50)

**6 Papers to note**

(14.50 – 14.55)

**6.1 Correspondence with the First Minister: General scrutiny session**

(Pages 37 – 39)

Attached Documents:

LJC(6)-20-24 – Paper 10 – Letter from the First Minister, 11 June 2024

LJC(6)-20-24 – Paper 11 – Letter to the First Minister, Counsel General, and the Cabinet Secretary for Finance, Constitution and the Cabinet Office, 13 May 2024

**6.2 Correspondence with the First Minister: Agreement between the UK and Denmark on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other**

(Pages 40 – 43)

Attached Documents:

LJC(6)-20-24 – Paper 12 – Letter from the First Minister, 13 June 2024

LJC(6)-20-24 – Paper 13 – Letter to the First Minister, 16 May 2024

**Private meeting**

(14.55 – 15.15)

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

(14.55)

**8 Health and Social Care (Wales) Bill: Consideration of evidence**

(14.55 – 15.10)

**9 Correspondence from Adam Price MS in relation to HM Prison Parc: Further consideration**

(15.10 – 15.15)

Document is Restricted



**Y Gwir Anrhydeddus Elin Jones AS**

Llywydd, Senedd Cymru

**Right Honourable Elin Jones MS**

Llywydd, Welsh Parliament

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Russell George MS

Chair, Health and Social Care Committee

Mike Hedges MS

Chair, Legislation, Justice and Constitution Committee

10 June 2024

Dear Russell and Mike,

### **Health and Social Care (Wales) Bill: legislative competence and human rights considerations**

In accordance with section 110(3) of the Government of Wales Act 2006 (the 2006 Act) and Standing Order 26.4, I have laid a statement setting out my view on whether the provisions of the Health and Social Care (Wales) Bill would be within the Senedd's legislative competence.

It is my view that one of the provisions of the Bill, paragraph 4 of Schedule 2, would not be within legislative competence as it requires Minister of the Crown consent, and such consent has not been received at the time of introduction. My statement on legislative competence reflects this position.

As Members will be aware, while I am required to make a statement setting out my views, the content of my statement does not affect whether or not a Bill may be introduced or complete its passage through the Senedd.


I have also considered the compatibility of the provisions in the Bill with the rights set out in the European Convention on Human Rights ("ECHR"). Whilst my overall conclusion is that the provisions in the Bill are compatible with the ECHR, my view is that the position in relation to

certain provisions is finely balanced, with persuasive arguments both for and against compatibility. As such, I believe these provisions would merit scrutiny by the responsible committees during Stage 1.

To help inform this work, I enclose a summary of the human rights considerations that are relevant to the Bill. If you would like further information and advice, the officials supporting the Committee will be pleased to assist.

I am copying this letter to the First Minister, the Minister for Social Care (as the Member in charge of the Bill) and all Members of the Senedd.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Elin Jones'.

The Rt. Hon. Elin Jones MS/AS

Llywydd

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

## Human Rights considerations relevant to the Bill

1. Careful consideration should be given as to whether any provisions of the Bill engage any rights under the European Convention on Human Rights (“ECHR”), but particular consideration should be given to **Article 8 and Article 1 of the First Protocol to the ECHR**. The Explanatory Memorandum to the Bill makes no reference to the Welsh Government’s views on the potential human rights impact of the Bill.

### **Article 8**

2. Article 8 of the ECHR states:

*Everyone has the right to respect for his private and family life, his home and correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

3. Committees may wish to carefully consider the impact of the following sections of the Bill:
  - **Section 4** inserts a new Schedule 1A into the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”), providing for transitional arrangements for registration as a provider of restricted children’s services. Schedule 1A will allow the Welsh Ministers to, by regulations, set a date by which existing profit-making providers of restricted children’s services must become non-profit-making, or no longer be registered. Article 8 may be engaged if service providers cease their provision of the service when they are no longer able to make a profit, which would have an impact on the rights of children who are cared for by such providers.
  - **Section 13** inserts new provisions into the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) to permit “supplementary placements” to be authorised by the Welsh Ministers, where a child may still be placed with a for-profit provider if the local authority decides that is the most appropriate placement and there is no not-for-profit alternative available. Again, this would have an impact on the rights of the children who require the placement.
  - **Section 10** of the Bill amends section 75 of the 2014 Act. Section 75, as currently drafted, provides that a local authority has a general duty to take steps to secure, as far as reasonably practicable, that it is able to provide certain looked after children with accommodation within the local authority’s area. The amendment which section 10 seeks to make will mean that local authorities must take all reasonable steps to secure that such accommodation can be provided within or near to the local authority’s area. This means that placements that are available to a local authority may be outside of its area. The Explanatory Note to section 10 notes there will be circumstances in which a child placed outside of a local authority’s area may be nearer to their home community than if they were placed in a different part of the local authority’s area, but this amendment could also result in children being placed further away from their home community. The purpose of section 10 is set out in the Explanatory Notes as to enable local authorities to



make arrangements with each other to develop new children's homes and foster care placements. The Explanatory Memorandum also states that, wherever possible, the Welsh Government wants to see placements provided for children and young people that will preserve their links with their local neighbourhoods and communities and allow as much continuity in their lives as possible.

#### **Article 1 of the First Protocol ("A1P1")**

4. A1P1 states as follows –

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

5. Committees may wish to carefully consider the impact of the following sections of the Bill:

- **Section 3** inserts a new section 6A into the 2016 Act, which imposes a requirement that children's care home services, fostering services and secure accommodation services be not-for-profit in order to be registered to provide restricted children's services.
- **Section 4** imposes a similar requirement on a transitional basis to existing providers of restricted children's services.
- **Section 8** amends the 2016 Act to make reference to the requirements set out in the proposed new section 6A when an application is being made to vary an existing registration to add the provision of restricted children's services.

6. Any provision that deprives an individual of their property will potentially engage A1P1. A1P1 says that every person "is entitled to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided by law."

7. The concept of possessions is very broadly interpreted in the case-law of the European Court of Human Rights. It is not confined to physical possessions and can include profit, although it has not been interpreted to mean future earnings.

- **Sections 4(4) and 4(5)** of the Bill amend the 2016 Act so that the Welsh Ministers may prescribe by regulations that it is an offence for a provider to fail to comply with conditions imposed in regulations made under the new Schedule 1A to the 2016 Act. Such an offence is punishable by a fine or a fixed penalty notice.

- Similarly, **section 14(3)** of the Bill makes it an offence to fail to submit or publish an annual return within the prescribed time limit, and a person guilty of such an offence is liable on summary conviction to a fine.
8. The issue of a fine engages A1P1, but deprivation of property is permissible where the policy is: justified on grounds of public interest, proportionate to the public interest aim pursued, done in accordance with domestic and international law and has legal certainty..

# Agenda Item 3.1

## **SL(6)489 – The Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024**

### **Background and Purpose**

These Regulations place a duty on local authorities to formulate a qualifying scheme for the co-ordination of admission arrangements for schools they maintain and, to secure the adoption of the scheme by themselves and each governing body who is the admission authority for a maintained school in their area.

The first qualifying scheme must be formulated and adopted by 1 January 2025 and by 1 January for all subsequent years. The first qualifying scheme will apply to admission arrangements in the academic year 2027 to 2028.

The Welsh Government's Explanatory Memorandum provides that the purpose of these Regulations is to:

*"enable local authorities and other admission authorities to operate more efficiently by helping to reduce the cost and time that comes with the holding up of school places by families who have received more than one school offer. If [these] Regulations were not made some parents will continue to hold multiple offers of places where other parents may have none."*

Additionally, these Regulations amend:

- the School Information (Wales) Regulations 2011 to require the local authority to include in its composite prospectus a summary of the local authority's co-ordinated scheme as determined each year, alongside a clear explanation of the stages in the process of applying for a school place.
- the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 so as to correct drafting mistakes in regulation 3 and regulation 5 of those Regulations.

### **Procedure**

Negative.

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



## Technical Scrutiny

The following 12 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In the preamble, in the English text, the title of the enabling Act is incorrect. It is cited as “the **Schools** Standards and Framework Act 1998”. However, it should be cited by its correct title as done elsewhere in these Regulations, which is “the **School** Standards and Framework Act 1998”.

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

In regulation 2(1) in the definition of “Welsh Minister scheme”, the reference “**subsection** 89B(2) of the 1998 Act” is incorrectly described and it should be referred to as “**section** 89B(2) of the 1998 Act” (see WLW 6.16 about composite references). The same issue arises in regulation 9, in the definition of “the scheme for co-ordinating admission arrangements of the local authority” in new paragraph 5A(2)(b).

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

In regulation 2(1), in the definition of “Welsh Minister scheme” in the English text, should the definition use a plural possessive noun and be “Welsh Ministers’ scheme”? An explanation is required in respect of the definition used.

**4. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.**

The term “working day” as defined in regulation 2(1) is only used in regulation 6 of these Regulations. Therefore, the term should only be defined in an interpretation provision that appears in that regulation, see WLW 4.13(1). An explanation is therefore required as to why the term has been defined in regulation 2 and not regulation 6.

**5. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.**

In regulation 2(1), in the definition of “working day” it states that “a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971” is not a working day. However, the Banking and Financial Dealings Act 1971 specifies days as bank holidays in England and Wales, Scotland, and Northern Ireland. Therefore, the definition of “working day” in regulation 2(1) of these Regulations as currently drafted excludes bank holidays in Scotland and Northern Ireland from the meaning of “working day” as well as bank holidays in England and Wales. Clarification is requested as to whether or not this is the policy intention.



**6. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.**

The term “working day” is given a meaning which is implied in Welsh SIs such as these Regulations by Schedule 1 to the Legislation (Wales) Act 2019. The definition found in Schedule 1 to that Act only excludes Bank holidays in England and Wales from the meaning of “working day”. Therefore, it was not necessary to define “working day” in any interpretation provisions found in these Regulations if the term was intended to bear the same meaning as given by Schedule 1 to that Act.

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

In regulation 6, the structure of paragraph (1) is incorrect as there is a sub-paragraph (a) without a subsequent sub-paragraph (b). This is confusing for the reader as it creates doubt as to whether an additional provision is missing from the text. In addition, in the English text, the words “and” and “for” have been combined as a single word, and in the Welsh text, the words “a” and “ar gyfer” have also been combined as a single word. In this regard, it does appear as though the intention was to create an additional sub-paragraph (b) which would begin with the words “for secondary schools” after the conjunction “and” in the English text, with a corresponding provision in the Welsh text.

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

In regulation 7(3)(a), there is an incorrect reference to “section 578(1) of the 1996 Act”. However, there is no subsection (1) found in section 578 of the 1996 Act. Therefore, the reference should be to “section 578 of the 1996 Act”. The additional subsection (1) is incorrectly noted on the collated version of section 578 in the 1996 Act on Lexis, but the provision is shown correctly on legislation.gov.uk and Westlaw.

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

In regulation 7(3), in the English text, in both sub-paragraphs (a) and (b), the corresponding language definitions are shown in italics and brackets after the definitions. But the Welsh Government’s drafting guidance states that this should not be done when each definition is given in a separate numbered provision as in these sub-paragraphs (see WLW 4.15(7)).

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

In regulation 9, a new paragraph 5A is inserted in Schedule 2 to the School Information (Wales) Regulations 2011. In the new paragraph 5A(1), in paragraphs (a) and (e), the terms “application” and “common application form” respectively are used which have been defined in regulation 2(1) for the purposes of the Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024. However, these



terms have not been included with the definitions listed in sub-paragraph (2) of the new paragraph 5A. Therefore, they have not been given the same meaning in paragraph 5A of Schedule 2 to the School Information (Wales) Regulations 2011. Clarification is requested as to whether that is the intention for both of those terms.

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

In regulation 9, in the new paragraph 5A(2) inserted in Schedule 2 to the School Information (Wales) Regulations 2011, there is a difference between the English and Welsh text. In the Welsh text, the corresponding English definitions have been noted in italics and brackets after each definition. In the English text, the corresponding Welsh definitions have not been noted after each definition. In this regard, the Welsh text is correct because it is following the Welsh Government's drafting guidance that the corresponding language definitions should be included if the definitions appear in an unnumbered list (see WLW 4.15(6)).

### **12. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.**

In regulation 9, in the definition of "the scheme for co-ordinating admission arrangements of the local authority", in paragraph 5A(2)(a), there is a reference to a scheme adopted by a local authority "pursuant to regulation **2(1)** of the 2024 Regulations". However, clarification is required as to whether it should refer "to regulation **3(1)** of the 2024 Regulations" which places an obligation on local authorities to formulate qualifying schemes?

## **Merits Scrutiny**

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

## **Welsh Government response**

Technical Scrutiny point 1: The Welsh Government agrees with the reporting point. We do not consider that the minor error in a non-operative part of the Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024 ("the 2024 Regulations") will mislead anyone. However, we will liaise with the SI Registrar as to how best to correct the error reported.

Technical Scrutiny point 2: The Welsh Government agrees with the reporting point. Whilst we do not consider that the minor error will mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 3: The Welsh Government does not agree with the reporting point. The term "Welsh Minister scheme" is used consistently throughout the instrument. Whilst the alternative "Welsh Ministers' scheme" could have been used we consider both approaches give the same legal effect to the policy.



Technical Scrutiny point 4: The Welsh Government agrees with the point made about the correct location for the definition given its single occurrence in the instrument and the approach used with other such “single use” definitions in the instrument. However, it is not considered the location of the definition will mislead anyone and we do not propose to amend the 2024 Regulations in this regard.

Technical Scrutiny point 5: It is accepted that the effect of the definition of “working day” in regulation 2(1) is to exclude all bank holidays as defined in section 1 of the Banking and Financial Dealings Act 1971 and that would also exclude bank holidays in Northern Ireland and Scotland from the definition of working day in the instrument. The intention was to exclude bank holidays for England and Wales only.

Technical Scrutiny point 6: The Welsh Government agrees that a better approach would be to rely on the definition of “working day” in the Legislation (Wales) Act 2019. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 7: The Welsh Government does not agree with the reporting point. The signature version of the 2024 Regulations does not contain the error identified. It would appear that the error occurred during the publication of the 2024 Regulations, and we will liaise with the SI Registrar to correct the published version so that it accurately reflects the signature version.

Technical Scrutiny point 8: The Welsh Government agrees with the reporting point which arose as a result of reliance on an error on the legal database, Lexis. Whilst we do not consider that the minor error will mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 9: The Welsh Government does not agree that the provision is defective or fails to fulfil statutory requirements. The provision is legally effective and its meaning clear.

Technical Scrutiny point 10: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

Technical Scrutiny point 11: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.



Technical Scrutiny point 12: The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**5 June 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

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# Agenda Item 3.2

## **SL(6)490 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2024**

### **Background and Purpose**

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”).

The Principal Regulations allow Local Health Boards and NHS Trusts (as applicable) in Wales to make and recover charges for relevant healthcare services that are provided to overseas visitors not ordinarily resident in the United Kingdom, unless the overseas visitor or the service they receive falls within a charging exemption.

These Regulations are being made to ensure that the Principal Regulations are aligned with UK Government policy regarding the Immigration Healthcare Surcharge and overseas students from the EU, Switzerland, Norway, Iceland and Lichtenstein and their dependents.

### **Procedure**

Negative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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

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

*“There is no statutory duty to consult prior to making the Regulations. It is considered that the proposed amendments do not require consultation as there is no discretion for the Welsh Government with regard to IHS policy and as the changes are regarded as*



*essential to align the Principle [sic] Regulations with UK policy.”*

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**11 June 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

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# Agenda Item 4.1

## **SL(6)486 – The Well-being of Future Generations (Wales) Act 2015 (Public Bodies) (Amendment) Regulations 2024**

### **Background and Purpose**

Section 6(1) of the Well-being of Future Generations (Wales) Act 2015 (the Act) lists certain persons who are “public bodies” for the purposes of Part 2 and Part 3 of the Act.

These Regulations add 8 further persons to the list of public bodies in section 6(1). These are:

- Welsh Ambulance NHS Trust;
- Digital Health and Care Wales;
- Health Education and Improvement Wales;
- Social Care Wales;
- Welsh Revenue Authority;
- Transport for Wales;
- Centre for Digital Public Services Limited; and
- Qualifications Wales.

Regulation 3 makes provision to specify that the additional public bodies must set and publish well-being objectives by 31 March 2025.

Regulation 4 makes provision for the examination and report by the Auditor General for Wales in relation to the additional public bodies.

### **Procedure**

Draft Affirmative.

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

### **Technical Scrutiny**

The following 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The preamble states that “the Welsh Ministers have consulted with the Future Generations Commissioner for Wales, the Auditor General for Wales and the public bodies listed under regulation 2, as required under section 52(4) of the Act”. This is misleading as the requirement in section 52(4) is for the Welsh Ministers to consult with:



- (a) *the Commissioner;*
- (b) *such other persons as the Welsh Ministers consider appropriate;*
- (c) *if the regulations amend section 6(1) so as to add a person, that person.*

There is no requirement to consult with the Auditor General for Wales specifically. It would be clearer to state that the Welsh Ministers have consulted with “such other persons as they consider appropriate” rather than specifically referring to the Auditor General for Wales by name in the preamble.

It would also be clearer to state that the Welsh Ministers have consulted with the persons that have been added to section 6(1), rather than referring to the “public bodies” that have been “listed under regulation 2”. Paragraph 43 of the Explanatory Memorandum sets out the consultation requirements more accurately.

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

The Regulations make reference to “section 6” of the Act (for example, in the headings to, and text of, regulations 3 and 4). It would be clearer to state “section 6(1)” in each case as this is the specific provision of the Act which the Welsh Ministers have the power to amend.

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

Regulation 2(2) inserts “Welsh Ambulance Services University NHS Trust” into section 6(1) of the Act. However, the legal name given by the amended article 2 of the amended Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998/678 uses “National Health Service” rather than NHS in the name. It is unclear, therefore, why “Welsh Ambulance Services University National Health Service Trust” was not used in regulation 2(2).

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

In regulation 2(3), it is unclear why the new paragraph which is inserted after paragraph (d) of section 6(1) is referenced as “(dd)”, rather than “(da)”. There is a paragraph “(ba)” that has previously been inserted after paragraph (b) (by SI 2021/1360 (W.356)). The use of “(dd)” may create an expectation that there are already paragraphs (da) to (dc) in section 6(1).

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

The heading of regulation 4 should refer to the “Auditor General for Wales” instead of referring to the “Auditor General”.

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

It is unclear why there are references to “public bodies added to section 6 of the Act”. The enabling powers allow the Welsh Ministers to add “persons” to section 6(1) so that they will be included within the meaning of public body for the purposes of Part 2 and 3 of the Act.



Both Transport for Wales and the Centre for Digital Public Services Limited are registered companies which are being added to section 6(1). Parts 2 and 3 of the Act will only apply to their functions of a public nature.

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

In regulation 4(2), the description of the modification would be clearer if the words “of section 15” were repeated after the reference to “for subsection (6)” because there are references to both section 6 and 15 in regulation 4(2).

## Merits Scrutiny

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

**8. 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**

Paragraphs 4 to 8 of the Explanatory Memorandum include “matters of special interest to the Legislation, Justice and Constitution Committee”. These paragraphs state as follows:

4. *The Legislation, Justice and Constitution Committee will wish to note:*
5. *The Public Accounts Committee (fifth Senedd) carried out an inquiry Barriers to the successful implementation of the Well-being of Future Generations (Wales) Act 2015 between May 2020 and March 2021. The Committee’s report Delivering for Future Generations: the story so far was published on 17 March 2021 and a Plenary Debate was held on 24 March 2021. The report included a recommendation (Recommendation 7) for the Welsh Government to carry out a review of the public bodies that are subject to the Act. The work of the Public Accounts Committee in 2020-21 outlined that acting in accordance with the sustainable development principle is an alternative, better way of working rather than an additional way of working. In practice this means enhancing existing arrangements for objective setting, monitoring, reporting, and decision making, as well as training and development for decision makers.*
6. *The remit of the Senedd’s Equality and Social Justice Committee includes the examination of legislation and scrutiny of expenditure, administration and policy for matters encompassing the implementation of the Act. In their Report on the annual scrutiny of the Future Generations Commissioner (An Update April 2022), the Committee were pleased that the Welsh Government is taking forward the Public Accounts Committee’s recommendation to review the number of bodies that are subject to the Act.*
7. *The Senedd Public Accounts and Public Administration Committee recently published a report Scrutiny of Accounts: The Future Generations Commissioner for Wales 2022-23 (March 2024), which included a recommendation for the Future Generations Commissioner to advise whether he will be able to continue to provide reassurances*



*regarding the support provided by the public bodies team to the additional public bodies to be added to the Act, for which his office used its reserves to fund in 2022-23.*

8. *The Senedd Finance Committee in their scrutiny of the then Social Partnership and Public Procurement (Wales) Bill, which places a social partnership duty on the public bodies listed in section 6(1) of the Act, included in their Stage 1 Report (November 2022) a recommendation (Recommendation 10) asking the Welsh Government to report back on the outcome of the review of the bodies subject to the Act. These regulations implement, in part, recommendations of Senedd Committees.*

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

The title of the instrument may confuse some readers. The use of the word “(Amendment)” in the title may make some readers think that there may be previous instrument, “The Well-being of Future Generations (Wales) Act 2015 (Public Bodies) Regulations XXXX” which has been amended by these Regulations.

### **Welsh Government response**

A Welsh Government response is required.

### **Committee Consideration**

The Committee considered the instrument at its meeting on 10 June 2024 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Well-being of Future Generations (Wales) Act 2015 (Public Bodies) (Amendment) Regulations 2024**

**Technical Scrutiny point 1:** The Government notes the points raised with regard to the persons referred to in the preamble with whom the Welsh Ministers must consult in order to fulfil the requirements of section 52(4) of the Well-being of Future Generations (Wales) Act 2015 (“the Act”). Specific reference was made to the Auditor General for Wales to comply with section 52(4)(b) due to regulation 4 which directly affects the Auditor General for Wales examination period under section 15 of the Act. Reference was made to the persons added by regulation 2(2) again to indicate what persons had specifically been consulted in accordance with section 52(4)(c). Whilst the Government accepts that just reference to “such other persons as the Welsh Ministers consider appropriate” and “if the regulations amend section 6(1) so as to add a person, that person” would have sufficed, the Government’s view is that the preamble makes it sufficiently clear that section 52(4) has been complied with and therefore considers that no amendment is required.

**Technical Scrutiny point 2:** The Government does not believe the existing drafting of regulations 3 and 4 is ambiguous and considers the drafting of both regulations to be sufficiently clear. The Government does not, consequently, consider any changes to regulations 3 and 4 necessary in this regard.

**Technical Scrutiny point 3:** The Government has considered whether the reference to “Welsh Ambulance Services University NHS Trust” in regulation 2(2) should refer to “Welsh Ambulance Services University National Health Service Trust” in light of the amended Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998 (S.I. 1998/678). However, the Government decided to refer to “NHS” as opposed to “National Health Service” due to “NHS” being used throughout the Act, including in section 6(1)(d). At no point in the Act is NHS provided for in full apart from where the Act refers to the National Health Service (Wales) Act 2006. In the Government’s view therefore it is more consistent with the Act to refer to “Welsh Ambulance Services University NHS Trust” and there is no ambiguity as to which body is captured. Consequently, the Government does not consider an amendment is needed.

**Technical Scrutiny point 4:** The Government accepts that in regulation 2(3) it would be more consistent with the Act to insert a new paragraph “(da)” as opposed to “(dd)”. Whilst this does not alter the legal effect, the Government will seek to amend this prior to the making of the instrument.

**Technical Scrutiny point 5:** The Government notes that the heading to regulation 4 refers to “the Auditor General” as opposed to “the Auditor General for Wales” however the Government disagrees that the heading should refer to “the Auditor General for Wales” because that heading reflects the heading to section 15 of the Act “The sustainable development principle: Auditor General's examinations”.

Further, section 15 of the Act continually refers to “the Auditor General” in relation to the examination period. Consequently, the Government does not consider an amendment is needed.

**Technical Scrutiny point 6:** The Government acknowledges that the references to “public bodies added to section 6 of the Act” could be to “persons added to section 6 of the Act” in reflection of the enabling power at section 52(1) which makes reference to “person”. However, section 6 of the Act is entitled “meaning of “public body”” and section 6(1) states that each of the specified persons is a “public body” for the purposes of Parts 2 and 3 of the Act. The Government, consequently, considers that the reference to “public bodies added to section 6 of the Act” is sufficiently clear and that no amendments are needed in this respect.

The Government accepts that both Transport for Wales and the Centre for Digital Public Services Limited are registered companies which are being added to section 6(1) and the Explanatory Memorandum makes it clear that Parts 2 and 3 of the Act will only apply to their functions of a public nature. However, those companies will be referred to as a “public body” for the purpose of Parts 2 and 3 of the Act due to being added to section 6(1). The references throughout the instrument are therefore referring to the persons that will be a “public body” for the purpose of Parts 2 and 3.

**Technical Scrutiny point 7:** The Government is content that it is clear regulation 4(2) modifies section 15 and notes that there is no section 6(6) in the Act. The Government does not consider an amendment is needed.

**Merit Scrutiny Point 2:** The Government has considered whether the title of the instrument could lead to confusion but on analysis is content that the title gives an accurate indication of the nature of the instrument.

*Corrections to be made prior to making the Statutory Instrument*

<b>CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING</b>	<b>CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING</b>
<b>Rheoliadau Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 (Cyrff Cyhoeddus) (Diwygio) 2024</b>	<b>The Well-being of Future Generations (Wales) Act 2015 (Public Bodies) (Amendment) Regulations 2024</b>
<i>The reference to paragraph (dd) in regulation 2(3) will be amended to (da).</i>	<i>The reference to paragraph (dd) in regulation 2(3) will be amended to (da).</i>



## **SL(6)487 – The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024**

### **Background and Purpose**

The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024 (“the Order”) amends the list of devolved Welsh authorities in Schedule 9A to the Government of Wales Act 2006 (“GOWA”).

The Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”) establishes the Commission for Tertiary Education and Research and provides for the dissolution of the Higher Education Funding Council for Wales.

Section 157A(5) GOWA provides that His Majesty may by Order in Council amend the list in Schedule 9A by adding or removing an entry.

In consequence of the 2022 Act, the Order inserts a new entry into Schedule 9A GOWA for “The Commission for Tertiary Education and Research or Comisiwn Addysg Drydyddol ac Ymchwil” and omits the existing entry for “The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru”.

### **Procedure**

Draft Affirmative

A draft of the Order has been laid before the Senedd and the UK Parliament. No recommendation may be made to His Majesty in Council to make the Order unless the draft is approved by a resolution of the Senedd and each House of Parliament.

### **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(ix) – that it is not made or to be made in both English and Welsh.**

The Order is in English only. According to paragraph 2.1 of the Explanatory Memorandum:

*The Order in Council is UK Government legislation, consequently the draft Order is being laid in English only.*

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



The italic headnote at the top of the Order provides that the draft is laid before Parliament under section 157A(6) of GOWA for approval by resolution of each House of Parliament.

The Welsh Government is asked why the headnote does not also refer to the draft being laid before the Senedd.

## Merits Scrutiny

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

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

A draft of the Order was laid before the UK Parliament on 21 May 2024.

Following the Prime Minister's announcement that a general election would be held on 4 July 2024, the UK Parliament was prorogued on 24 May 2024 before being dissolved on 30 May 2024. Neither House had approved the draft Order before dissolution.

The Welsh Government is therefore asked to provide an update on the future of the draft Order, and an indication of when it may be considered by a future UK Parliament. The Committee acknowledges that such an update may not be possible until after the general election.

## Welsh Government response

A Welsh Government response is required to the second and third reporting points only.

## Committee Consideration

The Committee considered the instrument at its meeting on 10 June 2024 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024**

### **Technical Scrutiny point 2:**

The Committee noted the headnote did not include a reference to the draft being laid before the Senedd.

The draft was prepared to be consistent with the headnote on Orders in Council previously made under section 109 of the Government of Wales Act 2006. The drafts of the most recent examples as laid before the Senedd, SI 2019/1506 and SI 2021/290, can be accessed [here](#) and [here](#).

Headnotes do not appear in final versions of Orders as made. Significantly, the role of the Senedd in approving the draft is included in the introduction, which will form part of the final Order. However, the Welsh Government considers that a reference to the Senedd should have been included in the headnote as a matter of good practice.

As the wording of the headnote does not affect the operation of the Order, and the Senedd's approval is indicated in the introduction, we do not propose to seek an amendment to the draft in this case; this will avoid any further delays to the Order being made. However, we have asked the Wales Office to ensure the headnotes of future draft Orders include a reference to the Senedd's role in the process.

### **Merits Scrutiny point 3:**

A Written Statement was issued to Members updating them on the status of the Order following the dissolution of Parliament. We will of course keep Members informed of progress on the Order once the new UK Government is formed and parliamentary business is resumed following the general election.



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Orders under sections 150 and 157A of the Government of Wales Act 2006

**DATE** 11 June 2024

**BY** Lynne Neagle MS, Cabinet Secretary for Education

Last month I issued a written statement informing members the Secretary State for Wales had made and laid the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) (No. 2) Order 2024 before the UK Parliament. I also laid the draft Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024 before the Senedd, on the same day as the Secretary of State laid it before Parliament. Both statutory instruments arise as a consequence of the Tertiary Education and Research (Wales) Act 2022.

Members will wish to be aware of the implications of the dissolution of the United Kingdom Parliament on both pieces of legislation.

The Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) (No. 2) Order 2024 has been made and is subject to annulment by Parliament. The Order is scheduled to come into force on either the day on which section 23 of the Tertiary Education and Research (Wales) Act 2022 comes into force, or 1st August 2024, whichever is later. The UK Government do not consider this Order will be affected by the dissolution of Parliament.

The Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024 cannot be made until it has been approved by both Houses of Parliament, and the Senedd. It will be a matter for an incoming UK Government to table a new motion seeking the approval of both Houses of Parliament, though there is no reason why the Senedd's consideration of the Order should not go ahead as planned. A debate on the Order is currently scheduled for 18th June.

I will keep members informed of progress on the draft Order in Council following the election.

Chair  
Legislation, Justice and Constitution Committee

11 June 2024

Dear Chair

I am writing in response to your letter of 13<sup>th</sup> of May inviting the Cabinet Secretary for Finance, Constitution and Cabinet Office, Counsel General and me to attend a general scrutiny session.

I can confirm that Rebecca Evans, as the relevant Cabinet Secretary, and the Counsel General will be available to attend on the 23<sup>rd</sup> of September.

I will be giving evidence to the Committee for the Scrutiny of the First Minister on the 12<sup>th</sup> of July, where there will be an opportunity for members to raise questions on any aspect of the government's work, including those within your Committee's remit.

Yours sincerely



**VAUGHAN GETHING**

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

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

Rt Hon Vaughan Gething MS

First Minister of Wales

Mick Antoniw MS

Counsel General

Rebecca Evans MS

Cabinet Secretary for Finance, Constitution and Cabinet Office

13 May 2024

Dear all

### Invitation to give evidence

We have established a constructive and valuable practice in this Sixth Senedd whereby the member(s) of the Welsh Government with responsibilities which fall within our remit have dedicated time to appear before us regularly for general scrutiny sessions.

In line with this practice, I would like to invite you all to attend our committee meeting on either 24 June, 8 July or 15 July for a collective scrutiny session. We would appreciate 2 hours of your time, and are content to be as flexible as we can with a convenient start time.

This meeting will take place on the Senedd estate, room location to be confirmed. I would be grateful if you could confirm, at your earliest convenience, whether you will be able to attend. The Committee Clerk can liaise with your officials to discuss appropriate timings.

This session will help inform our next annual report, which we intend to lay before the Senedd in the autumn term.

Yours sincerely,

A handwritten signature in black ink that reads "S. Murphy". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Sarah Murphy

Chair



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

13 June 2024

Dear Mike,

**Agreement between the UK and Denmark on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other**

I am writing in response to your predecessor's letter of 16 May regarding the above Treaty ("the UK-Denmark Agreement").

Your predecessor's letter asked about an issue raised by the former First Minister, and whether the Senedd would have the power to remove the franchise from citizens of countries with reciprocal agreements should it wish to in future. Specifically, the letter asked:

- whether the issue raised by the former First Minister has been resolved
- if the issue is unresolved, whether the Welsh Government has considered the use of any legislative means, such as the tabling of amendments to the Elections and Elected Bodies (Wales) Bill, to seek its resolution;
- whether the Welsh Government has considered the use of emergency legislation to reverse any potential legislative action by the UK Government to remove or limit the entitlement of nationals from a particular EU Member State to stand and vote in any UK local elections, so as to enable those citizens to continue to be enfranchised in devolved Welsh elections.

The situation is not fully resolved, however given current Welsh Government policy and cross-Senedd support for a wide franchise for Welsh elections, this is not a matter we have pursued with great urgency.

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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.



If the potential situation were to arise where a future Welsh Government or Senedd wished to amend the franchise in a way that was more restrictive and therefore not compliant with any of these agreements, there are mechanisms in place allowing the UK Government to negotiate changes to the relevant international agreements on our behalf. If such an issue arose we would expect positive engagement between the Welsh Government and the UK government to reach an agreeable solution.

The UK-Denmark Agreement aligns fully with this Welsh Government's commitments to ensure that EU and Commonwealth citizens retain their rights to vote. As a matter of law, entering into international obligations which bind the UK is reserved. However, the observation and implementation of certain international obligations, are matters which are not reserved. We will therefore continue to emphasise to the UK Government that it is essential that the Welsh Government is fully engaged in the negotiation of such agreements, and to provide sufficient opportunity for the Welsh Government to engage with the Senedd in advance.

Given the ongoing Senedd support for the current franchise, we have not sought any legislative means to address these potential issues, but we would consider all viable options if a scenario arose like the one described above.

We have a good relationship with the UK Government in terms of discussing electoral issues. We have no reason to believe the UK Government would attempt to legislate to remove or limit the entitlement of EU citizens to vote in Welsh local elections. We would object to any such attempt and we would work with the Senedd to consider all viable options to deal with the situation.

I am copying this letter to the Llywydd, the Chair of the Equality and Social Justice Committee, and the Chair of the Local Government and Housing Committee.

Yours sincerely,

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

**VAUGHAN GETHING**

Rt Hon Vaughan Gething MS

First Minister

16 May 2024

Dear Vaughan

**Agreement between the UK and Denmark on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other**

At its meeting on 7 May 2024, my Committee considered the above mentioned international agreement, which was laid in the UK Parliament in February. You will likely be aware that the agreement secures the right for UK nationals in Denmark and Danish nationals in the UK to stand and vote in local elections.

We noted that no devolved legislation is required to implement the agreement in Wales, as all legally resident foreign nationals are able to stand and vote in Welsh local elections.

We also noted that in the fifth Senedd, the former First Minister brought the below issue to the attention of the Llywydd, following the conclusion of similar agreements between the UK and other EU nations:

*"... in concluding agreements which bind all parts of the UK to extend the franchise to nationals of certain other countries the UK Government is effectively constraining both legislative and executive competence of the devolved institutions in future, since a future National Assembly with a different political outlook would be unable to legislate to remove the franchise from such citizens.*

*In the specific case of these agreements, there is a mechanism by which these reciprocal voting rights can be modified, and we have emphasised the need for a process to request the use of this mechanism to remove Wales from the agreement should a future Welsh Government or National Assembly adopt a different policy position from ours."*

I would be grateful if you could confirm by Wednesday 29 May 2024:

- whether the issue raised by the former First Minister has been resolved;
- if the issue is unresolved, whether the Welsh Government has considered the use of any legislative means, such as the tabling of amendments to the Elections and Elected Bodies (Wales) Bill, to seek its resolution;
- whether the Welsh Government has considered the use of emergency legislation to reverse any potential legislative action by the UK Government to remove or limit the entitlement of nationals from a particular EU Member State to stand and vote in any UK local elections, so as to enable those citizens to continue to be enfranchised in devolved Welsh elections.

My Committee will lay its report on the agreement in due course.

I am copying this letter to the Llywydd, the Chair of the Equality and Social Justice Committee, and the Chair of the Local Government and Housing Committee.

Yours sincerely,

A handwritten signature in black ink that reads "S. Murphy". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Sarah Murphy  
Chair