

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 5, Tŷ Hywel

Meeting date: 14 October 2024

Meeting time: 13.00

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

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Hybrid

Public meeting

(13.00 – 14.30)

1 Introduction, apologies, substitutions and declarations of interest

(13.00)

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

(13.00 – 13.05)

(Page 1)

Attached Documents:

LJC(6)–29–24 – Paper 1 – Draft report

Affirmative Resolution Instruments

2.1 SL(6)533 – The Commission for Tertiary Education and Research (Registration and De-registration of Tertiary Education Providers in Wales) Regulations 2024

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

(13.05 – 13.10)



Affirmative Resolution Instruments

3.1 SL(6)534 – The Historic Environment (Wales) Act 2023 (Consequential Provision) (Primary Legislation) Regulations 2024

(Pages 2 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–29–24 – Paper 2 – Draft report

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

(13.10 – 13.20)

Made Negative Resolution Instruments

4.1 SL(6)504 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024

(Pages 4 – 5)

Attached Documents:

LJC(6)–29–24 – Paper 3 – Letter from the Cabinet Secretary for Health and Social Care, 7 October 2024

LJC(6)–29–24 – Paper 4 – Letter to the Cabinet Secretary for Health and Social Care, 24 September 2024

4.2 SL(6)517 – The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024

(Pages 6 – 12)

Attached Documents:

LJC(6)–29–24 – Paper 5 – Report

LJC(6)–29–24 – Paper 6 – Welsh Government response

4.3 SL(6)528 – The Special Procedures Licensing Committees (Wales) Regulations 2024

(Pages 13 – 15)

Attached Documents:

LJC(6)-29-24 – Paper 7 – Report

LJC(6)-29-24 – Paper 8 – Welsh Government response

**4.4 SL(6)530 – The Firefighters’ Pension Schemes (Miscellaneous Amendments)
(Wales) Regulations 2024**

(Pages 16 – 18)

Attached Documents:

LJC(6)-29-24 – Paper 9 – Report

LJC(6)-29-24 – Paper 10 – Welsh Government response

Affirmative Resolution Instruments

**4.5 SL(6)525 – The Prescribed Objects for Body Piercing (Special Procedures)
(Wales) Regulations 2024**

(Pages 19 – 22)

Attached Documents:

LJC(6)-29-24 – Paper 11 – Report

LJC(6)-29-24 – Paper 12 – Welsh Government response

**4.6 SL(6)526 – The Special Procedures Exempted Individuals (Wales) Regulations
2024**

(Pages 23 – 27)

Attached Documents:

LJC(6)-29-24 – Paper 13 – Report

LJC(6)-29-24 – Paper 14 – Welsh Government response

**4.7 SL(6)527 – The Special Procedures Approved Premises and Vehicles (Wales)
Regulations 2024**

(Pages 28 – 37)

Attached Documents:

LJC(6)-29-24 – Paper 15 – Report

LJC(6)-29-24 – Paper 16 – Welsh Government response

5 Inter-Institutional Relations Agreement

(13.20 – 13.25)

5.1 Written Statement and correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Persistent Organic Pollutants (Amendment) Regulations 2024

(Pages 38 – 40)

Attached Documents:

LJC(6)-29-24 – Paper 17 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 9 October 2024

LJC(6)-29-24 – Paper 18 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 9 October 2024

5.2 Correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Official Controls (Extension of Transitional Period) and Plant Health (Frequency of Checks) (Miscellaneous Amendment) Regulations 2024

(Pages 41 – 42)

Attached Documents:

LJC(6)-29-24 – Paper 19 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 9 October 2024

5.3 Correspondence from the First Minister: Intergovernmental meetings

(Page 43)

Attached Documents:

LJC(6)-29-24 – Paper 20 – Letter from the First Minister, 10 October 2024

6 Papers to note

(13.25 – 13.30)

6.1 Correspondence from the Minister for Children and Social Care to the Finance Committee: Health and Social Care (Wales) Bill

(Pages 44 – 46)

Attached Documents:

LJC(6)-29-24 – Paper 21 – Letter from the Minister for Children and Social Care to the Finance Committee, 3 October 2024

**6.2 Written Statement by the Minister for Further and Higher Education:
Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment)
Order 2024**

(Page 47)

Attached Documents:

LJC(6)-29-24 – Paper 22 – Written Statement by the Minister for Further and Higher Education, 8 October 2024

**6.3 Report published by the Centre for Public Policy: Westminster Rules? The
United Kingdom Internal Market Act and Devolution**

[Report: Westminster Rules? The United Kingdom Internal Market Act and
Devolution](#)

7 Evidence Session with the President of the Welsh Tribunals

(13.30 – 14.30)

(Pages 48 – 80)

Sir Gary Hickinbottom, President of the Welsh Tribunals

Rhian Davies-Rees, Head of the Welsh Tribunals Unit, Welsh Government

Attached Documents:

LJC(6)-29-24 – Paper 23 – President of the Welsh Tribunals Fifth Annual Report (1 January 2023 to 31 March 2024)

LJC(6)-29-24 – Paper 24 – Research Brief

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

(14.30)

Private meeting

(14.30 – 16.40)

9 Evidence Session with the President of the Welsh Tribunals:

Consideration of evidence

(14.30 – 14.45)

Break

(14.45 – 14.55)

10 Legislative Consent Memorandum on the Product Regulation and Metrology Bill

(14.55 – 15.10)

(Pages 81 – 98)

Attached Documents:

LJC(6)-29-24 – Paper 25 – Legal Advice Note

LJC(6)-29-24 – Paper 26 – Research Brief

11 International agreements: Draft report

(15.10 – 15.20)

(Pages 99 – 105)

Attached Documents:

LJC(6)-29-24 – Paper 27 – Draft report

12 Legislative Consent Memorandum on the Railway Services (Public Ownership) Bill: Draft report

(15.20 – 15.30)

(Pages 106 – 112)

Attached Documents:

LJC(6)-29-24 – Paper 28 – Draft report

13 Welsh Government Draft Budget 2025–26 – Approach to scrutiny

(15.30 – 15.40)

(Pages 113 – 115)

Attached Documents:

LJC(6)-29-24 – Paper 29 – Approach to scrutiny paper

14 The Legislation (Procedure, Publication and Repeals) (Wales) Bill: Technical Briefing

(15.40 – 16.40)

Dylan Hughes, First Legislative Counsel, Welsh Government

Claire Fife, Policy Advisor to the Counsel General & Head of the Legislative
Codes Office, Welsh Government

Statutory Instruments with Clear Reports 14 October 2024

SL(6)533 – The Commission for Tertiary Education and Research (Registration and De-registration of Tertiary Education Providers in Wales) Regulations 2024

Procedure: Affirmative

The Tertiary Education and Research (Wales) Act 2022 (“**the 2022 Act**”) provides for the establishment of the Commission for Tertiary Education and Research (“**the Commission**”) and the dissolution of the Higher Education Funding Council for Wales. The Commission was established as a legal entity on 15 December 2022. Once the relevant provisions of the 2022 Act are commenced, the Commission will be responsible for promoting, funding, and regulating tertiary education and research in Wales.

Part 2 of the 2022 Act makes provision for a register of tertiary education providers in Wales (“**the Register**”). The Register will provide the legal mechanism for regulatory oversight of registered tertiary education providers in Wales, in receipt of public funds, including grant funding from the Commission and Welsh Government student support.

These Regulations make provision in respect of the registration and de-registration of tertiary education providers in Wales by the Commission, including categories of registration, eligibility to receive financial support from the Commission for the purposes of higher education, research or innovation, conditions of registration, information that must be included in a provider’s entry in the Register and circumstances in which the Commission must remove a registered provider from a category of the Register.

Parent Act: The Tertiary Education and Research (Wales) Act 2022

Date Made:

Date Laid:

Coming into force date: 11 November 2024



Agenda Item 3.1

SL(6)534 – The Historic Environment (Wales) Act 2023 (Consequential Provision) (Primary Legislation) Regulations 2024

Background and Purpose

The Historic Environment (Wales) Act 2023 (“the 2023 Act”) consolidates legislation relating to the historic environment in Wales. The 2023 Act forms part of a code of law relating to the historic environment in Wales.

These Regulations amend Schedule 13 and Schedule 14 to the 2023 Act.

Schedule 13 to the 2023 Act makes minor and consequential amendments and repeals.

Regulation 3 inserts in Schedule 13 a consequential change to the Harbours Act 1964.

Regulation 4 omits paragraph 73 of Schedule 13.

Schedule 13 to the 2023 Act also makes changes to the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”). The 1990 Act has since been amended by the Levelling-Up and Regeneration Act 2023. These Regulations make changes to Schedule 13 to the 2023 Act in light of those amendments.

Schedule 14 to the 2023 Act makes transitional and saving provisions. Regulation 22 inserts a further saving provision in Schedule 14.

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

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

Merits Scrutiny

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

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

The title of these Regulations is the Historic Environment (Wales) Act 2023 (**Consequential Provision**) (Primary Legislation) Regulations 2024 (emphasis added). These Regulations



amend Schedule 13 and Schedule 14 to the 2023 Act. Schedule 13 contains minor and consequential amendments and repeals, Schedule 14 contains transitional and saving provisions. The amendment made to Schedule 14 by these Regulations contains a saving provision. Can the Welsh Government confirm whether it considers 'Consequential Provision' to be the appropriate wording to use in the title of these Regulations, or should it also refer to the saving provision?

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

It is noted that these Regulations amend primary legislation. They are subject to the affirmative procedure, in accordance with section 209(5)(h) of the 2023 Act.

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

It is noted that Schedules 13 and 14 to the 2023 Act are not yet in force. In accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, Schedules 13 and 14 will come into force on 4 November 2024. These Regulations, if approved by the Senedd, come into force on 3 November 2024.

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

These Regulations were not subject to consultation and a regulatory impact assessment has not been prepared. We note the following paragraphs in the Explanatory Memorandum:

14. *No consultation has been undertaken on the regulations, as they reflect current policy and restate current procedures.*

15. *A Regulatory Impact Assessment has not been prepared for these regulations, as the regulations restate existing regulations. The regulations do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.*

Welsh Government response

A Welsh Government response is required for the first reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

8 October 2024



Agenda Item 4.1

Jeremy Miles AS/MS
Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol
Cabinet Secretary for Health and Social Care



Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

7 October 2024

Dear Mike,

Further to the Committee's comments in the letter dated 24 September 2024, the Welsh Government is writing to provide further clarity on Technical Scrutiny point 2.

The Welsh Government has accepted that in the definition of "general medical practitioner" it was unclear from the text whether the register referred to is that maintained under section 2 or section 34C of the Medical Act 1983. The policy intention was to ensure that general practitioners were restricted from prescribing puberty blockers unless permitted by the Regulations. That legal effect is achieved because either register includes qualified general practitioners as per the original policy intention.

For the Committee's information, upon further consideration it is now the intention for the restrictions to also apply to non-medical prescribers working in general practice who could prescribe puberty blockers but are not included on a register under those provisions (for example an independent nurse prescriber or an independent pharmacist prescriber who is prescribing under a general medical services "GMS" contract). The Welsh Government are in the process of preparing amendment regulations and therefore, intend to lay those regulations within the next month so that anyone prescribing under a GMS contract will be subject to the restriction on prescribing puberty blockers.

Yours sincerely,

Jeremy Miles AS/MS

Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol
Cabinet Secretary for Health and Social Care

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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.

Jeremy Miles MS

Cabinet Secretary for Health and Social Care

24 September 2024

Dear Jeremy,

The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024

We considered the above Regulations at our meeting on 16 July 2024. We are grateful for the Welsh Government's response which we considered at our meeting on 16 September 2024.

In our report we state that there was a lack of clarity in the definition of "general medical practitioner" in the Regulations. In the response received on 16 September, we are told that the provision will be made clearer at the next available opportunity, and within the next 12 months.

We believe that the definition is fundamental to the regulations, and so we find it disappointing that this lack of clarity could be on the statute book for up to another 12 months.

We also note that the response does not explain the potential impact of this lack of clarity, nor what the term was intended to mean, which would have been helpful for the Committee and for any stakeholders looking at this legislation.

We would therefore be grateful to receive further clarity on these points by 10 October 2024.

Yours sincerely,



Mike Hedges

Chair

Agenda Item 4.2

SL(6)517 – The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024

Background and Purpose

These Regulations make amendments to secondary legislation that are consequential to the Historic Environment (Wales) Act 2023 (“the 2023 Act”), which is the first consolidation Act in the Welsh Government’s programme to improve the accessibility of Welsh law. The Regulations mainly update references to old legislation now restated in the 2023 Act. They also reflect changes in terminology described in paragraph 22 of the Drafters’ Notes to the 2023 Act¹.

These Regulations do not form part of the code of law relating to the historic environment in Wales, but they amend some existing regulations to make them part of the historic environment code.

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

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

In regulation 2, the provision appears to amend the text of an earlier version of Schedule 2 to the Forestry (Felling of Trees) Regulations 1979, which has been amended by other statutory instruments. Regulation 2 amends the earlier version and not the new Schedule 2, which specifies the particulars that must be included with any application for a felling licence. Therefore, the amendment made by regulation 2 should state “in paragraph (i)” rather than “in paragraph (4)(i) of the Notes” to correctly identify the location of the words in the existing text in Schedule 2 to the Forestry (Felling of Trees) Regulations 1979.

¹ [ascod_20230003_en_001.pdf \(legislation.gov.uk\)](#)



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

Regulations 3 and 4 make amendments to the Ancient Monuments (Applications for Scheduled Monument Consent) Regulations 1981 (“the 1981 Regulations”) and the Ancient Monuments (Class Consents) Order 1981 (“the 1981 Order”) respectively. In both instances, the amendments are made to provisions that have been revoked, subject to saving provisions. In the case of the 1981 Regulations, the revocation does not apply to applications made before 31 May 2017. In the case of the 1981 Order, the revocation does not have effect in respect of works commenced before the Order which made the revocation came into force, which was 14 June 1994. Given the time that has elapsed since the dates specified in the saving provisions, clarification is requested as to why it was necessary to make the amendments specified in Regulations 3 and 4 and what their effect is in practical terms.

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

Regulation 6 amends article 1(2) of the Areas of Archeological Importance (Notification of Operations) (Exemption) Order 1984 to omit the words “and Wales”. However, Article 1(2) does not include the words “and Wales”. It appears that the words to be omitted should be “or Wales”.

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

In regulation 16(b), in the new text that will be inserted into article 7 of the Town and Country Planning (General Permitted Development) Order 1995, there is wording missing from the description of section 76(1) of the Historic Environment Wales) Act 2023. The description should be “(duty to maintain and publish list of buildings)” (our emphasis), as has been used in regulation 127(f).

A similar issue arises in relation to regulation 69, where reference is made to the heading of paragraph 2(6) of Schedule 9 to the 2023 Act, which should read “(action to be taken by Welsh Ministers on rejection of purchase notice by planning authority)” (our emphasis). The same point arises in regulation 135(b).

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

In regulations 32, 71, 87, 95, 114 and 126, it appears that there should also be a further amendment made to the heading of the respective individual regulations that are being amended, to add the word “and code”. This is because a new provision has been inserted stating that the statutory instrument now forms part of a code of law. This has been done in the other new statutory instruments that have been made in relation to the Historic Environment Act 2023 such as S.I. 2024/932 (W. 156), therefore it would be helpful to understand why this has not been done in relation to the instruments that are being amended.



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

In regulation 47, in the Welsh text, the amendment does not succeed in its intended effect because the new definition of “scheduled monument” has been defined bilingually in section 3(7) of the Historic Environment (Wales) Act 2023. Therefore, the existing words “a roddir i “scheduled monument”” also need to be amended in the Welsh text of paragraph (f) in the definition of “sensitive area” in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009. Those additional words were necessary in the existing text because “scheduled monument” was defined in English only in the Ancient Monuments and Archaeological Areas Act 1979.

This issue also occurs in the amendments made by regulation 61 and 76(a) of these Regulations.

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

Regulation 63(c) inserts new definitions into the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014. However, after each term that is defined, the corresponding language definitions have been omitted.

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

Regulation 64 amends the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. The amendment omits the entry for the Ancient Monuments and Archaeological Areas Act 1979 in the table in Schedule 2 and replaces it with an entry for the 2023 Act. All other entries in that table are in chronological order, yet the entry for the 2023 Act is now listed in between legislation from 1976 and 1980, which may make it difficult for the reader to locate. It would assist to receive an explanation as to why the entry for the 2023 Act was not moved to the end of the table to maintain the chronological order.

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

Regulation 99 inserts a new provision into the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (“the 2017 Regulations”). This provision states that paragraphs (1) to (7) of regulations 4 and 5 of the 2017 Regulations do not apply in specified circumstances. However, regulation 5 of the 2017 Regulations does not have any numbered paragraphs. It appears that the amendment in regulation 99 should make it clear that regulation 5 of the 2017 Regulations does not apply in its entirety in order to avoid confusion.



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

Regulation 130 amends the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017. It makes substitutions for the words “section 2A of the 1990 Act” in regulations 6(2) and 7(2)(c) of those regulations. However, regulation 7(2)(c) does not include the specified wording. It is believed that the correct reference should be to regulation 7(2)(b).

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

Throughout the Regulations, an inconsistent approach has been taken to the drafting style, including:

- in some instances, where the Regulations amend provisions with conjunctions at the end, it is not clear whether those conjunctions are to remain or not – some make it clear by using terms such as “but not the “or” after it” in relation to the amendment, whereas others, for example the amendment in regulation 106, do not;
- references vary throughout between “section 3” and “section 3(7)” of the Historic Environment Act 2023 when defining the term “scheduled monument”; and
- the divisions within definitions found in the statutory instruments are continually incorrectly described as “sub-paragraphs” but they should be correctly described as “paragraphs”.

Merits Scrutiny

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

12. 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

It is noted that many of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. However, in accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, the remaining provisions of the 2023 Act (except section 147, which is not referenced in these Regulations) will come into force on 4 November 2024, the same date on which these Regulations come into force.

13. 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.

These Regulations were not subject to any consultation. The Explanatory Memorandum states that:

No consultation has been undertaken on the regulations, as they reflect current policy and restate current procedures.



Welsh Government response

A Welsh Government response is required for all technical reporting points.

Committee Consideration

The Committee considered the instrument at its meeting on 30 September 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee

Welsh Government Response: *The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024*

Technical Scrutiny point _ :

1. The Welsh Government notes the point and will consider whether to make any change when drafting the amending Regulations referred to in point 6.
2. The saving provisions have now ceased to have practical significance in relation to Wales; the amendment makes it clear to a reader that there is no longer anything which applies to Wales in these Regulations.
3. The Welsh Government accepts the point. It is suitable for a correction slip but given the response to point 6 we will seek to include it in an amending instrument before the end of the year.
4. The Welsh Government notes the point. When referring to another provision, it is common to include a brief description of the provision in brackets to help the reader understand the significance of the reference. This is not defective drafting, but rather a drafting choice; the approach taken depends on the context of the provisions and what is considered to be helpful to the reader. The approach accords with paragraphs 5.7 and 7.10 of Writing Laws for Wales.
5. There is no need to amend a heading merely because it is not ideal for the amended text, but it may be helpful to do so if the heading is falsified by a textual amendment to the provision. We don't think this is the case.
6. The Welsh Government accepts the point and will make an amending instrument before the end of the year.
7. The general approach taken is to provide corresponding language definitions after a defined term in unnumbered lists where terms might appear in different orders in each list. This is in order to facilitate comparison of the Welsh and English language terms (paragraph 4.15(7) of Writing Laws for Wales). The two terms appear in paragraph (4) in the same order in both languages. The Welsh Government considers that nothing further is required to assist the reader to compare the terms in paragraph (4).
8. The Welsh Government accepts that it would be preferable to maintain the chronological order of the list. But the Welsh Government also notes that the amendment achieves the intended legal effect. Given the response to point 6, we will address the point in an amending instrument before the end of the year.

9. The Welsh Government notes the point. The Welsh Government agrees that it is clear from the context that the intention is to refer to regulation 4(1) to (7) and regulation 5. Given the response to point 6 we will seek to include an amendment in an amending instrument before the end of the year.
10. The Welsh Government does not accept the point. There is an error in the Westlaw version of regulation 7 of the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017 which appears to have combined regulation 7(2)(b) and (c), causing regulation 7(2)(c) to appear as part of regulation 7(2)(b). See legislation.gov.uk for the correct version containing the words “under section 2A of the 1990 Act” at regulation 7(2)(b). The Welsh Government has notified Westlaw.
11. The Welsh Government notes the Committee report and also notes that the amendments achieve the necessary legal effect. In particular, with the second example listed, the drafting is consistent with the provision being amended rather than internally consistent.

SL(6)528 – The Special Procedures Licensing Committees (Wales) Regulations 2024

Background and Purpose

The Special Procedures Licensing Committees (Wales) Regulations 2024 (“the Regulations”) make provision about the procedures applicable to local authority licensing committees (or their sub-committees) for the purpose of the exercise of certain functions relating to special procedure¹ licences under Part 4 of the Public Health (Wales) Act 2017 (“the 2017 Act”).

A local authority has various functions under Part 4 of the 2017 Act relating to the granting, varying, renewing or revoking of special procedure licences. This includes a duty to issue a warning notice where the local authority intends to take certain steps, for example refusing an application for a special procedure licence. A local authority is required to consider representations made after it has issued such a warning notice.

Paragraph 21(1) of Schedule 3 to the 2017 Act delegates specified functions of a local authority, including the consideration of such representations, to the licensing committee of the authority established under section 6 of the Licensing Act 2003. Subject to the Regulations, the relevant committees may regulate their own procedure.

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

Regulation 8 gives a relevant committee the power to postpone or adjourn a hearing. Paragraph (1) provides that a committee “may at any time” postpone or adjourn a hearing. Paragraph (2) provides that the committee may take the actions specified in paragraph (1) if it considers it necessary for the reasons set out in sub-paragraphs (a) and (b).

¹ The special procedures listed in section 57 of the 2017 Act are acupuncture, body piercing, electrolysis and tattooing.



The Welsh Government is asked to clarify whether a committee may only exercise the power in paragraph (1) where paragraph (2) applies, or whether the power to postpone or adjourn may also be exercised for other purposes.

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.

The 2017 Act received Royal Assent on 3 July 2017. These Regulations are due to come into force on 29 November 2024. This means it will have taken over 7 years for the new rules on special procedures to be implemented.

In 2017, the Explanatory Memorandum that accompanied the Public Health (Wales) Bill specified the “known and well reported health risks connected to” special procedures and the “complications that can arise” with special procedures.²

The Explanatory Memorandum to the Bill also referred to the current legislation being “inadequate to sufficiently protect the public”.³ The Explanatory Memorandum also noted the costs to the NHS under the current regime: “The main benefit of the licensing system is savings to the NHS, in terms of treatment costs, and to individuals’ health”.⁴

Further, the Explanatory Memorandum to these Regulations says that enforcement of the current rules has been inconsistent. It adds that Welsh Government model byelaws intended to address historic inconsistencies in this area have not been adopted by a number of local authorities in Wales, and that local authorities are unlikely to do so because “since the Act was passed in 2017, they have been waiting for the creation of the mandatory licensing scheme for special procedures”.⁵

Given all of the above, it is unclear why it has taken over 7 years to implement the new rules on special procedures set out in the 2017 Act.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 7 October 2024 and reports to the Senedd in line with the reporting points above.

² See paragraphs 116 and 117 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

³ See paragraph 616 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#).

⁴ See paragraph 614 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

⁵ See paragraph 4.7 of the [Explanatory Memorandum to these Regulations](#)



Government Response: *The Special Procedures Licensing Committees (Wales) Regulations 2024*

Technical Scrutiny point 1:

The Welsh Government confirms that the power in regulation 8(1), given to a relevant committee to postpone or adjourn a hearing, is only exercisable where regulation 8(2) applies.

Merit Scrutiny point 1:

Work on implementing the Public Health (Wales) Act 2017 (“the 2017 Act”) started immediately after the passing of the Act in July 2017. Part 5 (intimate piercing) of the 2017 Act came into force in February 2018, making it an offence to intimately pierce, or arrange to intimately pierce, a child or young person under the age of 18 in Wales, if that piercing involves or uses jewellery. The 2017 Act allowed for the scope of the offence to be extended, by way of regulations made by the Welsh Ministers, to capture intimate piercings which involve or use ‘objects’. With this as a priority, the Government undertook a consultation on its proposals to extend the scope of the protections, prepared guidance for practitioners and regulators as well as for young people, and undertook a publicity campaign to inform practitioners, clients and regulators of the new prohibitions. Regulations were subsequently made in July 2019.

In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related regulations that were then consulted upon earlier this year.

Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.

Agenda Item 4.4

SL(6)530 – The Firefighters’ Pension Schemes (Miscellaneous Amendments) (Wales) Regulations 2024

Background and Purpose

These Regulations ensure that firefighters’ pensions are revalued by the correct rate in respect of 2021 and 2022, by remedying issues arising as a consequence of HM Treasury’s Public Service Pensions Revaluation Order for those two years. The Regulations also make correcting amendments to the Firefighters’ Pensions (Remediable Service) (Wales) Regulations 2023 (“the 2023 Regulations”) and the Firefighters’ Pension Scheme (Wales) Order 2007.

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

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

The Explanatory Memorandum notes that regulation 3, which amends the Firefighters’ Pension Scheme (Wales) Regulations 2015 to correct an issue with the valuation of accrued pension rights for 2021 and 2022, has retrospective effect and that:

This is unavoidable: it corrects an error made by HM Treasury which affected the calculation of accrued pension for the years 2021 and 2022. That error only came to light after the relevant calculations had been made and can only be corrected retrospectively.

However, the Explanatory Note to the Regulations states that regulation 4 also has retrospective effect and this is not explained in the Explanatory Memorandum. It would be



useful to understand why the Explanatory Memorandum does not address the retrospective effect of regulation 4.

The retrospective effect of these provisions is permitted by section 3(3)(b) of the Public Service Pensions Act 2013.

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.

The Committee has previously reported on the 2023 Regulations and the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024 ("the 2024 Order"). Several points were noted in these reports. The Explanatory Memorandum to these Regulations states that regulations 4 and 5 address a number of those points. However, the Cabinet Secretary for Housing and Local Government has written to the Chair of the Committee in relation to one of the reporting points previously raised. Her letter states:

I have also given further consideration to Technical Scrutiny point 6 of your Committee's report on the 2024 Order. In our response to that point, we noted the difference between the Welsh language and English language texts in the heading for paragraph 1 of Schedule 2 to the Order, and confirmed that the Welsh language text should have been drafted to reflect the English language text. We originally proposed to amend the Welsh language text accordingly at the next available opportunity.

On reflection I think it is more appropriate to allow that heading in the Welsh language text to remain. The amendment required to address Technical Scrutiny point 3 is best dealt with by amending the Firefighters' Pension Scheme (Wales) Order 2007. So, to address Technical Scrutiny point 6, we would additionally have to amend the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024. Given that the heading in issue is inoperative, and it is not carried through to the amended instrument (the Firefighters' Compensation Scheme (Wales) Order 2007), any benefit to be gained in making such an amendment would be negligible and I do not consider it would be proportionate.

Welsh Government response

A Welsh Government response is required for the first reporting point only.

Committee Consideration

The Committee considered the instrument at its meeting on 7 October 2024 and reports to the Senedd in line with the reporting points above.



Government Response: The Firefighters' Pension Schemes (Miscellaneous Amendments) (Wales) Regulations 2024

Merit Scrutiny point 1:

Regulation 3 amends the Firefighters' Pension Scheme (Wales) Regulations 2015 to correct an issue with the valuation of accrued pension rights for 2021 and 2022. It has retrospective effect as this was unavoidable to correct an error made by HM Treasury.

The retrospective effect is permitted by section 3(3)(b) of the Public Service Pensions Act 2013. Both the Explanatory Note and the Explanatory Memorandum address this.

Regulation 4 amends the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 ("the 2023 Regulations"). Regulation 4 contains minor drafting corrections and clarifications to the 2023 Regulations. The Welsh Government notes that whilst the Explanatory Note states that regulation 4 also has retrospective effect, the Explanatory Memorandum does not address the issue. This was an oversight, and we are grateful to the Committee for drawing this to our attention.

SL(6)525 – The Prescribed Objects for Body Piercing (Special Procedures) (Wales) Regulations 2024

Background and Purpose

Part 4 of the Public Health (Wales) Act 2017 (“the Act”) establishes a mandatory licensing scheme for individuals who wish to perform special procedures in Wales. Section 57 of the Act provides that “body piercing” is a special procedure for the purposes of Part 4.

The definition of “body piercing” is provided in section 94(1) of the Act and means the perforation of an individual’s skin or mucous membrane, with a view to enabling jewellery, or an object of a description prescribed in or under regulations, to be attached to, implanted in, or removed from the individual’s body.

These Regulations prescribe that any object that is not jewellery (for example hooks, macro-dermals, micro-dermals, near-field communication chips, silicone beads) will fall within the definition of body piercing for the purposes of Part 4 of the Act.

This means that those individuals who perform body piercing with the view to enabling jewellery, or any object, to be attached to, implanted in, or removed from an individual’s body will be required to obtain a special procedure licence under Part 4 of the Act (unless they are exempt).

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

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

The Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. These Regulations will come into force on 29 November 2024. This means it will have taken over 7 years for the new rules on special procedures to be implemented.



In 2017, the Explanatory Memorandum that accompanied the Public Health (Wales) Bill specified the “known and well reported health risks connected to” special procedures and the “complications that can arise” with special procedures.¹

The Explanatory Memorandum to the Bill also referred to the current legislation being “inadequate to sufficiently protect the public”.² The Explanatory Memorandum also noted the costs to the NHS under the current regime: “The main benefit of the licensing system is savings to the NHS, in terms of treatment costs, and to individuals’ health”.³

Further, the Explanatory Memorandum to these Regulations says that enforcement of the current rules has been inconsistent. It adds that Welsh Government model byelaws intended to address historic inconsistencies in this area have not been adopted by a number of local authorities in Wales, and that local authorities are unlikely to do so because “since the Act was passed in 2017, they have been waiting for the creation of the mandatory licensing scheme for special procedures”.⁴

The Prescribed Objects for Intimate Piercing (Wales) Regulations 2019 (the 2019 Regulations) came into force on 1 August 2019. The 2019 Regulations prescribed “any object that is not jewellery” as an object for the purposes of the definition of “body piercing” in section 94(1) of the Act, but only insofar as that definition applies for the purposes of the offence in section 95 of the Act (performing or making arrangements to perform an intimate piercing on a child). The former Minister for Health and Social Services had stated “the health risks of piercing with non-jewellery objects could, depending on the object, be more severe than piercing with jewellery”.⁵

Given all of the above, it is unclear why it has taken over 7 years to implement the new rules on special procedures set out in the 2017 Act.

Welsh Government response

A Welsh Government response to the merits point is required.

Committee Consideration

The Committee considered the instrument at its meeting on 30 September 2024 and reports to the Senedd in line with the reporting point above.

¹ See paragraphs 116 and 117 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

² See paragraph 616 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#).

³ See paragraph 614 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#).

⁴ See paragraph 4.7 of the [Explanatory Memorandum to these Regulations](#).

⁵ Paragraph 361 of the record of proceedings, [Plenary 9 July 2019](#).



Government Response: *The Prescribed Objects for Body Piercing (Special Procedures) (Wales) Regulations 2024*

Merit Scrutiny point 1:

Work on implementing the Public Health (Wales) Act 2017 ('the 2017 Act') started immediately after the passing of the Act in July 2017. Part 5 (intimate piercing) of the 2017 Act came into force in February 2018, making it an offence to intimately pierce, or arrange to intimately pierce, a child or young person under the age of 18 in Wales, if that piercing involves or uses jewellery. The 2017 Act allowed for the scope of the offence to be extended, by way of regulations made by the Welsh Ministers, to capture intimate piercings which involve or use 'objects'. With this as a priority, the Government undertook a consultation on its proposals to extend the scope of the protections, prepared guidance for practitioners and regulators as well as for young people, and undertook a publicity campaign to inform practitioners, clients and regulators of the new prohibitions. Regulations were subsequently made in July 2019.

In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related Regulations that were then consulted upon earlier this year.

Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.

Grateful to the Committee's Advisor for bringing the inconsistency in footnote 2 on page 3 of the Welsh text to our attention, this will be corrected on making.

Technical drafting corrections to be made prior to the making of the Regulations

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
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Rheoliadau Gwrthrychau Rhagnodedig ar gyfer Tyllu'r Corff (Triniaethau Arbennig) (Cymru) 2024	The Prescribed Objects for Body Piercing (Special Procedures) (Wales) Regulations 2024
<p>In the Welsh text only, in footnote 2 on page 3 the words “<i>Gweler</i> hefyd adran 40 o Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4) am ddarpariaeth ynghylch y weithdrefn sy’n gymwys i’r offeryn hwn.” will be removed.</p>	

SL(6)526 – The Special Procedures Exempted Individuals (Wales) Regulations 2024

Background and Purpose

Part 4 of the Public Health (Wales) Act 2017 (the 2017 Act) establishes a mandatory licensing scheme for individuals wishing to perform special procedures in Wales. The special procedures are:

- acupuncture,
- body piercing,
- electrolysis,
- tattooing.

An individual who performs a special procedure on someone else, in the course of a business,¹ must be licensed, unless they are exempt.

Under section 60 of the 2017 Act, members of certain professions are treated as exempt. For example, doctors, dentists, opticians and pharmacists are exempt from the requirement to be licensed. However, regulations may set out further detail as to the extent of exemptions.

These Regulations set out further detail as to the extent of the exemptions. For example, these Regulations provide that:

- a pharmacist is not exempt and requires a licence to perform any special procedure;
- a registered nurse is not exempt and requires a licence to perform any special procedure, unless the nurse is performing the special procedure in a regulated independent healthcare establishment (such as an independent hospital) and is not subject to any conditions, restrictions or sanctions on their professional registration, in relation to their fitness to practise;
- a chiropractor is not exempt as regards performing the special procedure of acupuncture and therefore requires a licence to perform acupuncture.
- a physiotherapist is exempt as regards performing acupuncture, provided the physiotherapist is performing the acupuncture in a regulated independent healthcare establishment (such as an independent hospital) and is not subject to any conditions, restrictions or sanctions on their professional registration, in relation to their fitness to practise.

¹ Special procedures performed as part of NHS treatment in an NHS setting do not fall within the scope of the new licensing scheme.



Procedure

Draft Affirmative.

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

Technical Scrutiny

The following point is 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

The definition of “pharmacist” is split into a definition for pharmacists regulated by the General Pharmaceutical Council and a definition for pharmacists regulated by the Pharmaceutical Society of Northern Ireland.

However, the definition of “student pharmacist” refers only to student pharmacists regulated by the Pharmaceutical Society of Northern Ireland.

We would be grateful if the Welsh Government could confirm that the definition of “student pharmacist” is correct, not least because the definition refers to the definition applying “in relation to Northern Ireland”, which begs the question as to whether there should also be a definition that applies “in relation to Great Britain”.

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

The Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. These Regulations are due to come into force on 29 November 2024. This means it will have taken over 7 years for the new rules on special procedures to be implemented.

In 2017, the Explanatory Memorandum that accompanied the Public Health (Wales) Bill specified the “known and well reported health risks connected to” special procedures and the “complications that can arise” with special procedures.²

The Explanatory Memorandum to the Bill also referred to the current legislation being “inadequate to sufficiently protect the public”.³ The Explanatory Memorandum also noted

² See paragraphs 116 and 117 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

³ See paragraph 616 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#).



the costs to the NHS under the current regime: "The main benefit of the licensing system is savings to the NHS, in terms of treatment costs, and to individuals' health".⁴

Further, the Explanatory Memorandum to these Regulations says that enforcement of the current rules has been inconsistent. It adds that Welsh Government model byelaws intended to address historic inconsistencies in this area have not been adopted by a number of local authorities in Wales, and that local authorities are unlikely to do so because "since the Act was passed in 2017, they have been waiting for the creation of the mandatory licensing scheme for special procedures".⁵

Given all of the above, it is unclear why it has taken over 7 years to implement the new rules on special procedures set out in the 2017 Act.

Welsh Government response

A Welsh Government response to both points is required.

Committee Consideration

The Committee considered the instrument at its meeting on 30 September 2024 and reports to the Senedd in line with the reporting points above.

⁴ See paragraph 614 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

⁵ See paragraph 4.7 of the [Explanatory Memorandum to these Regulations](#)



Government Response: The Special Procedures Exempted Individuals (Wales) Regulations 2024

Technical Scrutiny point 1:

The Welsh Government notes the point made but can confirm we consider the definition of “student pharmacist” to be correct.

A definition of student pharmacist has not been included that applies “in relation to Great Britain” as student pharmacists in Great Britain are not regulated by the General Pharmaceutical Council. This is in contrast to student pharmacists in Northern Ireland who are regulated by their regulator (the Pharmaceutical Society of Northern Ireland).

Student pharmacists in Great Britain will be required to obtain a licence to perform special procedures because they fall outside the scope of the Regulations, and student pharmacists in Northern Ireland will be required to obtain a licence to perform special procedures as they will not be exempt from obtaining a licence under the Regulations. The intention and legal effect is therefore the same for students in Northern Ireland and Great Britain.

Merit Scrutiny point 1:

Work on implementing the Public Health (Wales) Act 2017 (‘the 2017 Act’) started immediately after the passing of the Act in July 2017. Part 5 (intimate piercing) of the 2017 Act came into force in February 2018, making it an offence to intimately pierce, or arrange to intimately pierce, a child or young person under the age of 18 in Wales, if that piercing involves or uses jewellery. The 2017 Act allowed for the scope of the offence to be extended, by way of regulations made by the Welsh Ministers, to capture intimate piercings which involve or use ‘objects’. With this as a priority, the Government undertook a consultation on its proposals to extend the scope of the protections, prepared guidance for practitioners and regulators as well as for young people, and undertook a publicity campaign to inform practitioners, clients and regulators of the new prohibitions. Regulations were subsequently made in July 2019.

In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related regulations that were then consulted upon earlier this year.

Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has

ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.

Agenda Item 4.7

SL(6)527 – The Special Procedures Approved Premises and Vehicles (Wales) Regulations 2024

Background and Purpose

Part 4 of the Public Health (Wales) Act 2017 (the “**Act**”) establishes a mandatory licensing scheme for individuals wishing to perform special procedures in Wales. The special procedures are:

- acupuncture
- body piercing
- electrolysis
- tattooing

Under the new licensing scheme, an individual who performs a special procedure on someone else, in the course of a business, must be licensed, unless they are exempt.

In addition, special procedures must be performed at a premises or in a vehicle that has been approved by a local authority for that purpose unless that premises or vehicle is exempt. If a local authority is satisfied the premises or vehicle meets the requirements for approval, they will issue an approval certificate authorising that approval.

These Regulations make provision in relation to such premises and vehicles, including:

- the criteria that must be met for a new approval certificate to be granted, and the application form to be used;
- what an approval certificate will look like once an approval has been granted and the mandatory conditions that an approval certificate will be subject to;
- the premises and vehicles that will be exempt from the requirement to be approved by the local authority;
- provision in relation to variations, voluntary termination, renewal and replacement of approval certificates;
- provision for fees in relation to approval certificates;
- what a local authority is required to do if they intend to refuse an application and the applicant’s right to make representations to the local authority; and
- the appeals process in respect of applications that are refused.

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 seven 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

Part 7 of the Regulations makes provision in relation to variations of approval certificates.

If an application to vary an existing approval certificate has been made, the relevant local authority must either grant or refuse such application. However, we consider the drafting of regulations 15(2) and 15(3) to leave room for ambiguity. Regulation 15(2) states:

If the local authority is satisfied that an application to vary in accordance with Part 7 has been made, the local authority must grant the application to vary an approval certificate and issue the varied approval certificate to the certificate holder.

On a wide interpretation, this could be construed as a duty on the local authority to grant a variation, merely if an application to vary has been made (notwithstanding that it does not comply with the requirements or conditions in Part 7).

This can be contrasted with regulations 9(2) and 21(2) where the drafting is much clearer:

*If the local authority is satisfied that **all of the approval criteria set out in regulation [8 and 20]** are met, the local authority must grant the application for an approval certificate and issue an approval certificate to the applicant, approving a premises or vehicle in respect of performance of special procedure.*

In our view, the drafting of regulations 15(2) and 15(3) would be more certain by amending in line with regulations 9(2) and 21(2).

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

Part 11 of the Regulations makes provision in relation to voluntary termination of premises or vehicle approval certificates by certificate holders.

Regulation 29(g) provides that a certificate holder proposing to voluntarily terminate an approval certificate must provide to the local authority:

*"the name **of any persons** that the certificate holder thinks likely to be affected by the notice." [emphasis added]*



This provision places a broad requirement on certificate holders. Please can the Welsh Government confirm the underlying rationale for regulation 29(g)?

Further, the information required to be included in a voluntary termination notice is relatively detailed and extensive. Did the Welsh Government consider adding a Schedule to the Regulations with a model 'notice' to be used by certificate holders in these circumstances?

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

In the application form for an approval certificate set out in Schedule 1 to the Regulations, the applicant must state the name of the relevant issuing authority. To assist the applicant, guidance note 1 states:

When applying for an approval certificate—

(a) [...]

(b) if the vehicle is considered to be, or is likely to be, driven, used or kept in the area of the local authority, an application is to be made to that local authority.

Our understanding is that an approval certificate issued by one local authority permits the certificate holder to use a vehicle for the performance of special procedures anywhere in Wales (as articulated in guidance note 10).

That is, applicants need not obtain separate approval certificates for each local authority where their vehicle may be driven and used to perform special procedures.

Assuming this is correct, we consider it would be useful to update guidance note 1 to clarify this point for the benefit of persons completing the application form.

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

Schedule 1 to the Regulations contains a standard 'Form of application for an approval certificate'. Guidance notes are provided to assist applicants with completing the form.

Guidance note 12 relates to Part 5, Section 5.2 of the form. It states:

*The "licence number" means the reference number given by the local authority to **the approval certificate** which is unique to that **certificate** and which is specified in it.*

Given the context of Section 5.2 of Part 5, it appears that the underlined reference above should refer to 'special procedure licence', rather than 'approval certificates'. It also appears that "certificate" should read "licence".

Our understanding is that the term 'approval certificate' is only applicable in the context of premises and vehicles, rather than licensed persons.



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

Regulation 8 provides for the criteria to be applied in granting approval certificates.

Regulation 8(2)(b) states that an applicant must “provide evidence that the applicant holds a regulated Level 2 Award [in ‘Infection Prevention and Control for Special Procedures Practitioners’]”.

The translation states that the applicant must:

*“darparu tystiolaeth bod y ceisydd yn meddu ar Ddyfarniad Lefel 2 a reoleiddir **yn llwyddiannus**”* [emphasis added].

The addition of the words “yn llwyddiannus” (i.e. successfully) in the Welsh text appear to be superfluous and inconsistent with the English text.

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

Guidance note 6 in Schedule 1 to the Regulations defines the term ‘workstation’ to assist applicants in completing the application form for an approval certificate.

The guidance note explains that the applicant should ensure there is sufficient space between each workstation to enable the safe and hygienic performance of the special procedure. The final sentence states:

Please see the non-statutory guidance for further information.

The guidance note does not provide a link to the ‘non-statutory guidance’, and it is unclear which resource in particular this refers to.

The Welsh Government is asked to confirm the same, and to consider updating guidance note 6 to signpost applicants to the relevant guidance.

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

Schedules 3 and 4 to the Regulations contain the mandatory approval conditions which apply to approval certificates and temporary approval certificates, respectively.

Approval certificates are issued subject to the mandatory approval conditions. Approval certificates must be displayed at premises and vehicles, and mandatory approval conditions must be “readily available for inspection upon request” by authorised officers and clients.

We note that key terms such as “certificate holder”, “special procedure”, “licence holder”, “approved premises”, “special procedure licence” are not defined in the mandatory approval conditions.



Therefore, if a lay client requested sight of the mandatory approval conditions, the terminology would be impenetrable.

We note that there is a definitions section at the bottom of the Schedules. However, in our view, the conditions would be more accessible if they contained a section at the top to explain the key terms in plain language in the style of a modern consumer contract.

Merits Scrutiny

The following two 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

The Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. These Regulations will come into force on 29 November 2024. This means it will have taken over seven years for the new rules on approved premises and vehicles to be implemented.

In 2017, the Explanatory Memorandum that accompanied the Public Health (Wales) Bill specified the “*known and well reported health risks connected to*” special procedures and the “*complications that can arise*” with special procedures.

The Explanatory Memorandum to the Bill also referred to the current legislation being “*inadequate to sufficiently protect the public*”. The Explanatory Memorandum also noted the costs to the NHS under the current regime: “The main benefit of the licensing system is savings to the NHS, in terms of treatment costs, and to individuals’ health”.

Given all of the above, it is unclear why it has taken over seven years to implement the new rules on approved premises and vehicles set out in the 2017 Act.

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

We note the following extracts from the Explanatory Memorandum regarding the consultation undertaken in respect of these Regulations:

5.2. The Welsh Government consulted on the principles of the special procedures licensing scheme (from here referred to as the ‘first consultation’) with a view to informing draft Regulations that would enable the commencement of the provisions of Part 4 and Schedule 3 of the Act. That 12-week consultation ran between 25 January and 19 April 2023 and the draft version of the RIA formed part of the consultation materials along with an Integrated Impact Assessment. [...]



5.9. A further consultation (from here referred to as the 'second consultation') ran for eight weeks between 12 February and 8 April 2024 and followed on from the first consultation referred to above.

5.10. As the policy proposals for the mandatory licensing scheme had already been consulted upon, this second consultation was considered a technical consultation specifically on the wording of the draft Regulations and draft Statutory Guidance, although the draft Regulations provided further detail around the new scheme, including those subjects where the statutory duty to consult under section 64 of the Act applied. For this reason, the Cabinet Secretary for Health and Social Services gave her consent for the consultation to run for eight weeks instead of the standard 12-week period.

Welsh Government response

A Welsh Government response is required to all points, save for the final Merits point.

Committee Consideration

The Committee considered the instrument at its meeting on 30 September 2024 and reports to the Senedd in line with the reporting points above.



Government Response: *The Special Procedures Approved Premises and Vehicles (Wales) Regulations 2024*

Technical Scrutiny point 1:

The Welsh Government acknowledges the point made but we are satisfied that there is no duty imposed on a local authority to grant a variation.

There is a contrast in drafting with regulations 9(2) and 21(2) as there are specific criteria that must be met for an approval certificate to be granted (in regulation 8) and for an approval certificate to be renewed (in regulation 20).

Technical Scrutiny point 2:

The Welsh Government can confirm the underlying rationale for regulation 29(g) is to ensure that any relevant information is passed on to the local authority, who must comply with the duty imposed under section 72(4) of the Public Health (Wales) Act 2017 (“the 2017 Act”) to take reasonable steps to bring the voluntary termination notice to the attention of any persons the local authority thinks is likely to be affected by the notice.

The Welsh Government did consider adding a Schedule to the Regulations with a model ‘notice’ but on balance given the length of the provision in regulation 29 (approx. 120 words) this was considered unnecessary. The drafting approach achieves the same legal effect.

Technical Scrutiny point 3:

The Welsh Government acknowledges the helpful point made but we do not consider that it is necessary to include further clarification in the application form in order for applicants to understand that an approval certificate issued by one local authority permits the certificate holder to use a vehicle for the performance of special procedures anywhere in Wales. This is articulated in Guidance Note 10 of the application form.

Technical Scrutiny point 4:

The Welsh Government agrees that the terms should read “special procedure licence” and “licence”. We will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 5:

The Welsh Government agrees the addition of the words “*yn llwyddiannus*” (i.e. successfully) in the Welsh text are unnecessary. We will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 6:

The Welsh Government acknowledges the point made and will ensure the necessary documents are readily available and widely circulated when they are published. We will take the opportunity the next time the Regulations are amended to address this issue as necessary and consider including the relevant links.

Technical Scrutiny point 7:

The Welsh Government notes the point raised by the Committee regarding accessibility. We consider that the terms are easily understood in the context of the mandatory approval conditions. Therefore we consider that the conditions would be understood and that by including the terms in a Schedule the legal effect is clear and correct. A drafting decision was taken to aid clarity by placing the definitions at the end of the Schedules and to include the operative provisions first.

Merit Scrutiny point 1:

Work on implementing the 2017 Act started immediately after the passing of the Act in July 2017. Part 5 (intimate piercing) of the 2017 Act came into force in February 2018, making it an offence to intimately pierce, or arrange to intimately pierce, a child or young person under the age of 18 in Wales, if that piercing involves or uses jewellery. The 2017 Act allowed for the scope of the offence to be extended, by way of regulations made by the Welsh Ministers, to capture intimate piercings which involve or use 'objects'. With this as a priority, the Government undertook a consultation on its proposals to extend the scope of the protections, prepared guidance for practitioners and regulators as well as for young people, and undertook a publicity campaign to inform practitioners, clients and regulators of the new prohibitions. Regulations were subsequently made in July 2019.

In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related regulations that were then consulted upon earlier this year.

Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.

Grateful to the Committee’s advisor for bringing the error in regulation 28(3)(b) of the English text to our attention, this will be corrected on making.

Technical drafting corrections to be made prior to the making of the Regulations

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
<p>Rheoliadau Mangreoedd a Cherbydau a Gymeradwywyd o ran Triniaethau Arbennig (Cymru) 2024</p>	<p>The Special Procedures Approved Premises and Vehicles (Wales) Regulations 2024</p>
<p>In Guidance Note 12 relating to Part 5, Section 5.2 of the form in Schedule 1 to the Regulations, the text will be replaced as set out below:</p> <p><u>Current text:</u> Nodyn 12: Rhif y drwydded Ystyr rhif y drwydded yw’r cyfeirnod a roddir gan yr awdurdod lleol i’r dystysgrif gymeradwyo sy’n unigryw i’r dystysgrif honno ac a bennir ynddi.</p> <p><u>Will be replaced with:</u> Nodyn 12: Rhif y drwydded Ystyr “rhif y drwydded” yw’r cyfeirnod a roddir gan yr awdurdod lleol i’r drwydded triniaeth arbennig sy’n unigryw i’r drwydded ac a bennir ynddi.</p>	<p>In Guidance Note 12 relating to Part 5, Section 5.2 of the form in Schedule 1 to the Regulations, the text will be replaced as set out below.</p> <p><u>Current text:</u> Note 12: Licence number The “licence number” means the reference number given by the local authority to the approval certificate which is unique to that certificate and which is specified in it.</p> <p><u>Will be replaced with:</u> Note 12: Licence number The “licence number” means the reference number given by the local authority to the special procedure licence which is unique to that licence and which is specified in it.</p>
<p>In the Welsh text only, in regulation 8(2)(b), the words “yn llwyddiannus” will be removed.</p>	
	<p>In the English text only, in regulation 28(3), sub-paragraph (b) will be replaced as set out below.</p> <p><u>Current sub-paragraph (b):</u> “(b) at subsequent at intervals of no more than 1 year.”</p> <p><u>Will be replaced with:</u></p>

	“(b) at subsequent intervals of no more than 1 year.”
Minor issues such as formatting, minor changes to the explanatory note and footnotes and correcting typographical errors will also be corrected prior to making.	



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Persistent Organic Pollutants (Amendment) Regulations 2024**

DATE **9 October 2024**

BY **Huw Irranca-Davies AS/MS**
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid
Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change
and Rural Affairs

Members of the Senedd will wish to be aware we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by Lord Douglas-Miller, the then Minister for Biosecurity, Animal Health and Welfare to make a Statutory Instrument titled The Persistent Organic Pollutants (Amendment) Regulations 2024 (“the 2024 Regulations”) apply in relation to Wales in exercise of powers conferred by the Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (“the POPs Regulations”).

The 2024 Regulations were laid before Parliament on 8 October by the Secretary of State in exercise of powers conferred by Articles 7(6), 15(1) and (2), and 18(1) of the POPs Regulations.

The 2024 Regulations amend Annexes I, IV and V of the POPs Regulations. Amendments are required to Annex 1 in regard to entries for Hexachlorobenzene, Pentachlorophenol and Perfluorooctanoic acid to ensure that the UK continues to meet its legal obligations as signatories to the Stockholm Convention on Persistent Organic Pollutants. Annexes IV and V are amended to reflect scientific and technical progress

Annex IV is amended and new substances added to the list of those subject to waste management provisions. Article 7 of the POPs Regulations provides that “*Producers and holders of waste shall undertake all reasonable efforts to avoid, where feasible, contamination of this waste with substances listed in Annex IV*”. Regulation 7 of the Persistent Organic

Waste Regulations 2007 provides it is an offence for a person to contravene Article 7. Adding substances to the list in Annex IV widens the scope of that offence.

Article 7(4)(b) of the POPs Regulations provides that in exceptional cases the competent authority may allow wastes listed in Part 2 of Annex V to contain or be contaminated by a substance listed in Annex IV up to concentration limits specified in Part 2 of Annex V. The 2024 Regulations amend Annex V to reduce the maximum concentration limits for Pentachlorophenol, its salts, and its esters, Dicofol, Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds. The 2024 Regulations further amends the table at Part 2 of Annex V to include the following waste from thermal processes: fly ash from peat and untreated wood and soil and stones (other than those containing hazardous substances).

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. However, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

The 2024 Regulations were laid before Parliament on 8 October and will come into force 21 days after the day on which they are then made.

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/HIDCC/05923/24

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

9 October 2024

Dear Mike,

I refer to my letter to you of 25 September 2024 regarding the Persistent Organic Pollutants (Amendment) Regulations 2024 (“the 2024 Regulations”). I previously wrote to you to notify the Committee of my intention to give consent to the Secretary of State for Environment, Food and Rural Affairs for the 2024 Regulations to apply to Wales. I am writing to notify you that I have now provided this consent. I also laid a Written Statement which can be found [here](#).

The Regulations intersect with devolved policy and will apply to Wales, England and Scotland. The 2024 Regulations are subject to the affirmative procedure and were laid before Parliament on 8 October 2024 and come into force 21 days after the day on which they are made.

Yours sincerely,

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

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

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs

Ein cyf/Our ref: HID/CC/MA/10102/24

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
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9 October 2024

Dear Mike,

Further to my letter of 24 September 2024. I am writing to inform the Committee that I have given my consent to the Minister of State to lay the Official Controls (Extension of Transitional Period) and Plant Health (Frequency of Checks) (Miscellaneous Amendment) Regulations 2024 in relation to Wales. I have laid a Written Statement which can be found [here](#).

Consent has been given for the UK Government to make these Regulations to avoid a gap between easements ending, and new policies coming into effect. This ensures that certain EU SPS goods are not subject to default official controls from 31 January 2025. The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 8 October 2024.

I have written similarly to Paul Davies MS, the Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,



Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig

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Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

10 October 2024

Inter-Institutional Relations Agreement: Forthcoming Intergovernmental Meetings

I am writing in accordance with the Inter-Institutional Relations Agreement to notify you of the inaugural meeting of the Council of the Nations and Regions, which will take place in Scotland on 11 October. I will attend in person. The focus of the meeting will be on maximising opportunities to deliver investment and growth across the UK.

On the same day, I anticipate involvement in a further meeting between the Prime Minister, the First Minister of Scotland and the First Minister and deputy First Minister of Northern Ireland, as well as a short bilateral meeting with the Prime Minister.

I will provide an update after the meeting.

I am copying this letter to Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs; Rebecca Evans MS, Cabinet Secretary for Economy, Energy and Planning; Julie James MS, Counsel General and Minister for Delivery; the Rt Hon Elin Jones MS, the Llywydd; the Finance Committee; and the Economy, Trade and Rural Affairs Committee.

Yours sincerely



Eluned Morgan

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

Agenda Item 0.1

Y Gweinidog Plant a Gofal Cymdeithasol
Minister for Children and Social Care



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: DB/PO/0271/24

Peredur Owen Griffiths MS
Chair
Finance Committee
Senedd Cymru

SeneddFinance@senedd.wales

3 October 2024

Dear Peredur,

As we approach the end of stage one, we have been reviewing the Bill documentation, including the Regulatory Impact Assessment (RIA) and the correspondence to committees.

Unfortunately, we have identified a factual error in our 26 July Q1(a) response to your letter of 8 July.

I apologise for this and for any confusion this may have caused the committee. Please see below the revised, correct response, which is also expanded in the form of a table, which I hope will ensure that the basis on which the Welsh Government has calculated the ranges cited is as clear as it can be.

I am copying this letter to the chairs of the Health and Social Care Committee and the Legislation, Justice and Constitution Committee.

Q1 (a) The sum of the constituent elements in the RIA suggests the total cost of the Bill ranges from £394.5m to £495.7m. However, this differs from the total cost set out in that RIA summary, which is £429.8m to £455.7m. We've also noted other inconsistencies in the value of costs and benefits in the RIA summary with the tables included in the rest of the RIA. Please could you provide a clarification of the correct figures or an explanation for these differences.

We have reviewed the RIA summary tables and we are content the range of £429.8M to £455.7M presented there is correct.

The range of £394.5M to £495.7M does not feature in the RIA summary but appears to have been calculated by adding up the lowest values from the 'Administrative costs', 'Compliance costs' and 'Other costs' ranges and the highest values from those same ranges in the RIA summary.

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

However, to calculate minimum or maximum costs for the eliminating private profit section of the RIA, the estimated costs of different scenarios need to be considered collectively, rather than simply adding all the lowest figures from the ranges together, or all the highest figures from the ranges.

Ranges for the costs and cost-savings under the eliminating private profit section have been calculated using different assumptions (scenarios) for the proportion of existing private sector providers who will opt to remain in the market. These are presented as scenarios A, B and C in the RIA. Market intelligence and stakeholder discussions have led us to believe that an outcome somewhere between Scenarios B and C is most likely and so the figures in the RIA summary tables are based on the range of costs and cost-savings calculated under these two Scenarios.

Comparing Scenarios B and C, private providers' costs (which are shown in the 'Other costs' section of the RIA summary table) are highest under Scenario B and lowest under Scenario C. The reverse is true for public sector administrative costs, where costs are lower in Scenario B and the higher end of the range is calculated under Scenario C.

Therefore, to simply add together the upper end of the private sector cost range and the upper end of the public sector cost range leads to an incorrect total, because they are derived from different scenarios and different sets of modelling assumptions. This is set out in Chapter 7 of the RIA, but we acknowledge it could have been explained more fully in the RIA summary in Chapter 6. We would anticipate laying a revised Explanatory Memorandum (including RIA) following the completion of Stage 2, and can include some additional narrative in Chapter 6's RIA summary table to clarify this point.

There are also £2.3M of administrative cost-savings identified in the RIA summary. The total cost as given in the RIA summary is reached on the basis of the net administrative costs, i.e. the administrative costs less the administrative cost savings.

Taking these two points together, and bearing in mind that the individual values in the RIA summary are subject to rounding, we hope this explains the basis for the calculation of the overall range of estimated costs in the RIA summary.

To set out as clearly as possible how the overall estimated range of costs of the Bill, as provided in the RIA summary, relates to the figures given in the RIA summary's narrative, we have provided a further table below:

	Costs (under the scenario which leads to the overall minimum) in £M, to the nearest £0.1M	Costs (under the scenario which leads to the overall minimum) in £M, to the nearest £0.1M
Administrative costs to Welsh Government	4.5	4.5
Administrative costs to local authorities	185.7	245.5
Administrative costs to health boards	20.5	24.2
Administrative costs to CIW	5.9	5.9
Administrative cost-savings	-2.3	-2.3
Net administrative costs	214.3	277.8
Compliance costs	0.1	0.2
Other costs (to private providers)	215.3	177.7
Total costs	429.8*	455.7

**The estimated total cost figure does not match the component costs exactly in this column, due to rounding*

You also raised concerns about inconsistencies between values in the RIA summary and in the body of the RIA at Chapter 7. Some of the apparent inconsistencies you are concerned about were explained in the earlier letter, but we have identified an error in Table 7.13 of the RIA, which estimates values for profit lost by the private sector in relation to the proposals on eliminating private profit in the care of looked after children. The values included for Scenarios B and C for the financial year 2034-5 are incorrect – these should be -£32,809,000 for both scenarios.

This error is not reflected in the totals given in the RIA summary, which are correct. The correct figures are also given in the ADSS Cymru report, which has been published separately.

We will update the Explanatory Memorandum at the next opportunity, after stage 2 proceedings are completed.

Yours sincerely,



Dawn Bowden AS/MS

Y Gweinidog Plant a Gofal Cymdeithasol
Minister for Children and Social Care

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

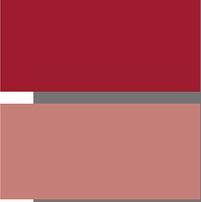
TITLE Government of Wales Act 2006 (Devolved Welsh Authorities)
(Amendment) Order 2024

DATE 08 October 2024

BY Vikki Howells MS, Minister for Further and Higher Education

In June the Cabinet Secretary for Education issued a [written statement](#) updating Members on the draft Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024, which was laid before the Senedd and both Houses of Parliament in May. We undertook to provide an update for Members following the UK general election. I am issuing this written statement as I now have responsibility for this area.

A debate on a motion seeking the approval of the House of Commons to the draft Order is scheduled for 8th October. We are not aware of any date for a debate in the House of Lords, although we anticipate this will be in the near future. Subject to the approval of both Houses of Parliament, the draft Order will be submitted to the Privy Council to be made by His Majesty. I will notify Members once the Order has been made.



President of Welsh Tribunals Fifth Annual Report 1 January 2023 to 31 March 2024

24 May 2024



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1 Introduction

1.1 This is the fifth, and my first, Annual Report of the President of Welsh Tribunals. The first four reports were prepared by my predecessor, Sir Wyn Williams, who served as President from July 2017 until his retirement in March 2023. This period saw the creation of the office by section 60 of the Wales Act 2017, and the development of the role in overseeing the six devolved tribunals including enhancing their structures and increasing their administrative coherence. His legacy includes a developing reform programme for the Welsh tribunals which I am pleased and proud to inherit. Sir Wyn's part in this remarkable journey cannot be overemphasised. Those who work in and with our tribunals, and those who come before them as parties, owe him an enormous debt.

1.2 I was appointed his successor on 1 April 2023, being sworn in by the Lord Chief Justice, Lord Burnett of Maldon, at Cardiff Crown Court on 2 May 2023. Over the last 25 years, I have spent much of my time as a judge in Wales, and it is a great honour to have been appointed as the senior judge in the Welsh Tribunals particularly at such an interesting and lively time in their development.

1.3 As explained in Sir Wyn's First Report, the Wales Act 2017 imposes an obligation upon the President of Welsh Tribunals to represent the views of members of the Welsh Tribunals to the Welsh Ministers and to the Senedd. In addition to regular meetings with the First Minister of Wales and Counsel General – my first meeting with them was on 8 June 2023 – following consultation with them, and with the need for appropriate transparency and accountability firmly in mind, Sir Wyn decided that the best way to discharge that duty would be by producing a regular report which would be presented to the First Minister and Presiding Officer of the Senedd. These reports were to be annual; but, for the reasons set out by Sir Wyn in its Introduction, the Fourth Report of the President of Welsh Tribunals covered the period April 2021 to December 2022. This Report covers the period January 2023 to March 2024. In future years, I shall return to preparing reports for the financial year April to March.

1.4 The Welsh Tribunals under my arm are set out in section 59 of the Wales Act 2017, as amended. They are (with the acronyms I shall use in this Report):

- (a) Tribiwnlys Tir Amaethyddol Cymru/the Agricultural Land Tribunal for Wales (“ALTW”);
- (b) Tribiwnlys Adolygu Iechyd Meddwl Cymru/the Mental Health Review Tribunal for Wales (“MHRTW”);
- (c) Tribiwnlys Eiddo Preswyl Cymru/the Residential Property Tribunal Wales (comprising three constituent tribunals: rent assessment committees constituted in accordance with Schedule 10 to the Rent Act 1977, a leasehold valuation tribunal and a residential property tribunal) (“RPTW”);
- (d) Tribiwnlys Addysg Cymru/the Education Tribunal for Wales (which also manages the jurisdictions of tribunals relating to the registration of school inspectors and nursery education inspectors) (“ETW”);
- (e) Panel Dyfarnu Cymru/the Adjudication Panel for Wales (“APW”); and
- (f) Tribiwnlys y Gymraeg/the Welsh Language Tribunal (“WLT”).

1.5 The following tribunals operate in Wales but are not included in section 59, and do not fall under the remit of the President of Welsh Tribunals.

- (a) Non-devolved tribunals which form part of the system of tribunals which operate across England & Wales reformed by the Tribunals, Courts and Enforcement Act 2007, such as those which adjudicate upon social security benefits and child support, immigration and asylum, and employment. These are administered by His Majesty's Court and Tribunal Service Wales ("HMCTS Wales"), and their judiciary is headed by the Senior President of Tribunals. In this report, I shall refer to them as "the HMCTS tribunals".
- (b) Tribunals which operate in devolved areas in Wales, but not under the President of Welsh Tribunals. For example, the Valuation Tribunal for Wales which has its own legal, judicial and administrative structures; and tribunals which determine school admission and exclusion appeals which are administered by local education authorities without any overarching structures.

1.6 The Welsh Tribunals are supported by the Welsh Tribunals Unit ("the WTU"), headed by Rhian Davies Rees. It is a part of the Welsh Government civil service, but operating as independent as it can practicably be, independence which is encouraged and supported by the Welsh Government. The Welsh Tribunals Unit is made up of about 35 members of staff who are located across Wales.

2 The Office of President of Welsh Tribunals

2.1 The office of President of Welsh tribunals was created by section 60 of the Wales Act 2017, a UK statute. Although the role is restricted to devolved tribunals dealing with devolved subject matter, the post is expressly not a devolved Welsh authority for the purposes of the Government of Wales Act 2006.

2.2 Given the moves to reform Welsh Tribunals (which include proposals to reform the role and functions of the President), a reminder of the current powers and duties of the President of Welsh Tribunals as set out in section 60 of the 2017 Act is timely. As Sir Wyn Williams explained in his First Annual Report, the 2017 Act does not comprehensively define the powers and duties of the President; but it is implicit in section 60 that the President is the most senior judge within the Welsh Tribunals and, in addition to the duties expressly referred to in the Act, he or she exercises a supervisory role over each of the Welsh Tribunals. Therefore, for example, the President ensures that complaints received about the conduct of Welsh Tribunal members are investigated fairly, properly and in accordance with the relevant complaints procedure. In addition to tribunal-specific meetings, I meet all the Judicial Leads of the Welsh Tribunals and the senior members of the WTU every quarter to discuss issues that cut across tribunal boundaries.

2.3 The express duties of the President prescribed by section 60 are limited to representing the views of members of the Welsh Tribunals to the Welsh Ministers and to other members of the Senedd as described above; and to maintaining appropriate arrangements for the training, guidance and welfare of members of the Welsh Tribunals within the resources made available by the Welsh Ministers. In pursuance of these powers, the President can (for example) issue Guidance Notes to tribunal members as I have done on the use of the English and Welsh languages in tribunal administration and proceedings, and sittings from abroad.

2.4 However, in exercising his or her wider supervisory powers, the President is also required by section 60(4) to have regard to the need for proceedings before Welsh Tribunals to be fair and handled quickly and efficiently; for members to be appropriately expert in the subject matter or law applied in their tribunals; and for the need “to develop innovative methods of resolving disputes that are of a type that may be brought before those tribunals”. Those, in practice, impose substantial obligations on the President.

2.5 I also regard the role of the President in construing and thereby developing the law in the devolved areas to be important. The President does not have any express statutory power to sit – and, to date, has not sat – in any Welsh Tribunal, but I have been appointed a Judge of the Administrative Appeals Chamber of the Upper Tribunal (part of the reserved tribunal system) which hears appeals from the Welsh Tribunals, enabling me to hear such appeals. On appeals which go further, I am also able to sit in the Court of Appeal (Civil Division).

2.6 As President of Welsh Tribunals, I sit on a number of bodies which concern the wider justice system in Wales (such as the Welsh Committee of the Judges’ Council chaired by the Lady Chief Justice, the Law Council for Wales, the Welsh Advisory Committee of the Law Commission and the Lord Chancellor’s Standing Committee on the Welsh Language) and the tribunals systems across the UK (such as the Tribunal Judiciary Executive Board and the Administrative Justice Council). Each of these bodies meets regularly and enables me as President of Welsh Tribunals to keep up to date with developments in the wider justice system in Wales and the tribunals systems in all four home jurisdictions, and to influence those developments.

2.7 Shortly after my appointment, I identified four areas that I considered warranted prioritisation in the year 2023-24, namely judicial training, the use of the Welsh language in the tribunals, appointments of Presidents and salaried judges, and reform through the Tribunals Bill. Please see Annex at the end of the document, that I published at the beginning of the year in which I set out these priorities and the steps I proposed to take in pursuit of them. I review these priority areas below (paragraphs 5-8).

3 Workload

3.1 The number of applications received by the Welsh Tribunals in the financial years 2022-23 and 2023-24 are set out below, with the figures for 2020-21 and 2021-22 for comparison purposes.

Table 1: Number of applications per tribunal

Tribunal	Financial Year 2020-21	Financial Year 2021-22	Financial Year 2022-23	Financial Year 2023-24
ALTW	13	20	28	17
MHRTW	1790	1840	1747	1798
RPTW	106	113	182	184
ETW*	116	151	90	108
APW	4	10	3	6
WLT	13	3	1	2

* Formerly the Special Education Needs Tribunal Wales, renamed from 1 September 2021 by the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

3.2 Further information about the nature of the work undertaken and the membership of each tribunal is set out in their respective annual reports, which are published on the website of each tribunal.

4 Finance

4.1 The budget provides for tribunal and administrative running costs. During the 2022-2023 and 2023-24 financial years, the budget allocated to tribunals was £4,233,000 and £4,150,000 respectively. Actual expenditure for 2022-23 was £4,454,476, and for 2023-24 was £5,016,688.

4.2 The tribunals' annual expenditure has therefore exceeded the allocation. This is largely down to increased fee-paid judicial time and recruitment costs, increases in pay and pension costs and, following COVID, a return of face-to-face hearings in MHRTW which is the largest tribunal. There has been no increase in budget allocations to meet this increasing expenditure.

4.3 Appointments as members of the Welsh Tribunals are currently not all made by the Welsh Ministers: some are still made by the Lord Chancellor. However, whilst terms and conditions are the responsibility of the appointing authority, the responsibility for remuneration for all Welsh devolved judicial office holders is with Welsh Ministers.

4.4 Having fee rates that are comparable with reserved courts and tribunals administered by HMCTS is vital for Welsh Tribunals. It is important not only because fairness dictates that those who do the same work as judges and non-legal members in Wales should be paid comparably; but also because all but one of our devolved tribunal judiciary are part-time fee-paid and many have other, HMCTS tribunal or court appointments, so any differential in pay may lead to their preferring to sit in other courts and tribunals rather than the less-well paid devolved tribunals. Parity is therefore not only a matter of principle and fairness, but any differential has considerable potential practical consequences.

4.5 Since 2017, much work has been done to ensure that Welsh devolved tribunal members' fees are in line with appropriate comparators in the courts and HMCTS tribunals. In 2019, the First Minister agreed a revised fee structure which aligned the fees of legal members. In August 2020, a similar exercise was undertaken for non-legal members. Since then, pay rates for devolved tribunal members have been comparable with those in the courts and tribunals administered by HMCTS.

4.6 In July 2023, in line with the recommendation of the independent Senior Salaries Review Body ("the SSRB"), the Lord Chancellor announced a 7% increase for judicial office holders who sit in courts and HMCTS tribunals, effective from 1 April 2023.

4.7 The Welsh Government did not contribute to the SSRB Review that led to that recommendation and, of course, is bound by neither its recommendation in relation to judicial office holders nor the decision taken by the UK Government to accept it. Following considerable engagement, including a meeting between the First Minister and me on 18 December 2023 to discuss the potential consequences of not adopting a 7% pay increase, on 12 February 2024, the First Minister announced that, effective from 1 April 2023, there would be a 5% pay award for devolved tribunal members. A pay award less than that granted in relation to reserved courts and tribunals was, said the First Minister, taken very reluctantly but made in the light of the difficult financial backdrop against which no pay award greater than 5% had been made for any sector for which the Welsh Ministers are responsible for pay decisions.

4.8 Although the First Minister made very clear that the Welsh Government is committed to returning to pay parity as soon as the budgetary situation allows, the pay differential has had an inevitable adverse effect on our tribunals, mainly on the willingness of members of the MHRTW (where many members have other tribunal and professional appointments) to sit. This has compounded the difficulties facing that tribunal in constituting panels for hearings following the COVID hiatus. This is something on which I am actively working, with the judicial leadership and senior administrators of that tribunal.

4.9 The First Minister also indicated a willingness to consider differential working practices which also make sitting in Welsh Tribunals (and, particularly, the MHRTW) less attractive. For example, members of the MHRTW equivalent in England (the Health, Education and Social Care Chamber of the First-tier Tribunal) have more generous terms than members of MHRTW in respect of cancellations, and reading and writing up time, which may make sitting in that tribunal more attractive. Levelling out these discrepancies would assist in encouraging MHRTW members to sit, and I will pursue this with the appropriate Ministers. However, like any working practices review, it is, at best, likely to take some time.

5 Judicial Training

5.1 As indicated above, I have an express statutory obligation to maintain appropriate arrangements for the training of Welsh Tribunal members within the resources made available by the Welsh Government.

5.2 The training provided by each tribunal comprises annual training of usually one or two consecutive days, with additional training on (e.g.) any new statutory provisions that change the tribunal's work and require specific training prior to implementation. The MHRTW also have four annual workshops of which members are expected to attend one, namely two face-to-face in South Wales, one in North Wales and a virtual workshop for those who cannot attend any of those that are face-to-face. For most of the tribunals, the annual conference is face-to-face, and a rare and valuable opportunity for the members to meet and discuss issues informally as well as in a formal training context. As envisaged in my Priorities Paper, this year, I attended and spoke at each of the annual conferences, which gave me an opportunity to meet members, answer their questions, and discuss their work with them both in a formal session and informally. I found it invaluable.

5.3 In pursuit of the aims for judicial training set out in my Priorities Paper, I appointed Judge Richard Payne (the President of RPTW) as Judicial Lead on Training, with the remit of ensuring that the best value for money is obtained from the training budget.

5.4 I have instigated a common feedback system from the training held, which will help in identifying future training needs and inform both the scope and mode of future training. We are investigating the extent to which training can be delivered remotely, with a view to increasing the training we are able to give to members within the allocated budget.

5.5 The Judicial College has no remit to train devolved tribunal members; but the College has indicated a willingness to support our tribunal members by making training materials available and allowing those responsible for tribunal training in the devolved tribunals to attend Judicial College training sessions as observers. Judge Payne is pursuing this source of training materials and expertise.

6 Welsh Language

6.1 So far as legal obligations are concerned, all the tribunals except the WLT and APW are listed in Schedule 6 of the Welsh Language (Wales) Measure 2011, and so are subject to the duties and standards set out in the Welsh Language Standards (No 4) Regulations 2016.

6.2 However, the tribunals which fall within the Measure are only bound to comply with the Service Delivery Standards set out in Schedule 1 to the Regulations, the Policy Making Standards (the requirement to consider the impact of new policies on the Welsh Language) set out in Schedule 2 to the Regulations and the Record Keeping Standards (in the case of the Tribunals, the keeping of records of complaints relating to the Welsh Language) set out in Schedule 4 of the Regulations. None is subject to the standards set out in the other Schedules, namely the Promotion Standards or the Operational Standards.

6.3 Whilst the WLT, the APW and the President of Welsh Tribunals are not formally governed by the Measure or Regulations, acknowledging the spirit of the scheme, they each voluntarily comply with the same standards.

6.4 Positive results were received from the Welsh Language Commissioner's "Mystery Shopper" Exercise in 2023, which tested compliance with the Welsh Language Standards in the RPTW and ETW.

6.5 Those are the formal legal standards. All Welsh Tribunals encourage and facilitate the use of the Welsh language, both in engaging with the service administration (e.g. all forms are available in the Welsh language, and correspondence in the Welsh language is encouraged) and in hearings. Each tribunal has the facility and capability of conducting both the administration of cases and hearings in the Welsh language. In each application form, parties are asked whether they wish to conduct their correspondence and/or hearing in the Welsh language, or the English language, or both (i.e. hybrid); and that response governs the language used in engaging with that party.

6.6 A new self-assessment process has been created and implemented by the WTU, in which staff assess how each tribunal complies with the requirements of the Welsh Language Standards. This will provide a baseline as to how each tribunal provides services to the public through the medium of Welsh and facilitates and encourages the use of the Welsh language.

6.7 A survey has also been conducted among all tribunal members to ascertain which members are able to speak the Welsh language, including members who would be able to conduct a hearing wholly or partly in the Welsh language without the use of translators. Of the 236 members of Welsh Tribunals, 60 (25.4%) indicated that they can speak Welsh, of which 43 (18.2%) indicated that they would be able to conduct a hearing in Welsh without the use of translators. The information gathered through this exercise has assisted tribunals in constituting Welsh-speaking panels when parties have indicated a wish to submit evidence wholly or partly in the Welsh language and/or speak Welsh at the hearing. It will also identify any language skill gaps in tribunal membership, which can then be addressed by training or recruitment.

6.8 Whilst each tribunal can provide both administrative services and hearings in the Welsh language, the use of the language in our tribunals is very small as can be seen from the table below.

Table 2: Hearings held in the Welsh language

Tribunal	Financial Year 2020-21	Financial Year 2021-22	Financial Year 2022-23	Financial Year 2023-24
ALTW	0	0	0	0
MHRTW	5	3	3	9
RPTW	0	0	0	0
ETW*	1	0	3	2
APW	0	0	0	0
WLT	1	0	2	2

* Formerly the Special Education Needs Tribunal Wales, renamed from 1 September 2021 by the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

6.9 This reflects the position in other courts and tribunals in Wales. There is a substantial difference between the use of the Welsh language in everyday life (and, indeed, in other walks of public life) in Wales and its use in hearings in the justice system. Whilst we can speculate as to why this is so (e.g. because of the traditional use of the English language in formal settings), there are no known data which might assist in identifying the reasons for this shortfall or in addressing this issue.

6.10 From 1 April 2024, an additional, voluntary question has therefore been added to the application form in each of our jurisdictions (except, for the time being, the APW), immediately after the questions relating to language preference, to explore why those who are Welsh speaking have indicated a wish to engage with the tribunal administration and have their hearing conducted solely in the English language. The form makes clear that the response to this question will not affect the conduct of their proceedings in any way but is seeking to identify the reasons for the predominance of the English language in our tribunals. It is hoped that sufficient responses will be received to this question to allow some conclusions to be drawn, upon which we can take steps to eradicate barriers to the use of Welsh in our tribunals. This is not simply an issue about the right to use the Welsh language: such restraint may amount to a barrier to justice to those who would better present their case to a tribunal through the medium of the Welsh language.

6.11 More generally, a training session on the Welsh language and the requirements of the Welsh Language Standards was presented by WTU staff at the ALT, RPTW and ETW annual conferences, and the WTU Staff Team Training Day, which outlined the legislation and legal requirements, identifying the roles of the administration and judicial office holders in providing services in the Welsh language; and how the use of the language can in practice be facilitated and supported in the tribunal process and hearings. Further, several judges and members from the Welsh Tribunals attended a Judicial College conference designed to assist them in conducting proceedings in the Welsh language.

7 Appointments

7.1 During the financial year 2023-24, Judge Jane McConnell was appointed as the new Judicial Lead for ETW following a campaign administered by the Judicial Appointments Commission (“the JAC”). In the final quarter of 2022/23, two members of RPT were authorised to sit in ETW. In October 2023, following an exercise by way of Expressions of Interest, five legal and five lay members of the First-tier Tribunal were authorised to sit in ETW.

7.2 Following a re-run campaign administered by JAC for two salaried judges in MHRTW, I am pleased that two appointees have been identified, who will hopefully be formally appointed soon.

8 Tribunal Reform

8.1 Building on the work and recommendations of the Commission on Justice in Wales and the Law Commission, on 19 June 2023, the Welsh Government issued a White Paper, “A New Tribunal System for Wales: A modern system for Wales’s devolved tribunals”. It is unnecessary for me to summarise the work and recommendations of this important paper – it is readily available on the Welsh Government website, with a summary of responses to the paper published in January 2024.

8.2 However, the express purpose of the proposed measures are as follows:

- (a) to put in place a clearer, simpler, more effective and coherent tribunal system that is focused on access to justice and the needs of tribunal users;
- (b) to lay a solid foundation for future changes to the justice system of Wales; and
- (c) to protect judicial independence, including by giving greater structural independence to the administration of justice.

8.3 In line with those aims, the main planks of the suggested proposed reform of the Welsh Tribunals are as follows.

- (a) The creation of a unified tribunals system for devolved tribunals in Wales, comprising a first-tier tribunal (of which the current tribunals would form distinct chambers) and an Appeal Tribunal for Wales which would hear appeals from the first-tier tribunal. It is proposed to bring into that system both the Valuation Tribunal for Wales and both school admission and exclusion appeals, although not necessarily immediately.
- (b) A statutory duty to uphold judicial independence applying to those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales, i.e. the relevant Ministers and, possibly, also the members of the Senedd.
- (c) The enhancement and clarification of office and role of President of Welsh Tribunals by reference to specific statutory powers and duties such as that of presiding in the Appeal Tribunal for Wales hearings, overseeing complaints against tribunal members and determining complaints against senior tribunal judiciary, and chairing the proposed Tribunal Procedure Committee for Wales (which would be responsible for the rules of all tribunals within the proposed reformed system).

- (d) Members will continue to be selected by way of a Judicial Appointment Commission exercise; but the formality of appointments will be simplified. The Lord Chancellor will have no role. Members will generally be formally appointed by the President of Welsh Tribunals, although senior judges will be appointed by the Welsh Ministers. The President of Welsh Tribunals will become a devolved appointment.
- (e) The structural separation of the operational and administrative functions of the new tribunal system from executive functions of the Welsh Government, by the creation of a Welsh Government Sponsored Body or a Non-Ministerial Department into which the functions of the WTU would be placed, with the Chair being either a Welsh Government appointment or the President of Welsh Tribunals ex officio.

8.4 Whilst in practice there will inevitably be a vital relationship between the new body that will replace the WTU and the devolved judiciary on the one hand and the Welsh Government on the other – akin to a partnership – there is intended to be a clear separation of responsibility for the day-to-day administration of the tribunal system from the executive Government. An important function of the new body will be to monitor the performance of the tribunal system: to ensure transparency and accountability, the White Paper proposes that the body will complete a corporate plan and annual report, and that information about operational performance of the new tribunal system will be published. That information will include performance against key performance indicators which will cover such matters as the use of the Welsh language in the tribunal system, differential experiences of tribunal users from different backgrounds and the diversity of tribunal members. An important aspect of the implementation phase of the reform programme will involve consideration of how best such information can be measured and assessed in advance of the new body being operational.

8.5 I am strongly in favour of the proposed reforms, as I understand are the Judicial Leads and vast majority of tribunal members. It will be a flexible and robust tribunal system, which should serve Wales well for many years to come. In my view, if enacted and implemented with appropriate consultation and care, the reforms will benefit the tribunal judiciary (who will have a better opportunity to build a working life around sitting in our tribunals, and sit in different jurisdictions in Wales where their experience and expertise allows), the administration (which will have the benefits of scale) and it will be flexible enough to allow other jurisdictions into the system if, as and when they are devolved. Most importantly, the reformed system will give a better service to the people of Wales, whom we serve, by enabling (e.g.) better computer functions in respect of both administration and mode of hearings, and better access to local justice including justice at appellate level. The Appeal Tribunal for Wales will sit in Wales, and crucially it will allow the development of the devolved law in Wales by a tribunal based in Wales that is locally accountable. This programme will be an important step in the evolution of the justice system in Wales, and it has my full support and that of the Welsh Tribunal judiciary.

8.6 The reform programme will require primary legislation. The First Minister's annual statement on the Government's legislative programme delivered on 27 June 2023 referred to the Government's intention to bring forward legislation relating to the Welsh tribunal system during the current Senedd term. The precise timing of that legislation has yet to be confirmed, but the Welsh tribunals are working on the assumption that it will be presented in 2025 and will come into effect, hopefully, in 2026. Preparatory work continues to be done by the Justice Policy Team which, in addition to the formal consultation process through the White Paper, regularly and helpfully consults me as President and, through me, the Judicial Leads and wider tribunal judiciary.

9 The First Year

9.1 The tribunal reform programme referred to above is a unique opportunity to build a system of tribunal justice that will serve the people of Wales for years to come. However, the implementation of such a programme will give rise to substantial operational challenges for our tribunals' day-to-day business. It is therefore imperative that we ensure that each of our devolved tribunals is working on sound foundations. Building on the work of Sir Wyn Williams, the first year of my term has seen consolidation and improvements which will put us in good stead for the challenges ahead.

9.2 For that, I must thank both the tribunal judiciary (especially the Judicial Leads, upon whom much of the burden falls) and members – and, of course, Rhian Davies Rees and the Welsh Tribunals Unit staff – for both their support and their tireless work in dealing with individual cases and constantly striving to improve the systems under which we work.

9.3 I would also like to thank the Rt Hon Mark Drakeford MS (First Minister for all but the last fortnight of the period covered by this Report) and Mick Antoniw MS (the Counsel General) for their thoughtful and constructive approach to the issues the devolved justice system faces in Wales; and for their support generally and, in particular, for the tribunal reform programme. I am sensitively aware of the enormous pressures on the time and resources of the Welsh Ministers and the Senedd; and am grateful that the First Minister and Counsel General clearly share my view of the importance of reforming of our devolved tribunals so that they are fit for purpose for the foreseeable future. I very much look forward to working with Mr Drakeford's successor as First Minister, the Rt Hon Vaughan Gething MS, over the coming months.

9.4 With my Judicial Leads and other members of our tribunals, I look forward to the year ahead; and to making further progress towards the improvement of the devolved justice system in Wales.



The Rt Hon Sir Gary Hickinbottom
President of Welsh Tribunals

PRESIDENT OF WELSH TRIBUNALS PRIORITIES
2023/2024

Ref.	Activity	PWT / JL / WTU
Priority A - Judicial Training		
A1	Review how training needs are identified in each devolved tribunal	PWT / JL
A2	Identify any judicial leadership training needs, and how they may be met	PWT / JL
A3	Agree what training is to be provided to the devolved tribunals and how it will be delivered	PWT / JL
A4	During 2023/24, to attend training events for each tribunal, and update members on live matters relating to the tribunals and give an opportunity to raise any questions	PWT
A5	Implement a consistent approach to evaluating training across the devolved tribunals	PWT / JL
A6	Analyse the feedback received from training evaluation process to identify further training needs	WTU
A7	Publish the yearly costs of Judicial training for each tribunal in the Annual Reports	JL / WTU
Priority B - Welsh Language		
B1	Establish the baseline for how each tribunal promotes and encourages the use of the Welsh language	PWT / JL / WTU
B2	Ensure that each tribunal has the capacity to conduct its judicial and administrative business in the Welsh language	PWT / JL / WTU
B3	Engage with service users to identify barriers to interacting with the Tribunals through the medium of the Welsh language	WTU
B4	Identify improvements that can be made and implemented within 23/24 to promote the use of the Welsh language in our tribunals	PWT / JL / WTU
B5	Deliver training to all tribunal members and WTU staff to raise awareness of the use of the Welsh language in its hearings and wider communication and the tribunals obligations within the Welsh Language Standards	PWT / JL / WTU
Priority C - Appointments		
C1	To review the diversity of existing tribunal members	PWT / JL / WTU
C2	Engage with the JAC to support delivery of a successful recruitment campaign for a new Judicial Lead in ETW	WTU
C3	Engage with the JAC to support delivery of a successful recruitment campaign for a new Judicial Lead in APW	WTU
C4	Engage with the JAC to support delivery of a successful recruitment campaign for two Salaried judges in MHRTW	WTU
C5	Lead and facilitate the induction of new Tribunal Judicial Lead and Salaried Judges (for campaigns outlined in C2, C3 and C4 above)	JL / WTU
Priority D - Tribunals Bill		
D1	Ensure full engagement with the Tribunal Reform Bill Team at every step of the tribunal reform	PWT
D2	Ensure engagement with all Judicial Leads (and, through them, appropriate engagement with users) at key stages within the tribunal reform process	PWT
D3	Ensure update on tribunal reform is communicated by the Tribunal Reform Policy team at Judicial Leads meeting	WTU
D4	Communicate to all tribunal members on the progress of the Bill at key stages	PWT / JL

PWT – President of Welsh Tribunals
JL – Judicial Leads
WTU – Welsh Tribunals Unit

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Agenda Item 12

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

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