

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 4, Tŷ Hywel

Meeting date: 20 January 2025

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Hybrid

Public meeting

(13.30 – 14.55)

1 Introduction, apologies, substitutions and declarations of interest

(13.30)

2 Evidence session on the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill

(13.30 – 14.30)

(Pages 1 – 57)

[Visitor Accommodation \(Register and Levy\) Etc. \(Wales\) Bill, as introduced](#)
[Explanatory Memorandum](#)
[Statement of Policy Intent](#)

Rt Hon Mark Drakeford MS, Cabinet Secretary for Finance and Welsh

Language

Anna Adams, Deputy Director, Tax Strategy and Intergovernmental Relations,
Welsh Government

David Greenhough, Head of Visitor Levy, Tax Strategy and Intergovernmental
Relations, Welsh Government

John O’Sullivan, Lawyer, Welsh Government

Emma Anderson, Lawyer, Education (Schools), Culture, Media, Sport and
Tourism Team, Welsh Government



Attached Documents:

LJC(6)-03-25 – Paper 1 – Briefing

LJC(6)-03-25 – Paper 2 – Letter from the Cabinet Secretary for Finance and Welsh Language to Committee Chairs, 26 November 2024

LJC(6)-03-25 – Paper 3 – Written evidence from Wales Tourism Alliance

Break

(14.30 – 14.35)

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

(14.35 – 14.40)

Affirmative Resolution Instruments

3.1 SL(6)567 – The Health Services (Provider Selection Regime) (Wales) Regulations 2025

(Pages 58 – 61)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-03-25 – Paper 4 – Draft report

LJC(6)-03-25 – Paper 5 – Written Statement by the Cabinet Secretary for Health and Social Care, 7 January 2025

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

(14.40 – 14.45)

Made Negative Resolution Instruments

4.1 SL(6)552 – The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (No. 2) (Wales) Regulations 2024

(Pages 62 – 64)

Attached Documents:

LJC(6)-03-25 – Paper 6 – Report

LJC(6)-03-25 – Paper 7 – Welsh Government response

Affirmative Resolution Instruments

4.2 SL(6)561 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Miscellaneous Amendments) (Wales) Regulations 2025

(Pages 65 – 67)

Attached Documents:

LJC(6)-03-25 – Paper 8 – Report

LJC(6)-03-25 – Paper 9 – Welsh Government response

4.3 Statutory instruments previously considered: Letter to the Counsel General and Minister for Delivery

(Pages 68 – 103)

Attached Documents:

LJC(6)-03-25 – Paper 10 – Letter to the Counsel General and Minister for Delivery, 16 January 2025

5 Inter-Institutional Relations Agreement

(14.45 – 14.50)

5.1 Correspondence from the Minister for Mental Health and Wellbeing: The Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025

(Pages 104 – 105)

Attached Documents:

LJC(6)-03-25 – Paper 11 – Letter from the Minister for Mental Health and Wellbeing, 14 January 2025

6 Papers to note

(14.50 – 14.55)

6.1 Correspondence from the Cabinet Secretary for Health and Social Care: The Food (Promotion and Placement) (Wales) Regulations 2025

(Pages 106 – 107)

Attached Documents:

LJC(6)–03–25 – Paper 12 – Letter from the Cabinet Secretary for Health and Social Care, 13 January 2025

6.2 Correspondence from the Cabinet Secretary for Finance and Welsh Language: Welsh Language and Education (Wales) Bill

(Pages 108 – 128)

Attached Documents:

LJC(6)–03–25 – Paper 13 – Letter from the Cabinet Secretary for Finance and Welsh Language, 13 January 2025

LJC(6)–03–25 – Paper 14 – Letter from the Cabinet Secretary for Finance and Welsh Language to the Finance Committee, 13 January 2025

LJC(6)–03–25 – Paper 15 – Letter from the Cabinet Secretary for Finance and Welsh Language to the Children, Young People and Education Committee, 13 January 2025

6.3 Correspondence from the Cabinet Secretary for Economy, Energy and Planning: Legislative Consent Memorandum for the Product Regulation and Metrology Bill

(Pages 129 – 133)

Attached Documents:

LJC(6)–03–25 – Paper 16 – Letter from the Cabinet Secretary for Economy, Energy and Planning, 13 January 2025

6.4 Correspondence with the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs and the Counsel General and Minister for Delivery: Scrutiny session follow-up

(Pages 134 – 146)

Attached Documents:

LJC(6)-03-25 – Paper 17 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs and the Counsel General and Minister for Delivery, 16 January 2025

LJC(6)-03-25 – Paper 18 – Letter to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs and the Counsel General and Minister for Delivery, 17 December 2024

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

(14.55)

Private meeting

(14.55 – 15.20)

**8 Visitor Accommodation (Register and Levy) Etc. (Wales) Bill:
Consideration of evidence**

(14.55 – 15.10)

9 The Welsh Government's 'The future of Welsh law: A programme for 2021 to 2026 – Annual Report': Consideration of key issues

(15.10 – 15.20)

(Pages 147 – 152)

Attached Documents:

LJC(6)-03-25 – Paper 19 – Paper

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/MDFWL/10656/24

Peredur Owen Griffiths, MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

26 November 2024

Dear Peredur,

Visitor Accommodation (Register and Levy) Etc. (Wales) Bill

Following the introduction of the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill into the Senedd on 25 November, please find attached a copy of the statement of policy intent. As indicated through my oral statement on the 26 November, I also attach some indicative additional registration provisions which we intend to table at stage 2. These documents are provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.



Llywodraeth Cymru
Welsh Government

Visitor Accommodation (Register and Levy) Etc. (Wales) Bill

Policy intent for subordinate legislation to
be made under this Bill

November 2024

VISITOR ACCOMMODATION (REGISTER AND LEVY) ETC. (WALES) BILL ("THE BILL") POLICY INTENT FOR SUBORDINATE LEGISLATION

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers are empowered or required to make under the provisions of the Bill. It has been published in order to assist Committees during the scrutiny of the Bill and should be read in conjunction with Chapter 5 of the Explanatory Memorandum and Explanatory Notes.

The Bill will create a register of visitor accommodation providers and also give local authorities powers to introduce a visitor levy (the levy). The money raised by the levy will support sustainable tourism, helping our communities and preserving the beauty of Wales for future generations. The levy will represent a small proportion of a visitor's overall spend. Each local authority in Wales will have the power to decide if they want to introduce the levy in their area.

The levy follows the [Welsh Government's tax principles](#):

- to raise revenue to fund public services as fairly as possible
- deliver Welsh Government policy objectives, in particular supporting jobs and growth
- be clear, stable and simple
- be developed through collaboration and involvement
- contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales

The purpose of the levy is to raise additional revenue for local authorities to reinvest in the public services and infrastructure that make tourism a success. Parts of Wales experience high numbers of seasonal visitors with visitors making extensive use of public goods and infrastructure such as roads. A visitor levy would help fund costs from hosting visitors and enable additional public investment in tourism related infrastructure.

The purpose of a register of visitor accommodation providers is to support the collection and administration of the levy and to provide data and intelligence to Welsh Government and local authorities on the types of visitor accommodation available across Wales, to support future tourism and housing policy development. A national scheme will give valuable and accurate evidence to local authorities when considering whether to introduce a visitor levy in the future.

[Tourism](#) provides a substantial economic contribution to Wales. Tourism-related expenditure was more than £5 billion in 2019. Welsh Government want to continue to see a thriving tourism industry in Wales.

The Welsh Ministers have considered the use of powers in the Bill as set out below and are satisfied they are necessary and justified.

Overview of the Bill

The Bill contains 4 Parts and 1 Schedule:

- Part 1 provides an overview of the Bill and key terms which are used within the legislation. It defines:
 - visitor accommodation and a visitor accommodation provider for the purposes of registration.
- Part 2 outlines the provisions for a national registration scheme of visitor accommodation providers which includes:
 - a duty on Welsh Ministers to maintain a register of visitor accommodation providers and a description of the information that register must contain
 - an obligation on visitor accommodation providers to be registered and regulation making powers for Welsh Ministers to exempt a visitor accommodation provider from this requirement
 - provisions to enable publication of information derived from the register
 - regulation making powers for Welsh Ministers to make further provision relating to:
 - (a) the application of the Part to partnerships and unincorporated bodies;
 - (b) the procedures for registration (including variation and cancellation of registration);
 - (c) authorising or requiring disclosure of information contained in the register;
 - (d) enforcement of the Part, including provision for—
 - (i) offences or penalties relating to failures to comply with any requirements in or under the Part;
 - (ii) reviews and appeals.
- Part 3 outlines the provisions for the levy which includes:
 - The power of principal councils to introduce a levy on overnight stays in visitor accommodation in their area,
 - Definition of what is an overnight stay
 - Liability to pay the levy and calculating the levy due on the overnight stay ,
 - Rates of the levy, and changes to the levy rates
 - Determining which rate applies for specified accommodation types and specified stays, and provision to adjust the application of the rates
 - Provision to provide for a premium rate to be introduced by principal councils who have implemented the levy
 - Applications to the Welsh Revenue Authority (WRA) for repayments of amounts equivalent to the levy incurred by certain visitors
 - Submitting returns and payment of the levy to the WRA
 - The collection and management of the levy by the WRA , including changes to the Tax Collection and Management(Wales) Act 2016 (the TCMA) to ensure that it functions for both the levy and devolved taxes. There are also a small number of miscellaneous operational changes to the TCMA that impact both the levy and the devolved taxes.

- How proceeds of the levy must be used by principal councils
 - How a principal council may introduce, change or abolish the levy in their area
 - Application of the levy in special cases e.g. Duties and liabilities of partnerships and unincorporated bodies and death and insolvency
 - Miscellaneous provisions relating to the levy including a power to impose advertising and billing requirements and for the Welsh Ministers to issue guidance
- Part 4 includes provision to extend the application of the Bill to berths and moorings alongside other general provisions such as the power to make consequential and transitional provisions. .

Other documentation

This document should be read in conjunction with the following:

- The Visitor Accommodation (Register and Levy) Etc. (Wales) Bill
- The Explanatory Notes to the Bill; and
- The Explanatory Memorandum to the Bill

| Section | Form | Proposal and Description of Powers | Procedure |
|----------------------|-------------|---|-------------------|
| Part 1, Section 2(5) | Regulations | Regulation making power to enable the Welsh Ministers to make regulations, to amend section 2 to: (a) provide that a type of accommodation, or accommodation of a particular description, is or is not visitor accommodation; (b) vary the description of a type of accommodation. | Draft Affirmative |

Policy purpose and intent

The policy intention for this regulation making power is to enable the description of types of accommodation, or accommodation of a particular description to be treated, or not treated, as visitor accommodation for the purposes of the Bill and to enable the description of a type of accommodation to be varied. The tourism sector is evolving, and it will be important for the legislation to keep pace with any sectoral changes, and to ensure the current descriptions remain appropriate, so that the register accurately reflects and depicts the visitor accommodation available. The Welsh Ministers have no immediate intention to use this power.

The Senedd will be provided the opportunity to scrutinise and vote on any proposed changes as such changes will affect the duties placed on persons and their exposure to any associated visitor levy and registration obligations.

| Section | Form | Proposal and Description of Powers | Procedure |
|----------------------|-------------|--|-------------------|
| Part 2, Section 4(5) | Regulations | Regulation making power for Welsh Ministers to add, vary or remove a description of information specified in subsection 2 (what an entry in the register must contain). | Draft Affirmative |

Policy Purpose and Intent

This power enables the Welsh Ministers to add, vary or remove a description of information to be included in the register of visitor accommodation providers operating in Wales that the Welsh Ministers are obliged to maintain. As the register develops and new types of visitor accommodation provider develop and/or new types of visitor accommodation develop, it will be important to ensure that the information required within the register remains appropriate.

The Senedd will be provided the opportunity to debate and vote on any regulations, to ensure effective scrutiny regarding use of these powers.

| Section | Form | Proposal and Description of Powers | Procedure |
|----------------------|-------------|--|-------------------|
| Part 2, Section 5(2) | Regulations | Regulation making power for Welsh Ministers which provide for a Visitor Accommodation Provider to be exempted from the requirement to register. | Draft Affirmative |

Policy Purpose and Intent

The Welsh Ministers are obliged to maintain a register of visitor accommodation providers operating in Wales. The visitor accommodation providers are placed under an obligation to be registered in respect of the visitor accommodation they provide or offer to provide. The Welsh Ministers are provided with a power to exempt certain visitor accommodation providers where it is considered inappropriate that they should be under the obligation to register. This power does not permit the Welsh Ministers to exempt a specific visitor accommodation provider, by name but provides power to exempt visitor accommodation providers by reference to a description. For example, there may be accommodation that is provided for longer-term residential, or on another basis, where registration by the visitor accommodation provider is considered unnecessary or inappropriate.

The Senedd will be provided the opportunity to scrutinise and vote on any proposed changes given that they will affect the duties placed on persons to register.

| Section | Form | Proposal and Description of Powers | Procedure |
|-------------------|-------------|--|-------------------|
| Part 2, Section 7 | Regulations | <p>Regulation making power for Welsh Ministers to make provision about the register and registration requirements including:</p> <p>(a) the application of this Part to partnerships and unincorporated bodies;</p> <p>(b) the procedures for registration (including variation and cancellation of registration);</p> <p>(c) authorising or requiring disclosure of information contained in the register;</p> <p>(d) enforcement of this Part, including provision for—</p> <p>(i) offences or penalties relating to failures to comply with any requirements in or under this Part;</p> <p>(ii) reviews and appeals.</p> | Draft Affirmative |

Policy Purpose and Intent

The Welsh Ministers are provided with a power to make provision about the register and registration requirements. Section 7 lists the types of areas that the power may be used to address, including additional aspects of registration application that may be required in respect of partnerships and unincorporated bodies and the procedure for registration. The power also enables the Welsh Ministers to authorise or require disclosure of information in the register, and to create offences for a visitor accommodation provider failing to register including penalties, and a review and appeal procedure. The intention is for the Welsh Ministers to create a register that contains the appropriate information and to ensure compliance by visitor accommodation providers through the creation of offences where they fail to comply with their registration obligations.

The Senedd will have the opportunity to scrutinise and debate the detail of any proposed regulations to ensure proportionality and accountability of the Welsh Ministers when exercising the power. Furthermore, impact assessment work, including a Justice Impact Assessment in relation to creation of new offences, will be undertaken and presented alongside any regulations introduced to the Senedd under this power.

| Section | Form | Proposal and Description of Powers | Procedure |
|----------------------|-------------|---|-------------------|
| Part 3, Section 9(5) | Regulations | Regulation making power for Welsh Ministers to add, remove or change the descriptions of circumstances in which an overnight stay in visitor accommodation does or does not take place | Draft Affirmative |

Policy Purpose and Intent

Section 9 provides the definition of overnight stays in visitor accommodation. The definition provides that stays that are longer than 31 nights are not overnight stays and also for exemptions in specified circumstances (such as in relation to immigration, bail or offender management). The Welsh Ministers have been provided with a regulation making power to add, remove or change descriptions of circumstances in which an overnight stay in visitor accommodation does or does not take place. This will enable the Welsh Ministers to respond to changing circumstances.

The Senedd will be provided the opportunity to scrutinise and vote on these regulations as they will define overnight stays which are subject to the levy or not.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|---|-------------------|
| Part 3, Section 12(2) | Regulations | Regulation making power for Welsh Ministers to revise the levy rates that are set in legislation | Draft Affirmative |
| Part 3, Section 13(4) | Regulations | Regulation making power for Welsh Ministers to amend which overnight stays are subject to the lower, higher or nil rate | Draft Affirmative |
| Part 3, Section 13(5) | Regulations | Regulation making power for Welsh Ministers to set evidence requirements for nil rated stays and to establish arrangements for issuing of vouchers for the purposes of proving a nil rated stay in visitor accommodation | Draft Affirmative |

Policy Purpose and Intent

The Welsh Ministers are provided with a number of powers that relate to the effective setting of the levy rates. The first rates for the levy are set out in section 12(1) of the Bill. Section 12(2) enables the Welsh Ministers to lay regulations subject to debate and vote within the Senedd, to change those rates.

Section 13(4) provides the Welsh Ministers with a regulation making power to add, remove or vary a type of visitor accommodation or accommodation of a particular description in relation to which overnight stays are subject to the lower, higher or nil rates.

Section 13(5)(a) provides the Welsh Ministers with a regulation making power enabling them to specify the information or documents that will be necessary for a visitor accommodation provider to prove that an overnight stay was subject to the lower or nil rate. Section 13(5)(b) provides the Welsh Ministers with a power to develop a voucher system so that visitor accommodation

providers may demonstrate that a nil rated overnight stay has occurred. Currently only one type of stay is subject to the nil rate - an overnight stay in visitor accommodation arranged by or provided on behalf of a principal council to address homelessness.

The intention for these three regulation making powers (sections 12(2), 13(4) and 13(5)) is to ensure that the levy rates deliver on the policy objectives and, over time, continue to reflect their current relationship with the price of overnight stays. The section 13(4) power will enable the Welsh Ministers to change the types and descriptions of accommodation that fall within each rate, including in response to tourism sector representations and evidence. The section 13(5)(a) power to provide rules for evidence of the applicability of the lower or nil rate is to ensure that visitor accommodation providers are applying the lower and nil rate properly and that such information will be made available to the WRA in the event of any concerns with the accuracy of returns made by visitor accommodation providers.

The Senedd will be provided the opportunity to scrutinise and vote on these regulations before they are made.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|--|-------------------|
| Part 3, Section 14(3) | Regulations | Regulation making power for the Welsh Ministers to make regulations specifying the maximum amount of the premium which may be added by a principal council. | Draft affirmative |

Policy Purpose and Intent

Principal councils will be able to charge a premium in addition to the levy rates set in Bill (or subsequently by regulations under section 12(2)). The Welsh Ministers are provided with a power to enable them to set a maximum amount that a principal council may add to the lower or higher rates of the levy (or both) by way of that premium. The power will enable the Welsh Ministers to ensure, if necessary, that any premium rates introduced are proportionate.

The Senedd will be provided the opportunity to scrutinise and vote on these regulations before they are made.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|---|-------------------|
| Part 3, Section 15(6) | Regulations | Regulation making power for the Welsh Ministers to add to the list of scenarios in which a repayment of an amount equivalent to levy paid to visitors may apply and to amend the definition of disability benefit. | Draft affirmative |

Policy Purpose and Intent

A repayment of an amount equivalent to levy paid by a visitor is possible and the conditions are set out in section 15.

The Welsh Ministers are provided with a regulation making power (section 15(6)(a)) to enable them to add, amend or remove the circumstances in which an application for a repayment can be made including adding new scenarios that would be eligible for a refund. The section 15(6)(a) power will allow Welsh Ministers to make changes to the definition of ‘disability benefit’, again this will ensure that the refund process operates within the most up to date regulatory framework.

The Senedd will be provided the opportunity to scrutinise and vote on these regulations before they are made.

| Section | Form | Proposal and Description of Powers | Procedure |
|--------------------------|-------------|--|-----------|
| Part 3, Section 17(3)(a) | Regulations | Regulation making power for the Welsh Ministers to determine the threshold amount of levy at which a visitor accommodation provider may submit an annual return | Negative |
| Part 3, Section 17(3)(b) | Regulations | Regulation making power for the Welsh Ministers to determine what evidence a visitor accommodation provider may or must submit to the WRA to be eligible to file an annual return | Negative |

Policy Purpose and Intent

The Bill provides the Welsh Ministers with two powers that can impact on whether a taxpayer is obliged to make quarterly or annual returns. The bill provides that where a taxpayer collects, or anticipates collecting, no more than £1,000 over a financial year that they may file their return annually. The section 17(3)(a) power enables the Welsh Ministers to make regulations to change the amount of visitor levy for this purpose from £1,000. The intention is to enable the relevant amount to be amended if it is evident that it is too high or low in practice, and over time to reflect inflationary changes.

The power provided by section 17(3)(b) will enable the Welsh Ministers to set out evidentiary requirements that visitor accommodation providers must provide if they wish to file annually. Annual returns are intended to capture smaller visitor accommodation providers, further evidence in practice may be necessary for the WRA to make this assessment.

Regulations of this nature will be subject to the negative procedure as they are operational in nature.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|---|-----------|
| Part 3, Section 24(4) | Regulations | Regulation making power for the Welsh Ministers to amend section 24 in respect of the content, number, frequency and deadline for the publication of the report principal councils must publish on the proceeds of the levy and how they have been allocated towards destination management and improvement. | Negative |

Policy Purpose and Intent

The Welsh Government wants to ensure a consistent approach to the reporting requirements placed on the principal councils that have chosen to implement a visitor levy in their area. The intention is that there is a high degree of transparency for levy payers, visitors and residents as to how the revenues have been allocated to support destination management and improvement. It may be necessary for the Welsh Ministers to make regulations to ensure that consistent and sufficiently detailed reporting by principal councils occurs by placing a statutory requirement on those councils to publish specific details or amend the number, frequency and/or date by which the report must be published.

Regulations of this nature will be subject to the negative procedure as they are operational in nature.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|--|-------------------|
| Part 3, Section 31 | Regulations | Regulation making power for the Welsh Ministers to make further provision about partnerships and unincorporated bodies. | Draft affirmative |
| Part 3, Section 33(1) | Regulations | Regulation making power for the Welsh Ministers to make further provision about death, incapacity and insolvency. | Draft affirmative |
| Part 3, Section 34(1) | Regulations | Regulation making power for the Welsh Ministers to make provision about transfers of businesses as going concerns. | Draft affirmative |

Policy Purpose and Intent

These provisions are necessary to ensure appropriate tax liabilities and obligations arise for differing types of levy payers, for situations that may arise in relation to levy payers, or those levy payers when a business is transferred as a going concern. Section 31 provides a power for the Welsh Ministers to make regulations to create, amend, repeal or revoke rules that set out how either partnerships or unincorporated bodies will be impacted by the obligations placed on visitor accommodation providers that are operated by partnership or unincorporated bodies. How the visitor levy is to apply to partnerships and unincorporated bodies is set out in section 30 of the Bill. Ensuring that tax liabilities are correctly assessed, and members of different kinds of partnership and unincorporated bodies are aware of their obligations and liabilities, is important to for collection of the levy and fairness for those members.

Section 32 sets out a series of rules in relation to specific situations that arise where a levy payer dies, becomes incapacitated or be subject to an insolvency process. The rules largely cover situations where another person takes responsibility for the operation

of the visitor accommodation providers business. The regulation making power enables the Welsh Ministers to introduce, amend, repeal or revoke any provisions relating to where a person dies, becomes incapacitated or is subject to an insolvency process. The power will include the creation of penalties for failure to comply with the obligations placed on the person who carries on the business of the person who has died, become incapacitated or is the subject of an insolvency process. The power in section 33 will enable the Welsh Ministers with the opportunity to make regulations to provide clarity as to what obligations and I apply in these situations.

Section 34 provides the Welsh Ministers with the power to make regulations to create rules for who will be responsible for the obligations under the Bill when a business has been transferred as a going concern from a current owner to a new owner. The use of the power may prove necessary if there are situations where there has not been a smooth transition of obligations and correct accounting of liabilities from one owner to the next.

The Senedd will be provided the opportunity to scrutinise and vote on regulations which will impact tax liabilities.

| Section | Form | Proposal and Description of Powers | Procedure |
|-----------------------|-------------|--|-------------------|
| Part 3, Section 37(1) | Regulations | Regulation making power for the Welsh Ministers to make provision about advertising and billing requirements for the levy | Draft affirmative |

Policy Purpose and Intent

The power is intentionally wide and includes requirements relating to information on how and when the existence nature and amount of the levy is to be notified to visitors. The power also provides the Welsh Ministers with the power to impose a civil sanction, and provide for an appeals process, on a person who has not complied with a requirements created through regulations made under this section.

There is an expectation that visitor accommodation providers will bring the levy to the attention of visitors but a power is necessary should evidence emerge that this is not happening voluntarily.

The Senedd will be provided the opportunity to scrutinise and vote on regulations which would impose new requirements on visitor accommodation providers and the creation of new offences.

| Section | Form | Proposal and Description of Powers | Procedure |
|--------------------|-------------|--|-------------------|
| Part 4, Section 40 | Regulations | Regulation making power for Welsh Ministers to amend the Bill and the Tax Collection and Management (Wales) Act 2016 so that the Bill applies to berths and moorings. | Draft affirmative |

Policy Purpose and Intent

The Welsh Ministers are provided with a power to extend the provisions of Part 2 (register of visitor accommodation providers) and Part 3 (visitor levy) to those visitor accommodation providers that operate berths or moorings .

The Senedd will be provided the opportunity to scrutinise and vote on regulations which will impact registration and tax obligations and liabilities for those visitor accommodation providers who operate berths and moorings.

| Section | Form | Proposal and Description of Powers | Procedure |
|--------------------|-------------|--|---|
| Part 4, Section 41 | Regulations | Regulation making power for the Welsh Ministers to make incidental, consequential, or supplemental provisions for the purposes of or in connection to the Bill. | Draft affirmative unless amending secondary legislation then any regulations made under this section will be subject to the negative procedure. |

Policy Purpose and Intent

The Welsh Ministers are provided with a power to make incidental, consequential, or supplemental provision for the purposes of or in connection to the Bill.

This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the levy or register of visitor accommodation providers. Further transitional measures may also be necessary in relation to any provision made under regulation powers of this Bill. These are routine regulation making powers which are consistent with approach taken in other Acts of the Senedd. The Welsh Government requires the ability to make these regulations to ensure coherency and clarity of legislation.

The Senedd will be provided the opportunity to scrutinise and vote on regulations which will amend the Bill unless these relate to amendments to secondary legislation.

| Section | Form | Proposal and Description of Powers | Procedure |
|--|--------------------|--|---|
| <p>Paragraph 6 of Schedule 1</p> <p>This paragraph inserts a new section 24A with the regulation making power into the TCMA rather than a regulation making power that sits on the face of the Bill.</p> | <p>Regulations</p> | <p>Regulation making power for the Welsh Ministers in section 24A(5) of TCMA to determine how and what operating costs and disbursements will be deducted from any levy receipts collected before their remittance to principal councils.</p> | <p>Draft affirmative, see paragraph 32 of Schedule 1 that amends section 189(2) of TCMA</p> |

Policy Purpose and Intent

The Welsh Revenue Authority will charge the principal councils for the collection and management of the levy. The Welsh Ministers are provided with a power to provide how and on what basis the Welsh Revenue Authority's operating costs and disbursements will be deducted from any levy receipts before their remittance to the principal councils.

The Welsh Government want to ensure that any costs which are deducted from visitor levy receipts are reasonable and apportioned in a fair manner across the relevant principal authorities. This approach will allow for the cost-effective operation of the collection and management of the levy and ensure that any costs allocated towards principal authorities are reasonable, proportionate and that the full ongoing costs of collecting and managing the levy is borne by the principal councils and not the Welsh Government.

The Senedd will be provided the opportunity to vote on any formula used to calculate costs to be deducted from levy receipts before remitting these to the principal councils. It is anticipated this will be of particular interest to the Senedd as any changes to the cost distribution of the levy could impact the income of the principal councils from the levy overall and deliver on the policy intention for the levy to be self-funding.

Penalties relating to registration

7A Penalties for failure to register

- (1) A visitor accommodation provider (“VAP”) that has failed to comply with section 5(1) (requirement to register) is liable to a penalty.
- (2) The penalty is to be calculated in accordance with the formula –

$$£300 \times A$$

where “A” is the number of premises in respect of which the VAP has failed to register.

- (3) Where a VAP is liable to a penalty under subsection (1), the Welsh Ministers must –
 - (a) assess the penalty, and
 - (b) impose the penalty by issuing notice to the VAP of the penalty assessed (“the penalty notice”), specifying the premises in respect of which the VAP failed to register (“the relevant premises”).
- (4) A VAP that is not registered in respect of one or more of the relevant premises after the period of 30 days beginning with the day on which the penalty notice was issued to the VAP (“the initial notice period”) is liable to a further penalty for each day on which –
 - (a) the VAP provides, or offers to provide, visitor accommodation at premises specified in the penalty notice, and
 - (b) the VAP is not registered in respect of the premises.
- (5) A penalty under subsection (4) is to be calculated in accordance with the formula –

$$£60 \times B$$

where “B” is the number of premises specified in the penalty notice –

- (a) at which the VAP provides, or offers to provide, visitor accommodation on the day to which the penalty relates, and
 - (b) in respect of which the VAP is not registered on the day to which the penalty relates.
- (6) Where a VAP is liable to a penalty under subsection (4), the Welsh Ministers must –
 - (a) assess the penalty, and
 - (b) impose the penalty by issuing notice to the VAP of the penalty assessed, specifying –
 - (i) the premises in respect of which the VAP is not registered on the day to which the penalty relates, and
 - (ii) the day to which the penalty relates.
- (7) In calculating the initial notice period, no account is to be taken of any day on which a decision relating to the penalty under subsection (1) is the subject of an appeal that has not yet been finally determined or withdrawn.

- (8) In this section, “registered” means registered in accordance with section 5(1).

7B Penalties for failures relating to information on the register

- (1) A VAP is liable to a penalty of £300 if –
- (a) the information contained in the VAP’s entry in the register is inaccurate, and
 - (b) the VAP has not given the Welsh Ministers the information necessary to correct the inaccuracy before the end of the period of 30 days beginning with the day the VAP became aware, or ought to have become aware, of the inaccuracy.
- (2) Where a VAP is liable to a penalty under subsection (1), the Welsh Ministers must –
- (a) assess the penalty, and
 - (b) impose the penalty by issuing notice to the VAP of the penalty assessed (“the penalty notice”), specifying the information that is inaccurate.
- (3) A VAP that fails to provide the Welsh Ministers with the information necessary to correct the inaccuracy before the end of the period of 30 days beginning with the day on which the penalty notice was issued to the VAP (“the initial notice period”) is liable to a further penalty of £60 for each day on which the failure continues.
- (4) Where a VAP is liable to a penalty under subsection (3), the Welsh Ministers must –
- (a) assess the penalty, and
 - (b) impose the penalty by issuing notice to the VAP of the penalty assessed, specifying –
 - (i) the information that is inaccurate, and
 - (ii) the day to which the penalty relates.
- (5) In calculating the initial notice period no account is to be taken of any day on which a decision relating to the penalty under subsection (1) is the subject of an appeal that has not yet been finally determined or withdrawn.
- (6) This section does not apply where, as a result of the failure to notify the Welsh Ministers that the information contained in the VAP’s entry in the register is inaccurate, the VAP is liable to a penalty under section 7A.

7C Reasonable excuse

- (1) This section applies where a VAP –
- (a) has failed to comply with section 5(1);
 - (b) has failed to give the Welsh Ministers the information necessary to correct an inaccuracy in the VAP’s entry in the register.
- (2) If the VAP satisfies the Welsh Ministers or (on appeal) the First-tier Tribunal that there is a reasonable excuse for the failure, the VAP is not liable to a penalty under section 7A or 7B (as the case may be).
- (3) For the purposes of this section –

- (a) where a person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure;
- (b) where a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

7D Powers to reduce, waive or suspend penalties

- (1) The Welsh Ministers may reduce a penalty under section 7A or 7B if they consider it right to do so because of special circumstances.
- (2) In subsection (1), “special circumstances” does not include ability to pay.
- (3) In subsection (1), the reference to reducing a penalty includes a reference to –
 - (a) waiving a penalty entirely, and
 - (b) suspending a penalty.

7E Assessment of penalties

- (1) An assessment of a penalty under section 7A(3)(a) or 7B(2)(a) must be made within the period of 12 months beginning with the day on which the Welsh Ministers first believed that the provider was liable to the penalty.
- (2) An assessment of a penalty under section 7A(6)(a) or 7B(4)(a) must be made within the period of 12 months beginning with the day to which the penalty relates.

7F Penalty notices: supplementary

A notice under section 7A or 7B must include (in addition to the information specified in those sections) information as to –

- (a) the grounds for the imposition of the penalty,
- (b) the period within which the payment is to be made,
- (c) representations that may be made relating to sections 7C and 7D, and
- (d) rights of appeal.

7G Payment of penalties

- (1) A penalty under section 7A or 7B must be paid before –
 - (a) the end of the period of 30 days beginning with the day on which the notice of the penalty is issued, or
 - (b) in the event of an appeal, the end of the period of 30 days beginning with the day on which the appeal is completed.
- (2) An amount payable under section 7A or 7B is recoverable as a civil debt due to the Welsh Ministers.

7H Power to make regulations about penalties

- (1) Regulations may make further or different provision about –
 - (a) the amounts of penalties under section 7A or 7B;

- (b) the procedure for assessing those penalties.
- (2) The regulations may amend this Act.

7I Appeals against penalties

- (1) A person on which a penalty has been imposed under section 7A or 7B may appeal to the First-tier Tribunal—
 - (a) against the decision to impose the penalty, on the ground that—
 - (i) the decision was based on an error of fact;
 - (ii) the decision was wrong in law;
 - (iii) the decision was unfair, unreasonable or wrong for any other reason;
 - (b) against the decision as to the amount of the penalty, on the ground that the amount is incorrect.
- (2) An appeal under subsection (1) must be made no later than 30 days after the date on which the notice is issued.
- (3) But the Tribunal may allow an appeal to be made after the expiry of that 30 day period if it is satisfied that there is a good reason for the failure to appeal before the expiry of that period (and for any delay in applying for permission to appeal out of time).
- (4) On appeal under subsection (1) the Tribunal may—
 - (a) affirm the decision to impose the penalty;
 - (b) vary the amount of the penalty;
 - (c) cancel the penalty.

Visitor Accommodation (Register & Levy) Etc. (Wales) Bill

(what's the Etc for!)

The Draft Legislation:

Legislation, Justice and Constitutional Committee

As well as the Finance Committee, this committee will look at the drafting of the Act on **20th January**. While some policy points may slip through, this is mainly about drafting inconsistencies, lack of clarity, powers v duties and wording which deviates from explicit policy intent. We advise that it is read in tandem with the Wales Tourism Alliance response to the Finance Committee consultation facilitating scrutiny of the Bill.

The content of this paper follows the order of the Bill but does not check the amendments made to other legislation. We would point out that this is an opportunity to use the powers in the Legislation (Wales) Act 2019 to consolidate law in a Wales-only statute without reference to England & Wales law, and it is disappointing that the opportunity was not taken.

Key points:

1. Our main concerns relating to the drafting of the Bill is that it has emerged as something of a Trojan horse: this is not the “tourism tax” referred to in the Welsh Labour manifesto. Further, even though it captures visits for a wide variety of visitor reasons, it is confusing as to whether it captures all accommodation offered to provide for those reasons.

2. (a) While overnight stays in accommodation provided, short term, for “business, leisure and education” visits trigger tax liability, these terms are not defined. What about where the purpose of the visit is none of those things, as commonly understood. An everyday interpretation of these terms would not include overnight stays prior to hospital admission, or visiting someone in hospital. It would not include women and children fleeing domestic violence, although the latter are clearly envisaged as having to pay the levy as they are given the right to reclaim it within 30 days (itself a proposition which reveals a lack of understanding of the disruptive situation in which such women find themselves).

By comparison accommodation offered to refugees/asylum seekers, people subject to bail conditions etc is not considered to be “visitor accommodation” If this is bespoke accommodation (the references to sections in other statutes is not clear that it is) that is understandable, and there is no reason that the list could not include women’s refuges. If not, bespoke and has a mixed use, does the premises fall outside the definition just for the period it houses such individuals?

We note that live-in staff and contract workers staying for more than 31 nights are exempted from liability for the tax despite their right to occupation arising under contract.

- (b) Regardless of the motives of the visitor, the accommodation provider also has to be providing the accommodation “in the course of a trade or business”. Without definition, it will be easy for someone casually letting spare time in a second home, or a day here and there in their own home for a big event, or who open a field in their farm (the actual trade or business) to argue that they are not engaged in a trade or business and, therefore, do not have to collect the tax.* This would fundamentally undermine one purpose of the policy which is to require the ‘unregulated’ operators in the market to

contribute in the same way as professional businesses. The drafting is confusing as, earlier in the Bill, it appears that these operators are included; this is covered in more detail later in this document. (* We urge caution in describing these as “Airbnbs” as the Airbnb platform now also includes professional tourism businesses).

3. The appearance of the power for a local authority to charge a premium on top of the visitor levy was not consulted upon in the written consultation, was not raised in any of the in-person consultation meetings arranged by Welsh Government or with its own Visitor Levy Advisory Group.

It also contradicts the accepted view, reflected in the Explanatory Memorandum, that the levy must be simple, fair, consistent and centrally collected. Any deviation from that reignites the argument that, if councils set their own rates, they should also be responsible for collecting their tax.

4. Nearly all regulation referred to is to be introduced via the draft affirmative procedure. While this gives some limited opportunity for scrutiny in due course, it also suggests that there are areas of importance where the consequences, let alone practical requirements, have not been sufficiently considered before publication of the Bill. There is a lot of material detail which will escape the level of scrutiny appropriate to primary legislation.

Part 1 Overview and Key Terms

Section 1(3) confirms that relationship is between the person obliged to collect the levy and the WRA, not the local authority. NB any attempts within the Act to confuse that.

Section 2 defines “Visitor Accommodation”: Sections 1 - 4

Subsection 2(1)(a) includes accommodation which is “similar” to hotels, guest houses and B&Bs. There is no indication as to what WG has in mind by “similar” accommodation.

Other listed accommodation captured in other subsections include hostels, bunkhouses, caravan & motorhome pitches, any kind of accommodation on a recognisable site or “another similar place”. The same lack of clarity of intention of what that may mean.

Subsection 2(1)(e) needs clarification. While subsection (g) operates as a catch-all, subsection (e) appears to try and include non-conventional units, which is welcome. While referring to a sited mobile home, it also refers to a “vessel or other vehicle” which is sited. This should capture houseboats, railway carriages, old buses and other strangely converted vehicles (for examples, please look at the “OMG” option on the Airbnb app) sited on land but it needs clarification of intention. It does not capture fly camping by vehicles.

There is no definition of “visitor” in this legislation but it does include accommodation let to those staying overnight and participating in business and education as well as leisure. Fly campers, in their own vehicles and tents, are staying overnight but not contributing: Responsible campers, in their own vehicles and tents but staying on premises are caught by the legislation. Does this reflect the policy intention of all tourists contributing to their host community?

The distinction is drawn at **Section 3(3)**, namely the Act applies only where there is a contract. Why does this Act only apply to a “contracted” activity? An overnight stay is an overnight stay. The statutory definition under **Section 9** is limited to a stay in pursuance of a contract, but how

does this wording captured the explicit policy aim of “fairness” as often repeated by Cabinet secretaries and officials?

The use of the word “vessel” is also unhelpful as that invites the inclusion of (semi) permanently moored houseboats. This contradicts the reservation of powers at [Section 1\(4\)\(b\)](#) to “extend” the Act to apply to berths and moorings for vessels. The word “extend” invites the inference that any type of boat and its location fall outside the scope of the Act at the moment.

[Section 2\(1\)\(f\)](#) needs careful consideration. The current drafting captures any accommodation offering self-catering, however infrequently. This is to be welcomed as this is where unregulated growth has taken place in the market; “unregulated” meaning no requirements for insurance, hygiene and safety standards. These are also the properties most difficult to track down and capture for the register. Even so, the whole of [Section 1](#) needs to be read in conjunction with [Section 3\(2\)\(1\)](#) - see later - which describes the persons to whom this Act applies (gypsy travellers having already been excluded).

Further, what if the stay is not for “business, leisure or educational trips”? For example, visiting someone in hospital, jury service, witness in a trial. Either some definitions are needed here or under [Section 24](#). At the very least these other activities should appear under [Section 15](#) (repayment). And, does it matter who has paid; the individual or the organising body?

****Policy consideration* The levy is raised on properties used for educational trips”. The monies raised by this levy are for visitors to contribute to communities in a tourism-led way, not charge other LEAs extra to educate children and young people.***

Also, establishments run for charitable purposes are not mentioned, for example, those offering holiday respite to disadvantaged families. Nor are such visitors permitted to reclaim the levy (unless disabled) under Section 15; see later.

Section 2(3) states that occupation for more than 31 days falls outside the scope of the Act. This is, presumably, to exclude contract workers, students etc. Would need confirmation that no levy is payable for the first 31 days, ie is this a cap or a recognition that this kind of occupation is not by “visitors”. However, not all contractor stays are 31 days. They are certainly not tourists and they (usually) have no agency in deciding where they stay. Further, does this mean consecutive days - they may go back home on days off -, and does it have to be the same individuals over the 31 days - there may be some staff churn due to illness or redeployment.

Section 2(5) reserves powers to “Welsh Ministers” to change what is included in **Section 1**. (Assume this covers “Cabinet Secretaries”). The power is *draft affirmative*, which is welcome.

Section 3 identifies who will be made responsible for collecting and paying the levy under later sections in the bill. It raises many questions

Section 3(2)(a) in particular refers to the person needing to be “in the course of a trade or business”. What does this mean? Those offering casual lets may well be able to argue that their offer of occasional accommodation is not part of a trade or business as ordinarily understood. Indeed, those casually letting their second home or back bedroom will say that they do it to contribute to the costs of having a second (or primary) home and not as a means of earning a living.

The botched distinction between professional furnished holiday let businesses (FHLs) and casual lets of second homes has already caused problems under the 182-day occupancy rule. If this interpretation of these words in this subsection is correct then it is either double jeopardy (levy and council tax) for professional FHLs or a get-out-of-jail-free card re the levy. Here's why:

A FHL is not treated as a business for local taxation purposes if it fails to meet the 182-day occupancy threshold.

The levy, while centrally managed, is a form of local taxation, being council specific and spent by local councils.

If a self-catering property is not treated as a business because of the 182-day rule (and compelled to pay a council tax premium as a result, identifying it firmly as a second home for local taxation purposes) then is it a "trade or business" for the purposes of this Bill?

It is not sufficient to say that these rules are introduced via different pieces of legislation: WG cannot have it both ways on local taxation.

If this is not the intention, then the Bill needs to define "trade or business" here or in [Section 43](#)

However, it then needs to be clear on the status of casual lets. [Subsection 2\(1\)](#), as we say, appears to envisage their inclusion, in which case the reference to "trade or business" needs to be dropped or a new subsection included to capture casual lets of second homes (and other casual lets)

If the intention is not to include casual lets of second homes (or at all), despite this being where the problems in the self-catering market arise, the question has to be why. Their inclusion was certainly a consideration in the consultation papers. If they are not captured as a result of [Section 3\(2\)\(a\)](#), it will also completely undermine WG's intention to introduce statutory licensing for self-catering units and the development of a register of those offering self-catering.

This inconsistency between **Sections 2 & 3** in this regard needs addressing or clarifying.

Section 3(2)(c) also states that the person offering the accommodation must be “the occupier”. Presumably this means ownership or legal possession rather than living in the unit as that would be impossible for business owners with more than one unit - and not very professional.

Neither can it be the intention of the Bill that a legal tenant of any property can offer their accommodation, professionally or casually, in breach of their own tenancy agreement. Yet the tenant might be “an occupier”. While the three elements of **Section 3(2)** are cumulative, they are also confusing for the reasons above.

Subsection 3(3) refers to a contract being necessary for the person offering the accommodation to be considered a VAP. There is no reference to what the consideration might be in such a contract, here or in **Section 43**. The background to this policy being introduced was predicated on accommodation being let “at a commercial market rate” in order for owners to be liable to collect and pay the levy. The narrative leading up to the consultation was firmly in that vein and approached accordingly.

Here, there is no reference to a commercial rate - a penny might suffice. Or a payment in kind or a house swap. (**Section 3(4)** does make it plain that a contract for accommodation for live-in workers or trainees eg at hotels, are not included in the definition of a “contract” but this is just one exception.)

Section 3(2),(3) & 4 need revisiting to capture or clarify the intention of the Bill

Part Two - Register of Visitor Accommodation Providers

The *duty* to keep a register of VAPs lies with WG. The details to be included on the register, **Section 4(2)**, seem reasonable but can be added to in future. This section could well be extended once statutory licensing comes in. Again WG's powers to change this Section are *draft affirmative* and would need Senedd scrutiny, which is welcome.

There is *duty* for VAPs to “be registered”. Or what? Enforcement will come up later but there's nothing to say here that failure to register is an offence, that an unregistered provider must not offer accommodation etc. These are tax evasion issues (as well as ones of competition, safety etc)

Section 5(2) allows WG to exempt certain provision from being registered but the explanatory notes, gives no indication what they have in mind as a possible example They would have to be units which would otherwise be caught by Part 1.

Section 5(3)(b) allows for the Act itself to be amended but through secondary legislation, which is not ideal. The power is confined to exempting a particular VAP from registration, and will be exercised via the *draft affirmative* procedure. Query whether this would be suitable for the super-affirmative procedure to allow for some targeted consultation.

Section 6 is about the information that WG can publish if they want to. Their power to do so derives from the Bill itself but no insight into what they have in mind or how their decision could be challenged. There is no scrutiny procedure. This is not just a technical, admin issue: VAPs may want some information kept confidential for legitimate reasons.

This matters as, in **Section 7**, WG reserves the power to introduce additional requirements around registration, including at **Section 7(c)** “authorising or requiring disclosure of information contained in the register”. This could include passing on information to HMRC, which would be difficult to object to if the purpose was to help HMRC tackle tax evasion. However, no such restriction or explanation appears in the EM and they could disclose for all kinds of reasons which may prove unwelcome. We caution against an open-ended power for the reasons above.

Further, the other powers listed here relate to variation and cancellation of registration, offence and penalties for, essentially, failure to register properly, review and appeals.

Offences and penalties, in particular, are matters on which WG should have certainty **at this stage**, not to be thought about at some future time. This is not the same as bringing in regulations which may amend existing descriptions as circumstances and policy change: They are about missing bits of legislation which need to be good to go as soon as the Act comes into effect.

It is useful to ask when these regulations will be ready, when will they come into force and when will they come into effect; as soon as possible after the Bill does. The powers are also merely permissive - there is no obligation on WG to introduce them. VAPs who comply will want confirmation that those who do not comply will be dealt with promptly and proportionately. Will draft guidance be available before the end of Stage 2 scrutiny?

Regulations using these powers would also be introduced via the *draft affirmative* procedure which is welcome

Part 3 - Visitor Levy

Chapter One: Application, Operation and Rates of Levy

Section 8 confuses the issue somewhat in that the definition of “visitor accommodation” used in this Chapter only refers to units within the footprint of participating councils, whereas all relevant accommodation has to be registered wherever it is. It also confirms that the WRA, with whom a VAP will be working, is acting as an agent for local authorities rather than being the ‘owner’ of the tax take, and I go back to the earlier point as to whether FHLs paying council tax count as being in “trade or business” when they do not under local taxation rules (if they fail to reach 182 days)

Section 9, the definition of an “overnight stay”. The same points re the unqualified use of the word “contract” and the requirement for the unit to be provided in the course of a “trade or business” can be made here in defining what counts as an overnight stay; **Section (1)(a) and (b)**.

We also come up against the issue of “**any**” of the people staying have the unit as their own residence. This can be read as, if you offer Airbnb to others in your own home, you will not be considered to be offering “overnight stays”. The wording is not the same as **Section 2**’s description of “visitor accommodation” and the Explanatory Note in the EM is misleading as it does not account for the position where not all those staying will be using the place as their primary home.

Again, at **Section 9(5)**, WG has reserved the power to amend all this Section to change what counts as an “overnight stay”. The *draft affirmative* procedure is anticipated once again, which is welcome.

Section 10(2) and **Section 11(a)** give some reassurance. While the unit owner has to pay the levy, whether or not they demand it from the visitor, the **Section 10(2)** states that liability only arises when the visitors actually show up. This gives rise to a situation where a VAP may have

to refund the levy if the customer has already paid in full. It may even be included in a non-refundable deposit, in which case, does that have to be paid to the WRA?

As a per person levy, it won't matter if fewer people arrive than booked for. If more people turn up than booked for **Section 11(a)** says the levy is payable calculated on the number "entitled" to stay there. How does this section cover the situation where more people stay over than expected? If you know or find out that there are more people and don't do anything about it, have you varied the contract terms and you would have to make payment for them all? Do party guests who crash count as overnight stays?

And what if a provider doesn't know? This is why having the appeals process clear from the date the Act comes into effect is critical, because if you don't know, you need to be able to protect your position (see later)

Section 12(2) allows WG to change the rates as you would expect. They would do this via the *draft affirmative* procedure, which is welcome. What would also be welcome is a statement that WG will not use these powers for a given period to allow for the system to bed in.

Section 13 confirms the lower and higher rate types of unit, but also reserves powers to change what falls into which category, including a nil-rate category.. This keeps space clear to include marine accommodation or any new types of offer of an overnight stay. Changes would, again, be introduced via the *draft affirmative* route, which is welcome.

Section 14, the power of councils to raise a premium is completely incompatible with the principle of the Bill and was not covered in public consultation

Here is the relevant section of the EM:

“4.2.7 A point raised by many respondents to the consultation **including many local authorities** was for a levy to be consistent. Question 3 of the consultation explored what local autonomy should be provided for application of a levy. 66% of respondents disagreed with any aspect of local autonomy, believing that a more centrally aligned scheme would be of benefit.

4.2.8 Taking account of feedback on this point, the policy design is based on the application of a national framework for the operation of the visitor levy across those local authorities that choose to introduce it. The programme for government commitment is to ‘permit’ local authorities to raise a visitor levy. Discretion and local decision making are important parameters for the policy. Therefore, local authorities **will decide whether to introduce a levy and how to use revenues**. Should local authorities opt-in, they will be subject to the national framework established for the levy.”

The discretion accepted was for a local authority to decide to raise a levy or not and how to spend it . It was not for the amount charged.

Adding a premium is incompatible with this statement in the EM and was firmly rejected in the in-person consultation meetings led by the industry to complement those run by Visit Wales. It also undermines the *purpose* of central management and administration. This is a local tax raised for local purposes but if there is to be inconsistency regarding amounts charged then the whole admin and management should be devolved to participating councils as well, as with council tax premiums, without the additional expense of a WRA role.

This is not on all fours with the 182-day rule where councils have *no* discretion as to whether to implement the NDR/council tax taxation rules re FHLs; their only discretion is whether to charge a premium or not. In the case of the levy, councils *do* have the discretion whether to participate on the basis of the fees set out on the face of the statute. If it's not cost effective, they don't have to do it (unlike the 182-day rule).

To then give local authorities the powers to raise those fees beyond the consistency protected by having fees on the face of the Bill is incoherent. It is no protection to give WG the powers to cap any premium in [Section 14\(3\)](#) as there is no obligation on WG to do so.

This section should be scrapped in its entirety for inconsistency of policy intention. If WG is determined to pursue this, then they should include a lockstep % or capped figure on the face of the Bill at [Section 14\(3\)](#), otherwise there is little point in [Section 12\(1\)](#) remaining on the face of the Bill.

Consultation beforehand is also no protection. This will be covered under notes for [Chapter 4](#).

[Section 15](#) looks at who would be entitled to ask for a reimbursement of the levy. The Section focuses mainly on people in receipt of a range of disability benefits and companions necessary to effect their care. They and the relevant carers would have to reclaim the equivalent of the levy within 30 days.

The entitlement to - effectively - a refund extends to a particular class of homeless person, and those who had to leave their home due to “a risk to their health, safety or welfare”. The reason given for accommodation used, even temporarily, for this purpose not being automatically

exempt is that it would be insensitive for the VAP to ask someone seeking that accommodation why they are there.

Even so, people fleeing their home for the reasons of fear, especially of violence and abuse, are unlikely to be in a position, practically or emotionally, to think about claiming refunds. Even those shocked by floods, landslips and sink holes may be too dazed to think about this in such a short period of time.

Unless it is the intention of WG to worsen the experiences referred to, the WG needs to reconsider how the Bill deals with them in order to align with the stated purpose of the legislation. These aren't its genuine target and can be differentiated from those on disability benefits on the grounds of being acute rather than chronic circumstances.

Again, who is included in this section of the Act can be amended via the *draft affirmative* procedure. However, as with **Section 7**, these are matters on which there needs to be certainty at the outset as the vulnerability is clear now, as is the likely capacity of those listed in **Section 5(1)(a)&(b)** to meet an application deadline. As well as extending the deadline, it would be helpful to see draft regulations at the same time as the Bill so understand how refunds are to be claimed.

Chapter Two: Accounting for and Payment of the Levy

This Chapter deals with how to make a “return” within each “accounting period”. The latter is defined but what the former looks like is unknown even though the frequency of making them is clear.

Section 16(3) contains typical tax wording which is the space to include an assessment of the figure payable and declarations of honesty. ***With (essentially) a year to make a return, why are we talking “assessment”. The VAP will know what they’ve collected and any software should be reliable. In what circumstances will the VAP or WRA seek to amend the return (Section 20)?***

Whether or not the figure and frequency is appropriate is a policy matter but some clarity is needed on **Section 17(1)(b)** and **Section 17(2)**. It is quite likely that a levy of <£1k will be raised in a first year of less than 12 months before April; therefore, an annual return is permissible. VAPs can also supply an annual return if the preceding year produced a <£1k levy take. Does this mean that an annual return is permissible in the second year even if the anticipated/actual take is >£1k.

Welsh Government can change the nature of what to disclose and when at any time, using secondary legislation, this time through the *negative* procedure. To be fair, most regulations of this type will not be controversial, but sometimes they do need more scrutiny. Here, for example, there may be some issues about how quickly a change is introduced and how practical that is. We recommend the draft affirmative procedure for that reason.

Sections 18 and 19 aim to get everyone preparing their returns for the traditional financial year. For bona fide businesses, this is already an expectation and would be difficult to contest as an appropriate period. However, for the casuals, the most difficult to find, and least likely to be making any HMRC returns, what are the proposal to help/penalise non compliance? The question is raised so that businesses who might miss a deadline are not considered low hanging fruit for penalties when the main evasion of this tax will be the casuals.

Chapter Three: Use of Proceeds of the Levy by Principal Councils

There will be plenty of policy to challenge under this under Chapter, summarised in the observation that the tax take should not just be spent by councils. We try and limit comment on that here but, again, there are issues with the drafting and interpretation we wish to draw to your attention.

Section 23 says that councils must use the proceeds for “destination management and improvement in the area”. Is this one concept or two different ones? **Section 23(2)**, which attempts some definition, gives some examples of what “destination management and improvement” include, but it is neither comprehensive nor clear on whether “improvement” is limited in any way to tourism. Providing better schools or social care in an area is “improvement”, so this needs a redraft to ensure that the “and” functions to combine the terms rather than reinforce their separate nature.

What is the status of the four examples included in **Section 23(2)**? Are these to be priorities for spend as this is not a comprehensive list? Also, by way of example only, what, exactly, is “maintaining and promoting use of the Welsh language” and where is the overt connection to tourism services and experience? There clearly are examples but there is nothing here to limit or target spend on Welsh language in this confined context, which would be necessary to prevent local authorities using tax take beyond the tourism-focus purpose of the levy.

Who would argue with promoting and supporting the sustainable economic growth of tourism, but what is “other kinds of travel”? Tourism isn’t just “travel”. That is a prime example of lack of understanding of the tourism ecosystem. If, however, it means modes of transport which benefit tourists (eg more park and ride/car parks/buses to popular destinations) this needs to be clearer in the drafting.

Section 23(2)(d) is the public toilet/car park clause essentially. The question is whether it’s sufficiently tightly drafted to prevent ‘interpretation bleed’. Just because a visitor might need to see a GP or pharmacist, is not sufficient for funds to be diverted to the local health centre.

It would be worthwhile pressing the Finance Committee for a recommendation that Welsh Government make an early statement or commit to statutory guidance on what this money can NOT be used for.

Section 24 is about the council’s duty to report, annually, on the levy. We are assuming that **Section 24(2)(a)**, in talking about the “amount of levy collected” and the “proceeds of the levy” seek to distinguish between two things - gross and the **Section 22** definition of “proceeds”? - but we are not sure. That needs clarification. It is welcome that **Section 24(2)(b)** requires councils to report what they have spent the “proceeds” on but there is no indication as to the detail required. This is fertile territory for high level figures when we should be looking for the strongest possible granularity so that councils cannot disguise or hide spend under vague classifications or headings. Unlike VAPs, whose relationship with the WRA will require certain details already under the 2016 Act (even though the form of a return is yet unclear), there is nothing in this section to give any direction to assist councils and those scrutinising them.

In marked contrast to **Section 17(3)(b)**, which gives WG the power to change the information which can be required of a VAP to make in their annual returns, there is no equivalent power here at **Section 24(4)** to tell councils what to put in their annual reports; all that can be changed is the frequency of reporting.

Before this Act is passed, we recommend a non-exclusive list of what detail councils should report on on the face of the Bill, or, at least, an amendment to this section to include information required - preferably accompanied by some draft statutory guidance.

Further, the councils have far longer to report than VAPs have to return and pay. There may be practical reasons connected with councils' existing accounting periods, we don't know, but why? Strategic decisions backed by agreed delivery plans should be in place in advance so the ability to scrutinise spend against plans shouldn't be delayed by up to two years.

Chapter Four: Introducing, Changing or Abolishing the Levy

WG will be aware that confidence in public consultation is very low, especially in all matters tourism. Even in the WTA discussion with Jayne Bryant, which included the more switched on estate agents, they didn't know that there was a second homes pilot happening in Dwyfor. In short, there is very little confidence that the private sector, which delivers tourism, will be adequately reached or informed. In those cases where they are (due to membership organisation mainly), their evidence and views are treated as "they would say that wouldn't they"; the content is then underweighted as a consequence of evidence or views which support a WG position is overweighted. Inconvenient truths are invisible truths as far as tourism providers are concerned.

Section 25(2) states that “changing” refers to changing any premium. This should be removed as there has been no discussion of a premium and I refer you back to the notes on **Section 14**.

Section 25(3) imposes a range of duties on councils planning to introduce, change or abolish a levy. They have to explain why to the WRA, notably setting out a cost-benefit analysis to support what they want to do. The section does not set out any detail on how costs are to be identified; nothing on data and assumptions. While you might not expect that in the face of the Bill, there are no powers or duties for WG to issue guidance or provide detail in regulations as to how the figures in the report to the WRA should be calculated. This, again leaves space for obfuscation and delay.

Further, there is no indication as to the purpose of this report to the WRA. They do not appear to have the power to resist a council’s plan or to challenge any inadequacies of process. While this reinforces our point that this is a local tax, with the WRA merely acting as a collecting agency, it also exposes the vulnerability of the VAPs who bear the brunt of a council’s decision. The councils have no responsibility vis a vis individual VAPs, so if the WRA cannot push back against the councils for poorly crafted decisions, who can?

This is an important point on the balance of power. The WRA, on behalf of councils, will be able to collect taxes with some powers of adjustment for error and - in due course - exercise penalty powers to be introduced by WG in the future, in addition to those in the 2016 Act, for non-compliance. By comparison, VAPs can only avail themselves of judicial review to challenge a council’s decision under this section. Judicial review is no remedy at all for an individual, and barely a remedy for a representative group because of the cost. It is also of no help in challenging a council’s process for reaching its decision under **Section 25** if the process for reaching that decision is unclear or incomplete.

I say “incomplete” as the process is partly set out [Section 25\(4\) & \(5\)](#), which define the mandatory consultees to a council’s proposals to introduce, change or abolish the levy. While a list is welcome, the current draft comes with its own problems. [Section 25\(4\) \(b - f\)](#) are straightforward, although it would be worth asking why all neighbouring local authorities have to be consulted. There is a risk of mutual influence which could go either way, and it comes with no guarantee that neighbouring councils would work together strategically. It is [Section 25\(4\)\(a\) and \(g\)](#) which need consideration.

[Section 25\(4\)\(a\)](#) states that “local people” must be consulted. This is defined at [Section 28\(a\)](#) as people who “live, work and study” in the council area. Does it include second home owners (as distinguished from local FHL owners)? Does it include people in long term respite or hospital care from out of county? People not on the electoral register? Refugees and asylum seekers? Moreover, if “non-local” people respond, are their responses disregarded? What weight is given to, say, a petition - not everyone wants to complete a formal consultation response.

[Section 25\(4\)\(g\)](#) specifically includes tourism organisations as mandatory consultees, which is certainly to be welcomed. What would be even more welcome is an obligation to facilitate consultees in their preparation of consultation responses. It would be worth, in the evidence to Committees, asking for a recommendation that councils adopt the same rule that WG does re facilitation (££ usually), and advertises that help as part of the consultation documentation.

In any event, for consultations on changing and abolishing the levy, mandatory consultees should explicitly include those businesses already on the visitor levy register. One of the purposes of having the register is to have communication access to tourism accommodation providers so why not use it! Even for introducing a levy, businesses

whose details are known to councils should be contacted **directly** and not left to tourism membership organisations to find.

The publication of the preliminary and final reports referred to in this section is on the council's website and "in such other manner" as the council thinks fit (as per [Section 43\(2\)](#)). This needs strengthening to include notification to all consultees of the date that they can be found there. There's already too much reliance on psychic powers in public administration.

[Section 25\(9\)](#) is worrying. It allows councils to prepare reports and embark on consultations before this part of the Act comes into force so that they can introduce the levy on Day 1 of coming into force. In this case, it's the day after Royal Assent is received ([Section 44](#)). So it is possible, within 24 hours of the Act becoming law for the 12-month notice of introduction of a levy to be published in any given council area (as per [Section 26](#)).

So, this subsection allows a significant retrospective element to be included in the legal process of introducing a levy. This is still a very uncomfortable situation, especially after the 182-day issue of taking retrospective data into account. A council could start preparing a report and starting a consultation now, based on the contents of the draft Bill, even before any amendments have been tabled - and it may be considered "sufficient" even if there are amendments. This needs to be challenged as the duty on a council to take all these steps does not arise until the day after Royal Assent. Any steps taken prior to that cannot be undertaken in fulfilling that duty as the duty doesn't exist: These are just steps which happen to be (possibly) the same as those newly required. Whichever way you look at it, any activity taken before the Act becomes law cannot be acts of presumed compliance with a new duty which only arises under that Act. It is a step too far to be allowed to rely on a well informed guess.

If I paint my exterior house walls blue because I know there is a law on the horizon which compels me to have blue exterior house walls, this doesn't mean I have complied with that as yet non-existent law. I may even have seen a draft Bill which says I must "paint" my walls blue, and so I've taken the risk, bought some paint and a paintbrush, and have got straight to it. I may even have asked the paint shop and my neighbours what colour blue, as I have to ask them as putative mandatory consultees. And put a notice in my front door about what I planned to do. In the end though, the actual law says I needed to ask my family members as well, and that I needed to use a roller not a paintbrush to do the painting, plus it had to be minimum of two coats. And I needed to tell all my neighbours and the paint shop, not just rely on the notice on my door. So can I be considered to have complied with the requirements of the new law? This subsection says I may!

Section 25(5) places a duty on councils to consider consultation responses. As ever, there is no mention of guidance as to what due regard looks like and, to repeat ourselves, no useful remedy in the event of a potential failure of process.

Section 26 sets out what happens once a decision is made which complies - or it taken to comply - with **Section 25**. Again, it's a publication, this time of a notice of how much the levy (or premium) will be and when it goes live (or, indeed, abolished). That date has to be the first April 1st or October 1st after the 12 month anniversary of the notice being published (6 months for a premium) so you can imagine most councils will be publishing notices as close to those dates as possible. For abolition, it's a date specified in the notice, no notice periods prescribed.

Considering a premium will be just as/more controversial than the statutory levy, we wonder why the notice period is half that for introduction. It's the same level of inconvenience to change all your systems and it has a material as well as reputational effect for you when it comes to advance bookings taken on the basis of the existing levy. This provision should be removed

because of our position on **Section 14** but, if not, the notice period needs to be extended to accommodate a suitable date for advance bookings.

Publication has the same meaning as mentioned in **Section 25** and really should be more widely defined or construed.

Section 27 gives examples of overnight stays which are not captured by the Bill. The main one is advance bookings taken before the council “decided to introduce” or “decided to change” the levy.

What does “decided to introduce the levy” and “decided to change the levy” mean? A handful have already decided, making a joke of the consultation at **Section 25(4)** already. This wording needs to be replaced and a date identified by reference to a date from either **Section 25** or **Section 26**. In **Section 37**, the same wording is used but given a definition specific to that section; there needs to be something similar here.

Section 27(6) prompts a query. The contract referred to needs to be between the visitor and the VAP. There needs to be a clarification around this as to the role of booking agencies and OTAs to ensure that agency relationships do not confuse the identity of the contract parties.

Chapter Five: Special Cases

The provisions of **Sections 29 - 33** deal with the joint and several liability of VAPs who are partners or managers of other non-companies, which could include small community groups, and which are generally welcome.

Again the definition of “occupier” needs attention as it did under **Section 3(2)** to confirm whether the VAP needs to be physically on the premises or not.

Section 31 allows WG to expand provisions for partnerships and unincorporated bodies, suggesting they haven’t really thought this through. We can’t offer any insight into what they might have in mind but it would have to be compatible with existing common, equity and statute law or amend existing England & Wales legislation. Regulations for any change this will be introduced via the *draft affirmative* procedure so MSes will get a say if they’re interested enough, and suggests no major changes to other primary legislation is anticipated.

Section 32 is worth checking as liability for fulfilling all the reporting/paying responsibilities may transfer from a VAP to someone who acts for them while they are ill or insolvent - or dead. The wording allows the WRA to treat the person who’s now stepped in as if they were the VAP “for the purposes of the levy”, which is a pretty wide-reaching statement.

We think it’s been drafted with professional executors and insolvency practitioners in mind primarily, not members of the family having to step in at short notice without much idea of how the person ran the business. They will have bookings to deal with. Whoever steps in has 30 days to inform the WRA and, again, may have no idea they’re supposed to do this. While the WRA needs to know what’s happening, it would not be very equitable to treat the accidental

amateur as a defaulter if they miss half of what they're supposed to do. If the VAP is a casual letter, family members may have no idea that they've even taken money from visitors in any given financial year. There needs to be some protection for good faith errors here and would ask for this to be sorted out before the end of Stage 2.

Sections 33 and 34 are described as “routine powers” to ensure effective assignment of tax liabilities and operations of the tax system for special cases. This may well be the case but these are powers enabling WG to change any enactment relating to the levy in the event of a VAP's death, in capacity, insolvency or transfer of a business as a going concern. This includes transfer of liabilities and potential for penalties. This is a potential bear trap for purchasers of a business who fail to check on whether all tax has been paid or whether there is a WRA enquiry outstanding. On the other hand - don't buy without legal advice!

More importantly, both sections also reserve powers to WG to provide for penalties and appeals. In the first instance, these are dealt with by amending the Tax Collection & Management (Wales) Act 2016 and can be scrutinised as part of this primary legislation, albeit in a non-consolidated draft Bill. Considering the effect of proposed penalties and appeals, these should be consulted upon properly and, so, ***ask the LJC Committee to ask what Welsh Government is doing to draw attention to Schedule 1 before Stage 2.***

We would also ask for certainty that the **Section 34 (3 - 5)** references to “the regulations” are restricted to those defined in **Section 34(2)**, otherwise it gets very generous to WG!

Chapter Six - Miscellaneous - important

Section 35 raises some interesting questions! Where the accommodation crosses a county line, the greater part determines which county it's in for levy purposes. The drafting works fine for a cottage that straddles the border, although it would mean the use of tape measures and surveyors where it's not clear where the larger part of a single unit lies. But what about a much larger footprint? Does a site with three cottages one side count as the greater part of the visitor accommodation if there are just two the other side of the border? What if the two are twice the size of the three? Or what if the clubhouse is one side and the chalets the other, the spa one side and the dining room the other. Or the fact it's postal address is in a non-levy county? This section is effectively meaningless without guidance on what "greater or greatest" part of the premises will look like.

Sections 36 and 37 are important. The first reserves to WG powers to govern third party collection, payment and repayment (by agencies and OTAs) whilst confirming that liability lies with the VAP themselves. The fact there is no indication at all whether WG intends to do anything about this has all the hallmarks of can kicking, whereas VAPs really could do with some support in ensuring that agencies and OTAs behave in a timely and accurate way with the WRA to avoid the VAPs getting into trouble due to a third party failure of some sort.

Further, **Section 37** reserves powers to WG to set out how the existence of the levy is made known to customers eg how it appears on invoices and promotional material. Here, there's a better indication of what penalties for non-compliance with these unknown rules would look.

In combination, these rules are necessary to ensure that OTAs (as advertising vehicles) in particular, but agencies and owner managers too are transparent and can avoid penalties. We would say, then, that these should be duties for Welsh Government to introduce these missing

details (and as soon as possible), as this leaves a particularly contentious area undecided as the Bill moves through the Senedd. For the same reason, as it cannot be scrutinised as part of primary legislation, the regulations - which we suggest “must” not “may” be introduced - should be brought in via the super affirmative procedure at first introduction, draft affirmative for changes over time.

Section 39 says WG can issue guidance in relation to implementing the Act and any subsequent regulations - and it has to consult who it thinks appropriate first. We think it’s worth pushing for as much draft guidance as possible to be published in time for Stage 2 scrutiny. It will be indicative only and pre-consultation, but it will help fill some of the policy intention gaps referred to. The good point in **Section 39(2)** is that councils must have regard to any such guidance - not “should” or “may” - which gives it the weight of statutory guidance. However, we refer back to the point about the lack of means of challenging a local authority.

Section 40 is the reservation of powers to extend the Act via regulation. As this is another can kicked down the road, absolutely should have been covered on the face of the Bill, then I’d push for ***the super affirmative process*** for any of these regulations too. It’s probably a candidate for this being a duty not a power too as this limbo could go on indefinitely.

Sections 41 and 42 are the usual, annoying, catch all clauses which allow WG to make regulations in connection with the Act that they hadn’t thought of, including amending the primary legislation. However, at least any such attempt has to survive the draft affirmative procedure.

Section 44 - Apparently, you pick this up as standard!

Wales Tourism Alliance

bethan@wta.org.uk

Agenda Item 3.1

SL(6)567 – The Health Services (Provider Selection Regime) (Wales) Regulations 2025

Background and Purpose

These Regulations change the way that health services, provided as part of the NHS in Wales, are procured.

The Regulations replace the existing public procurement regime provided by the Public Contracts Regulations 2015 (PCR 2015). The Regulations also respond to wider changes in the public procurement legal landscape in the United Kingdom, which has seen a number of changes since the United Kingdom left the European Union.

Key developments have included the Procurement Act 2023, which reforms the way in which public bodies procure goods and services and repeals the PCR 2015. Changes to the way health care services are procured in England have also occurred with the introduction of the Provider Selection Regime by the UK Government.

In light of these changes, the Health Service Procurement (Wales) Act 2024 provides the Welsh Ministers with powers to implement changes to health service procurement in Wales.

The Regulations provide for the introduction of a bespoke procurement regime, to be known as the 'Provider Selection Regime Wales' or 'PSR Wales', for the procurement of health services provided as part of the NHS in Wales. The Regulations broadly seek to restore the 'level playing field' for health service procurement across England and Wales, providing a new regime governing the procurement of these services in Wales.

The Regulations apply to the procurement of health services by relevant authorities in Wales, i.e.

- a county council or county borough council;
- a local health board;
- a National Health Service trust;
- a special health authority.

Schedule 1 to the Regulations sets out the relevant health services, by reference to Common Procurement Vocabulary (CPV) codes. Schedule 1 includes, for example:

- Surgical hospital services
- Rehabilitation hospital services
- Outpatient care services
- Cardiology services
- Services provided by nurses
- Physiotherapy services
- Ambulance services
- Residential nursing care services
- Optician services



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(i) – that there appears to be doubt as to whether it is intra vires

Regulation 5(c) says that when procuring relevant health services, a relevant authority must act having regard to the Wales procurement policy statement published under section 14 of the Procurement Act 2023.

We make the following points:

- (a) The reference to the policy statement in regulation 5(c) does not appear to be a reference to a specific, existing policy statement. The reference appears to include future statements published under section 14.
- (b) Policy statements published under section 14 could change the effect of the Regulations. When procuring relevant health services (i.e. when implementing the Regulations), relevant authorities will not be able to ignore the policy statements – relevant authorities will have to consider the statements carefully and follow them unless there is a good reason not to. Therefore, the policy statements may have an effect on the Regulations.
- (c) There is a long-standing presumption against sub-delegation.
- (d) We are concerned that regulation 5(c) amounts to unauthorised sub-delegation because it could allow the Welsh Ministers to change the effect of the Regulations via policy statements.
- (e) The enabling powers are powers to make provision by Regulations, not by policy statements.
- (f) If anything is intended to change the effect of the Regulations, it must be set out clearly and precisely in the Regulations themselves. This ensures that the appropriate parliamentary procedure applies to anything that changes the effect of the Regulations.



(g) We agree with the following passage from Craies on Legislation (12th edition):

3.5.4 As well as making no difference for purposes of lawfulness on whom a power to delegate is conferred, it also makes no difference how it is framed or described. A power to make regulations is obviously identifiable as a sub-delegation; but a power to do anything that determines the ultimate effect of the law concerned is equally, but less obviously, a sub-delegation, and its lawfulness or otherwise will depend on the extent of the enabling power.

We ask the Welsh Government whether regulation 5(c) has any effect on the Regulations?

If not, why is regulation 5(c) included in the Regulations?

If yes, does the Welsh Government consider that regulation 5(c) amounts to sub-delegation, and if so, which power is the Welsh Government relying on to make that sub-delegation?

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required to the reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

15 January 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

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Legislation, Justice and Constitution Committee



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Health Services (Provider Selection Regime) (Wales) Regulations 2025**

DATE **07 January 2025**

BY **Jeremy Miles MS, Cabinet Secretary for Health and Social Care**

Following the withdrawal of the draft Health Services (Provider Selection Regime) (Wales) Regulations 2024 on 19 September 2024, an updated statutory instrument has today been laid before Senedd Cymru.

The draft Health Services (Provider Selection Regime) (Wales) Regulations 2025 ('the draft regulations') will introduce a new regime for the procurement of health services on behalf of the NHS in Wales, as provided for by the Health Service Procurement (Wales) Act 2024.

The draft regulations will apply to 'relevant authorities', as defined in section 10A(9) of the National Health Service (Wales) Act 2006, and disapply the UK Government's Procurement Act 2023 in relation to health service procurement in Wales.

Subject to approval by the Senedd, the draft regulations will come into force on 24 February 2025 to coincide with the commencement of wider public procurement reforms being introduced by the Procurement Act.

The draft regulations are accompanied by draft [statutory guidance and training materials](#). These documents are available for stakeholders to familiarise themselves with the operational principles ahead of the proposed changes to health service procurement in Wales.

Agenda Item 4.1

SL(6)552 – The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (No. 2) (Wales) Regulations 2024

Background and Purpose

These Regulations amend, in relation to Wales, Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries (EUR 2019/1793).

Regulation 2 makes provision to update the lists of high-risk food and feed of non-animal origin in Annexes 1 and 2 to EUR 2019/1793. Regulation 2(5) and (6), and Schedules 1 and 2, substitute those Annexes. The substitution of Annex 1 is made using powers in Articles 47(2)(b) and 54(4)(a) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (EUR 2017/625). The substitution of Annex 2 is made using powers in Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (EUR 2002/178) and Article 54(4)(b) of EUR 2017/625.

Regulation 2(3) amends EUR 2019/1793 (using powers in Article 34(6) of EUR 2017/625) to make provision in relation to sampling and analysis for the hazard pentachlorophenol and dioxins in guar gum listed in Annex 1 (as substituted by these Regulations). Regulation 2(2) and (4) makes consequential amendments to EUR 2019/1793 following the removal of the entry in Annex 2 for guar gum (by these Regulations).

Regulation 3 makes consequential amendments to the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024, to remove earlier amendments to EUR 2019/1793 that are superseded by the amendments made by these Regulations.

Procedure

Negative

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



Technical Scrutiny

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

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

In regulation 2(3), there is a difference between the English and Welsh text. In the English text, the location of the text for amendment is identified as "In Article 3(d)..." . But in the Welsh text, it states that the text is "In Article 3(b)..." ("Yn Erthygl 3(b)...").

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.

These Regulations correct an error identified during our scrutiny of [The Official Controls \(Import of High-Risk Food and Feed of Non-Animal Origin\) \(Amendment of Commission Implementing Regulation \(EU\) 2019/1793\) \(Wales\) Regulations 2024](#). In Schedule 2 to those Regulations, in Annex 2 to retained Regulation 2019/1793, in Table 1, in the entry for Sudan (SD), in the second column, in the Welsh text, the English words "Groundnut flours and meals" were translated into Welsh as "Blawd a phrydau bwyd cnadaear". However, these words should not have been translated into Welsh because retained Regulation 2019/1793 was not made in Welsh (as it is not an official language of the European Union). These Regulations correctly refer to "Groundnut flours and meals".

This is not referenced in section 2 of the Explanatory Memorandum (Matters of special interest to the Legislation, Justice and Constitution Committee).

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 9 December 2024 and reports to the Senedd in line with the reporting points above.



Government Response: The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (No. 2) (Wales) Regulations 2024

Technical Scrutiny point 1: The Government acknowledges the point – the Welsh language text of regulation 2(3) refers to “Article 3(b)”, when it should refer to “Article 3(d)”. The English language text is correct.

The error has been addressed via correction slip.

https://www.legislation.gov.uk/wsi/2024/1214/pdfs/wsics_20241214_we_001.pdf

Merits Scrutiny point 2: These Regulations did not specifically correct the point raised in the Committee’s report on the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024, and subsequently they were not, as per paragraphs 3.5.20 onwards in The National Archives’ Statutory Instrument Practice, made available free of charge to purchasers of the original WSI, and did not contain the relevant “free of charge” Headnote. Therefore, no explanation was considered necessary in the Matters of special interest to the Legislation Justice and Constitution Committee.

SL(6)561 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Miscellaneous Amendments) (Wales) Regulations 2025

Background and Purpose

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

These Regulations make amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively as “the 2013 CTRS Regulations”). It updates certain figures used to calculate an applicant’s entitlement to a reduction under a CTRS, and the subsequent level of reduction.

In addition to updating the financial figures, these Regulations make technical and consequential amendments to:

- Provide that where a person is in receipt of Universal Credit, and where relevant information has been shared with a local authority, then that authority may treat that as an intention to apply for CTRS and to process that application in accordance with the 2013 CTRS Regulations.
- Allow displaced persons from Sudan, Israel, Palestine and Lebanon access to the CTRS in Wales.
- Ensure that “no CTRS applicant living in Wales is negatively impacted because they have received a payment made under the Victims of Overseas Terrorism Compensation Scheme”, as explained in the Explanatory Memorandum to these Regulations.
- Mirror changes made in England to omit references to the “Lower Profits Threshold” for National Insurance Contributions, to reflect the fact that from 6 April 2024, self-employed people with profits above £12,570 (the lower profits threshold) are no longer liable to pay Class 2 NICs and instead are treated as having paid Class 2 NICs.
- Reflect the updated title of the Migrant Victims of Domestic Abuse Concession.

The Cabinet Secretary for Finance and Welsh Language, Mark Drakeford MS, issued a [Written Statement](#) in relation to these Regulations on 10 December 2024.

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(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulations 5(e)(ii), 8(e)(ii) and 17(b) of these Regulations, textual amendments are made to omit the phrase “or the amount specified in **section 11(4)(a)** of that Act (**lower profits threshold** in relation to Class 2 contributions)” from various provisions in the 2013 CTRS Regulations. However, the reference to “section 11(4)(a)” and the words “lower profits threshold” in that phrase were only introduced to the English language text by previous amendments made by regulation 5 of the Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022, which is a UK statutory instrument.

As a result, the existing Welsh language text of those various provisions does not appear to have been amended to include that reference and those words at any time. Therefore, in the Welsh text, the amendments made by regulations 5(e)(ii), 8(e)(ii) and 17(b) of these Regulations are incorrect when identifying the existing text to be omitted as including the reference “section 11(4)(a)” and the words “lower profits threshold” as they do not appear to have been inserted in the existing Welsh language text of the 2013 CTRS Regulations.

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 13 January 2025 and reports to the Senedd in line with the reporting point above.



Government Response: The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Miscellaneous Amendments) (Wales) Regulations 2025 (the “2025 Regulations”)

Technical Scrutiny point 1: The point is agreed, save that regulation 5 of the Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022 only had the effect of adding “(a)” after section 11(4) and amending “small” to “lower” in the English language text of the 2013 CTRS Regulations. “Section 11(4)” and “profits threshold” are in fact present in the Welsh language version of the 2013 CTRS Regulations. However, we will ensure that the 2025 Regulations are corrected as set out below prior to 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 style="text-align: center;">Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor (Gofynion Rhagnodedig a'r Cynllun Diofyn) (Diwygiadau Amrywiol) (Cymru) 2025</p> | <p style="text-align: center;">The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Miscellaneous Amendments) (Wales) Regulations 2025</p> |
| <p>In regulations 5(e)(ii), 8(e)(ii), and 17(b), the words “yn y testun Saesneg” will be inserted at the start of each provision.</p> <p>In regulations 5(e), 8(e), and 17(b), a new sub-paragraph will be inserted:</p> <p>“(iii) yn y testun Cymraeg, hepgorer “neu’r swm a bennir yn adran 11(4) o’r Ddeddf honno (trothwy elw isel mewn perthynas â chyfraniadau Dosbarth 2)””</p> | <p>In regulations 5(e)(ii), 8(e)(ii), and 17(b), the words “in the English language text” will be inserted at the start of each provision.</p> <p>In regulations 5(e), 8(e), and 17(b), a new sub-paragraph will be inserted:</p> <p>“(iii) in the Welsh language text, omit “neu’r swm a bennir yn adran 11(4) o’r Ddeddf honno (trothwy elw isel mewn perthynas â chyfraniadau Dosbarth 2)””</p> |
| <p>Minor issues related to footnotes and cross referencing in the Explanatory Note will also be corrected.</p> | |

**Legislation, Justice and
Constitution Committee**

Welsh Parliament
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0300 200 6565

Julie James MS
Counsel General and Minister for Delivery

16 January 2025

Dear Julie

Statutory instruments considered by the Legislation, Justice and Constitution Committee

You will be aware that the Committee has been monitoring when and how the Welsh Government corrects errors in Welsh statutory instruments that have been identified by the Committee in its reports to the Senedd.

At our meeting on 13 January 2025, we discussed the statutory instruments considered by the Committee during 2024 where the Welsh Government has indicated that it will bring forward an amending instrument to rectify errors the Committee has identified.

Our discussion also included the Committee's consideration of The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022, and the subordinate legislation which was expected in 2024 relating to a healthy food environment.

The Committee agreed that it will write to the relevant Welsh Ministers in relation to instruments where it would appear that amending instruments are overdue.

In addition, the Committee agreed that its analysis should be shared with you for information. The analysis we considered is included in the enclosed Annex.

The Committee's intention is to routinely update its analysis and discuss on a termly basis what, if any, action may be required.

Yours sincerely,

Mike Hedges

Mike Hedges

Chair

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|----|--------------------------|---|--|-------------------|---|---|-------------------------------------|
| 1. | 292, 22 Nov 2022 | <u>The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022</u> | 25 – “In Direction 2009/156, in relation to the query as to why Article 5(5)(a) is not listed, the Government have reviewed and confirm that it has been omitted by oversight and should be included in the list of functions in the Schedule. The Government proposes remedying this by amending statutory instrument early in 2023.” | No | <u>Latest letter from the Welsh Government, 18 October 2024:</u> ““You request a definitive timetable for introducing an amendment Statutory Instrument (SI) to resolve Reporting Point 25. My officials are working to introduce this within the next six months.” 6 months will expire in mid-April 2025 | Rural affairs | Due within next 6 months |
| 2. | 427, 5 Dec 2023 | <u>The Building Control Profession (Charges) (Wales) Regulations 2023</u> | 3 - “We will insert the missing wording into the Welsh regulation when the Regulations are next updated, we | No | | Climate Change | Promised but no timeframe specified |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|----|--------------------------|---|---|-------------------|--|---|---------|
| | | | do not have a timeframe for this currently." | | | | |
| 3. | 431, 12 Dec 2023 | <u>The Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023</u> | <p>2 – "we will look to make a future amendment to assist the reader in the next appropriate instrument, that is likely to be made in the autumn."</p> <p>6 – "We agree that there is a historical error that requires correction and will look to make the necessary amendments in the next appropriate instrument. We anticipate that being in the autumn."</p> <p>7 – "We agree that this is an error and will look to make the necessary amendment in the</p> | No | <p>Corrections should have been made in the autumn of 2024.</p> <p>See <u>SL(6)510</u></p> <p>The Committee's advisers believe that points 7 and 8 were resolved via a correction slip in August 2024, although this was not drawn to the attention of the Committee.</p> | Education | Overdue |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|----|--------------------------|---|--|-------------------|---|---|-------------------------------------|
| | | | <p>next appropriate instrument. We anticipate that being in the autumn.”</p> <p>8 – “We agree that the omission of the italicised Welsh definitions following the corresponding English definitions is an error and will be corrected in the next appropriate instrument. We anticipate that being in the autumn.”</p> | | | | |
| 4. | 437, 20 Dec 2023 | <u>The National Health Service (General Medical Services Contracts) (Wales) (Amendment) Regulations 2023</u> | 5-8 – “The Welsh Government notes this point and will make an amendment to the principal Regulations when the opportunity arises.” | No | <u>Letter to the Welsh Government</u> , 31 January 2024, and <u>Letter from the Welsh Government</u> , 19 February 2024 | Health | Promised but no timeframe specified |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
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| | | | | | See also <u>SL(6)504</u> and <u>SL(6)542</u> | | |
| 5. | 441, 10 Jan 2024 | <u>The Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024</u> | 3 – “The Welsh Government notes that the text of the Welsh and English provisions of new rule 5C(7) (inserted by paragraph 6(3) of Schedule 1 to the Order) produce opposite meanings. The English text identified is correct, and the equivalent Welsh text should read “Where the authority do not hold records of that person’s pay for that period...” (emphasis added). The Welsh text will be amended accordingly | Yes <u>SL(6)530</u> laid 23 Sept 2024 | <u>Letter to the Welsh Government</u> , 7 February 2024, and <u>Letter from the Welsh Government</u> , 22 February 2024 In laying <u>SL(6)530</u> , the <u>Welsh Government wrote</u> to the Committee re: reporting point 6 on <u>SL(6)441</u> : “On reflection I think it is more appropriate to allow that heading | Social Partnership | Amending SI laid |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|---|---|--------|
| | | | <p>at the next available opportunity.”</p> <p>6 – “The Welsh Government notes that there is a difference in the headings for paragraph 1 of Schedule 2 to the Order, between the Welsh and English texts. The reference to “Part 1” in the English text is correct, and the Welsh translation should reflect that. The Welsh text will be amended accordingly at the next appropriate opportunity.”</p> | | <p>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</p> | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|----|--------------------------|---|---|-------------------|---|---|-------------------------------------|
| | | | | | 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." | | |
| 6. | 444, 15 Jan 2024 | <u>The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024</u> | 1 – "The Welsh Government notes the Committee Report and agrees that it would have been helpful to refer to the definition in section 167A(6)(b) of the Education Act 2002. The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 Regulations will be | No | | Education | Promised but no timeframe specified |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|----|--------------------------|--|--|--|-----------------------------------|---|-------------------------------------|
| | | | amended to address this point at the next available opportunity. " | | | | |
| 7. | 453, 2 Feb 2024 | <u>The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024</u> | 1 – "A further statutory instrument is planned that will substitute an updated Annex 2 to that Regulation; that instrument is anticipated to be made in the fourth quarter of 2024." | Yes <u>SL(6)552</u> , laid 27 Nov 2024 | | Wellbeing | Amending SI laid |
| 8. | 454, 9 Feb 2024 | <u>The National Health Service Joint Commissioning Committee (Wales) Regulations 2024</u> | 2 – "The Welsh Government agrees that including a definition of these bodies would have been more precise, however, in context, the intention and legal effect is clear and correct. We will take the opportunity the | No | | Health | Promised but no timeframe specified |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|--|-------------------|-----------------------------------|---|--------|
| | | | next time the Regulations are amended to address this issue as necessary." | | | | |
| | | | 4 – "The Welsh Government agrees that including a definition of Integrated Care Board may have been more precise, however, in context, the intention and legal effect is clear and correct. We will take the opportunity the next time the Regulations are amended to address this issue as necessary." | | | | |
| | | | 5 – "The Welsh Government agrees that the reference to section 11 of the Act | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
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| | | | <p>within Schedule 2, in paragraph 6(1)(a) was unnecessary, however, the provision has the correct legal effect. We will take the opportunity the next time the Regulations are amended to address this issue as necessary."</p> <p>6 - "The Welsh Government agrees with the point raised by the Committee, however, the intention and legal effect is clear and correct. We will take the opportunity the next time the Regulations are amended to address this issue as necessary."</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|---|--|-------------------|---|---|-------------------------------------|
| 9. | 457, 20 Feb 2024 | <u>The Special Schools Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2024</u> | 3 – “A small alteration to the wording may assist the reader, but this is not an urgent amendment required to the regulations and will be reviewed at the earliest opportunity to amend. ” | No | | Social Services | Promised but no timeframe specified |
| 10. | 466, 8 March 2024 | <u>The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) (Amendment) Regulations 2024</u> | 3 – “The Welsh Government acknowledges that there is an error in the Welsh text of the Schedule to the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 (“the Maintained School Regulations”). The reporting point does not relate to an error | No | Corrections should have been made by the end of 2024. | Education | Overdue |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | <p>in the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) (Amendment) Regulations 2024 ("the 2024 PRU Regulations") but to an error in the Maintained School Regulations. The purpose and effect of the 2024 PRU Regulations is to change the law in relation to PRUs. We will make the necessary amendment to the Maintained Schools Regulations to correct the error the next time those Regulations are amended, which is anticipated to be later this year."</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|---|--|--|-----------------------------------|---|-------------------------------------|
| 11. | 470, 11 March 2024 | <u>The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2024</u> | 2 – “We note the merit points concerning regulation 6 of the Regulations and the historical error in regulation 9(1)(a) of the principal Regulations. However, we do not think the current drafting creates any uncertainty or lack of clarity to the reader such that any amendments are required at this stage, but these errors will be corrected the next time the principal Regulations are amended.” | No | | Climate Change | Promised but no timeframe specified |
| 12. | 489, 29 May 2024 | <u>The Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments)</u> | 2 – “The Welsh Government agrees with the reporting point. Whilst we do not consider that the minor error will | Yes <u>SL(6)536</u> , laid 9 Oct 2024 | | Education | Amending SI laid |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|--|---|-------------------|-----------------------------------|---|--------|
| | | <u>(Wales) Regulations 2024</u> | mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible." | | | | |
| | | | 6 – "The Welsh Government agrees that a better approach would be to rely on the definition of "working day" in the Legislation (Wales) Act 2019. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible." | | | | |
| | | | 8 – "The Welsh Government agrees | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | <p>with the reporting point which arose as a result of reliance on an error on the legal database, Lexis. Whilst we do not consider that the minor error will mislead anyone the 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible."</p> | | | | |
| | | | <p>10 – "The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible."</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|----------|---|-------------------|---|---|---------|
| | | | <p>11 – “The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.”</p> <p>12 – “The Welsh Government agrees with the reporting point. The 2024 Regulations will be amended to address the point before the end of the current Senedd Cymru term at the latest and sooner if possible.”</p> | | | | |
| 13. | | | 2 – “The Government agrees with the point raised and we will | No | <u>Letter to the Welsh Government</u> , 1 July | Finance | Overdue |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|--|--|-------------------|--|---|--------|
| | 493, 11 June 2024 | <u>The Procurement (Wales) Regulations 2024</u> | <p>amend this via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force."</p> <p>6 – "The Government notes the reporting point and whilst we think the intended meaning is clear here, we will look to amend this by adding 'or' via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force, this amendment will be included in that instrument."</p> <p>7 – "The Government agrees with the reporting point on</p> | | <p>2024, and <u>Letter from the Welsh Government</u>, 2 September 2024</p> <p>2 September letter states "I can confirm this work is being progressed and Regulations to update the names will be laid in September 2024 with the intention that, subject to the will of the Senedd, they will be made in October to commence on 28 October 2024."</p> | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | <p>regulation 28(2)(e)(vi), we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead of this regulation coming into force. Regulation 41(3) signposts the reader to the provision which requires contracting authorities to publish contracts as modified or modifications in certain cases.”</p> <p>9 – “The Government agrees the reporting point in respect of regulation 46(3)(b) and (c) and regulation 49, we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|--|--|-------------------|--|---|--------------------------|
| | | | of these regulations coming into force and these amendments will be included within that instrument." | | | | |
| 14. | 503, 26 June 2024 | <u>The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024</u> | 3 – "In relation to point a), the Welsh Government accepts the point raised and will take steps to correct this. The Welsh Government is satisfied these minor differences do not undermine the legal effect of the instrument. In relation to point b), a line of text has been erroneously omitted from the definition. An amendment will be brought forward to rectify this." | No | <p>The Welsh Government response to the report concluded – "The Welsh Government aim to bring forward legislation which will make the required corrections by Spring 2025."</p> <p>The SI breached the 21 day rule - <u>letter to Llywydd</u>, 26 June 2024</p> | Rural Affairs | Due within next 6 months |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|--|-------------------|-----------------------------------|---|--------|
| | | | <p>5 – “In article 8(3) the intention is to refer to the period of any given permit period and not to the definition of the “single permit period”. The term “permit period” takes its ordinary meaning. The Welsh Government are satisfied no additional definition is required. However, steps will be taken to ensure equivalence between the English and Welsh texts.”</p> <p>7 – “The Welsh Government agrees with the point raised. An amendment will be brought forward to rectify this.”</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | 10 – “The Welsh Government agrees with the point raised and will take steps to correct this typographical error.” | | | | |
| | | | 11 – “The Welsh Government agrees with the reporting point and will take steps to address this. “Bernir” is the better term and “barnu” is the glossary term for “deem”.” | | | | |
| | | | 14 – “The Welsh Government agrees with the reporting point and steps will be taken to correct the omission.” | | | | |
| | | | 15 – “The Welsh Government agrees with the reporting | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|--|-------------------|-----------------------------------|---|--------|
| | | | <p>point and steps will be taken to remove remaining references to "cockle" from Byelaw 13A of the Byelaws of the former North Western and North Wales Sea Fisheries Committee."</p> <p>16 – "The Welsh Government agrees with the reporting point and steps will be taken to correct the reference to the Byelaws."</p> <p>17 – "In relation to article 9(4), the Welsh Government agrees with the reporting point and steps will be taken to replace the verb "will". In relation to article 12(1)(b) and (c), the Welsh</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|--|-------------------|-----------------------------------|---|--------|
| | | | <p>Government agrees with the reporting point and steps will be taken to replace the verb "will". In relation to article 16(2), the Welsh Government agrees with the reporting point and steps will be taken to replace the verb "will".</p> <p>20 – "As indicated in the Explanatory Memorandum, maps have been made available online. Maps of the individual fisheries are also provided with permit conditions. However, the point is noted and the Welsh Government will consider an</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|--|---|---|---|---|------------------|
| | | | amendment to the Order to add clarity." | | | | |
| 15. | 504, 28 June 2024 | <u>The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024</u> | 2 – "The Welsh Government is grateful to the Committee for raising this point and accepts further clarity is required. We will seek to make the provision clearer at the next available opportunity, and within the next 12 months." | Yes <u>SL(6)542</u> , laid 25 Oct 2024 | | Health | Amending SI laid |
| 16. | 507, 18 July 2024 | <u>The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) Regulations 2024</u> | 3 – "The Welsh Government notes the point raised, but do not consider it to have any practical impact on the operation of the provision or instrument. However, as amending regulations are required to address reporting point 6, we | No | Corrections should have been made by the end of 2024. | Rural Affairs | Overdue |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | will take that opportunity to amend the provision.” | | | | |
| | | | 5 – “The Welsh Government notes the point raised, but do not consider it to have any practical impact on the operation of the provision or instrument. However, as amending regulations are required to address reporting point 6, we will take that opportunity to amend the provision.” | | | | |
| | | | 6 – “The Welsh Government notes the point and will amend these Regulations to achieve a consistent reference to a “period of 4 months”. This will | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
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| | | | be addressed by amending regulations which we aim to introduce before the end of 2024.” | | | | |
| | | | 7 – “The Welsh Government notes the point raised, but do not consider it to have any practical impact on the operation of the provision or instrument. However, as amending regulations are required to address reporting point 6, we will take that opportunity to amend the provision.” | | | | |
| 17. | 510, 19 July 2024 | <u>The Education (Student Finance) (Miscellaneous Amendments)</u> | 1 – “We agree that there is a historical error and an error made by these Regulations that | No | The corrections are not technically overdue, but the same issues were raised during the | Education | Due within next 6 months (but see entry no.3) |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|---|--|--|---|---|------------------|
| | | <u>(Wales) Regulations 2024</u> | require correction and will look to make the necessary amendments in the next appropriate instrument. We anticipate that being in early 2025.” | | scrutiny of 431 (see entry no.3 above). | | |
| | | | 4 – “We agree that there is a historical error that requires correction and will look to make the necessary amendment in the next appropriate instrument. We anticipate that being in early 2025.” | | | | |
| 18. | 516, 11 Sept 2024 | <u>The Listed Buildings and Conservation Areas (Procedure and Interest Rate)</u> | 4, 5, 6 – WG response did not suggest amending the SI, but see correspondence | Yes <u>SL(6)555</u> , laid 29 Nov 2024 | <u>Letter to the Welsh Government</u> , 11 October 2024, and <u>Letter from the Welsh</u> | Culture | Amending SI laid |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|--|---|--|---|---|------------------|
| | | <u>(Wales) Regulations 2024</u> | | | Government , 24 October 2024 24 October letter states "we will address these points in a correcting instrument before the end of the year" | | |
| 19. | 517, 11 Sept 2024 | <u>The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024</u> | 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." 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 | Yes <u>SL(6)555</u> , laid 29 Nov 2024 | | | Amending SI laid |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | <p>before the end of the year.”</p> <p>6 – “The Welsh Government accepts the point and will make an amending instrument before the end of the year.”</p> <p>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.”</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|--|--|-------------------|--|---|--------------------------|
| | | | <p>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.”</p> | | | | |
| 20. | 538, 18 Oct 2024 | <u>The Nutrition and Health Claims (Wales) (Amendment) Regulations 2024</u> | <p>The original response from the Welsh Government said correction slips would be sought.</p> <p>2 – “The Welsh Government agrees that the term “specified provision of the</p> | No | <u>Letter to the Welsh Government</u> , 28 November 2024, and <u>Letter from the Welsh Government</u> , 6 January 2025 | Wellbeing | Due within next 6 months |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|---|---|--------|
| | | | <p>Regulation" in the modified text of the 1990 Act has not been given a meaning. We are investigating with the SI Registrar the possibility of making the change by correction slip.</p> <p>3 – "The Welsh Government agree that the location of the modification to the 1990 Act is not correctly described and the numbering of "(1B)" should instead refer to "(1A)". We are investigating with the SI Registrar the possibility of making the change by correction slip.</p> <p>6 – "The Welsh Government agrees that the modification</p> | | <p>The Deputy Minister's letter of 6 January states that "the Welsh Government will now prepare further amending regulations to be laid early in the new year to correct all three points within one Statutory Instrument to aid in the accessibility of the law"</p> | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
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| | | | to section 37(1) inserted by paragraph 5 of the new Schedule in relation to "unauthorised" is incorrect and should instead be "authorised". We are investigating with the SI Registrar the possibility of making the change by correction slip." | | | | |
| 21. | 544, 8 Nov 2024 | <u>The Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Wales) Order 2024</u> | 1 – "The Welsh Government accepts that there is an inconsistency between the wording of the entries in Column 1 of Table 1 and will take steps to correct this when the instrument is next amended. However, the Welsh Government is satisfied | No | | Rural Affairs | Promised but no timeframe specified |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|---|-------------------|-----------------------------------|---|--------|
| | | | <p>that this difference does not undermine the legal effect of the instrument. The wording replicates that of the Animal Gatherings (Fees) (Wales) Order 2018 (the "2018 Order"), which is amended by this instrument. The 2018 Order makes provision for the determination of fees payable to the Welsh Ministers for the issue, amendment or renewal of licences for animal gatherings under the Animal Gatherings (Wales) Order 2010, amongst other provisions. At present, the prescribed fees included in the 2018 Order are scheduled to be</p> | | | | |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|-----|--------------------------|--------------------------------------|--|-------------------|--|---|---------|
| | | | reviewed in 2026. However, in the meantime, should the powers under section 84(1) of the Animal Health Act 1981 be exercised by statutory instrument to prescribe other fees, the Welsh Government will consider amending Column 1 of Table 1 in that earlier instrument, if appropriate." | | | | |
| 22. | NA | Healthy food environment regulations | NA | NA | <u>Latest letter</u> , 1 July 2024 1 July letter states that the Welsh Government intended to lay the Regulations before the end of 2024. "The intention is for there to be a 12- | Health | Overdue |

| | SI number, and date laid | SI title | Relevant reporting points, and Welsh Government response | Amending SI laid? | Notes and relevant correspondence | Welsh Government department / policy area | Status |
|--|--------------------------|----------|--|-------------------|--|---|--------|
| | | | | | month implementation period, which would allow industry the time to make the necessary changes before, subject to Senedd approval, the coming into force of the regulations towards the end of 2025" | | |



Llywodraeth Cymru
Welsh Government

Our ref: MA/SM/10886/24

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

14 January 2025

Dear Mike,

The Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025

I wish to inform the Committee of my intention to consent to Andrew Gwynne MP, the Parliamentary Under-Secretary of State for Public Health and Prevention laying before Parliament, pursuant to the affirmative procedure, the Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025 (“the Regulations”).

The purpose of the Regulations is to make substantive reforms, on a GB-wide basis, to the pre-market authorisation processes within regulated food and feed product legislative regimes. The Regulations aim to reduce the regulatory burden of the approval process for regulated products for food and feed that are put on the GB market.

The Regulations will deliver two main policy proposals:

- the removal of the fixed 10-year authorisation period (and associated renewal processes) from three regulated product regimes, and
- enable regulated product authorisations to be made by ministerial decision, rather than being prescribed in regulations by way of statutory instrument. Details of the authorisations are to be made available to the public within an official register or list published and maintained by the Food Standards Agency (FSA).

All statutory legislation containing the existing authorisations will be revoked. The existing authorisations will remain valid and continue to have effect by virtue of the transitional and

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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.

savings provisions in the Regulations. Publicly accessible details of the existing authorisations will be made available in the FSA's published and maintained lists.

The Regulations will make necessary consequential amendments to certain domestic and assimilated legislation. Existing Welsh subordinate legislation that reference amended legislation require minor consequential amendment to remain operable. All changes to bilingual Welsh subordinate legislation will be made bilingually.

As the authorisations are subordinate legislation, albeit not made by statutory instrument they will be made bilingually and published on the Welsh Government website.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, providing consent for the laying before Parliament, of the Food and Feed (Regulated Products) (Amendment, Revocation, Consequential and Transitional Provision) Regulations 2025 is deemed appropriate. To keep pace with innovation, and in preparation for receiving future applications for innovative products, the FSA wants to ensure the system works efficiently and effectively for applicants. Working collaboratively with UK Government on a GB statutory instrument provides a more efficient means of introducing these amendments that have a consistent application across each nation.

The Regulations will be laid before Parliament on 29 January 2025 and, if approved by Parliament, made using the concurrent powers of the Secretary of State in sections 14(1), (3), (4)(a) and (b) and 20(1) of the Retained EU Law (Revocation and Reform) Act 2023 on 1 April 2025.

Yours sincerely,

A handwritten signature in black ink that reads "S. Murphy". The signature is written in a cursive, flowing style.

Sarah Murphy AS/MS
Minister for Mental Health and Wellbeing
Y Gweinidog Iechyd Meddwl a Llesiant

Agenda Item 6.1

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

13 January 2025

Dear Mike,

You will be aware that in Summer 2024, the then Cabinet Secretary for Health and Social Care, Eluned Morgan, published a consultation on the draft Regulations and proposed enforcement approach for the Food (Promotion and Placement) (Wales) Regulations 2025 ("the Regulations"). The Regulations will restrict the promotion and placement of high fat, salt and sugar foods within the retail sector, as well as free refills of sugar-sweetened beverages within the retail and out of home sectors. Responses to this consultation have now been analysed and a summary of responses has been published today: [Proposals to make the food environment healthier | GOV.WALES](#). Any changes to the policy emerging as a result of the consultation process will be reflected in the Regulations.

I am now writing to give you early notification of my intention to lay a draft of the Regulations before the Senedd in Spring 2025. Subject to Senedd approval, I intend to make the Regulations with a 12-month implementation window to allow industry time to make the necessary changes ahead of the Regulations coming into force in Spring 2026. My officials will continue to work closely with key stakeholders to provide comprehensive guidance to support them in implementing the Regulations.

I would also like to take the opportunity to update you on my assessment of the impact the United Kingdom Internal Market Act 2020 may have on the proposed Regulations. In my view, the prohibitions to be implemented by the Regulations are not envisaged to fall within the scope of the market access principles under the Act.

I am happy to engage with you and the Committee around these Regulations and would welcome your views on what engagement would be of use to you and other members to support your scrutiny work.

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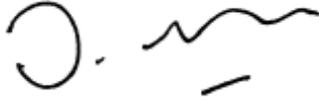
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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I have also sent a letter to the Chair of the Health and Social Care Committee and the Chair of the Children, Young People and Education Committee.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AS/MS

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



Llywodraeth Cymru
Welsh Government

Our ref: MA/MDFWL/0003/25

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee.

13 January 2025

Dear Mike,

Welsh Language and Education (Wales) Bill

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Welsh Language and Education (Wales) Bill at Stage 1 and for the report published on 13 December 2024.

I have set out the Government's response to the Committee's recommendations and conclusion in the Annex to this letter.

I look forward to continuing to work with Committee Members on the detail of the legislation.

I am sending a copy of this letter to the Chairs of the Children, Young People and Education Committee and the Finance Committee.

Yours sincerely,

Mark Drakeford AS/MS

Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

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ANNEX

Government Response to the recommendations from the LJC Committee Report

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|--|--------------------|-----------------------------------|---|
| <p>Recommendation 1. The Cabinet Secretary should outline any assessment made by the Welsh Government of the Bill's engagement with the rights protected by the European Convention on Human Rights, and in particular Article 2 of Protocol 1 to, and Article 14 of, the Convention.</p> | <p>See the Government's comments in column 5</p> | <p>No</p> | <p>No</p> | <p>As with all Senedd Bill proposals, the Welsh Government carries out a full Human Rights assessment before introduction and we are satisfied that the provisions of this Bill are compliant.</p> <p>I can confirm that the Welsh Government has considered all the relevant articles of the European Convention on Human Rights (ECHR), with a particular focus on Article 2 of the First Protocol 1, and read together with Article 14 of the Convention.</p> <p>I consider that the provisions pursue the legitimate aim of ensuring that all pupils reach the end of compulsory school age as independent Welsh language users. This will help contribute to the Welsh Government's aim of ensuring one million Welsh speakers in Wales by 2050. The aim is for all pupils to develop oral skills equivalent to at least level B2 of the Common European Framework of Reference for Languages.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| | | | | I am also satisfied that the provisions in the Bill are a proportionate means of achieving the legitimate aim. I am satisfied that the provisions in the Bill strike a fair balance between the rights and freedoms of the individual and the general interest, and do no more than is necessary to achieve that aim. On that basis, I concluded that the Bill is compliant with the ECHR. |
| <p>Recommendation 2. The Cabinet Secretary should explain why the Bill does not use the common reference levels for describing the ability of those types of Welsh language users, as introduced in the Table in Schedule 1, as the basis for individuals to assess their language ability for the purpose of calculating the number of Welsh speakers in Wales in accordance with provisions in Part 1.</p> | Accept | No | No | <p>The Bill does not use the common reference levels for describing the ability of Welsh language users, set out in the Table in Schedule 1, as a basis for individuals to assess their linguistic ability for the purpose of calculating the number of Welsh speakers in Wales. We believe that it is up to the individual to decide whether they describe themselves as a Welsh speaker or not. We are unwavering in terms of the principle that the Welsh language belongs to us all, and therefore the Bill confirms that individuals will self-assess whether they are Welsh speakers.</p> <p>However, there will inevitably be a connection with the common reference levels over time as we set Welsh learning goals for schools. As pupils reach the goal of being able to speak Welsh at B2 level, there will be a progression as those pupils describe themselves as Welsh speakers for the purposes of the provisions of Part 1 in due course.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| <p>Recommendation 3. The Cabinet Secretary should confirm whether the Welsh Government believes the Bill's inclusion of both terms "Welsh speakers" and "Welsh language users" may lead to any confusion, and if so, set out the steps it will take to limit this.</p> | Accept | No | No | <p>We confirm that we do not believe that the inclusion of the terms "Welsh speakers" and "Welsh language users" in the Bill could lead to any confusion. The term 'Welsh language users' covers other skills as well as speaking - e.g. reading and writing.</p> |
| <p>Recommendation 4. The Cabinet Secretary should explain why the Bill does not include on its face a clear and direct link between the statutory target of one million Welsh speakers by 2050 included in Part 1 of the Bill and the Welsh language learning goals included in Part 3, as proposed in the White Paper for the Bill.</p> | Accept | No | No | <p>We are unwavering regarding the fact that the Welsh language belongs to us all, and therefore it is not desirable to set a specific threshold for people to self-identify as Welsh speakers. However, when the Code is published in due course, this will empower people to understand at what level their skills are, and this will facilitate the Government's work in collecting more detailed, more sophisticated data about people's Welsh language skills.</p> |
| <p>Recommendation 5. The Cabinet Secretary should consider whether to include on the face of the Bill specific dates by which the Welsh Ministers must</p> | Reject | No | Yes | <p>Section 26(3) of the Bill states that the Welsh Ministers must lay the first National Framework before the Senedd before 31 July 2028. We have considered including specific dates on the face of the Bill for regulations and other plans.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|--|
| <p>exercise their powers to make regulations in respect of specifying the start dates of the first periods for school Welsh language education delivery plans and local Welsh in education strategic plans, and the first planning period for the Learning Welsh Institute's strategic Plan.</p> | | | | <p>We believe that it would not be appropriate to do so as there are so many dependencies between the different elements of the Bill. For example, until the Regulations on school language categories and the WESPs are in place it will not be possible for the delivery plans to be operational.</p> <p>Nevertheless, this Government is committed to implementing the Bill and to this end we have set an indicative timetable and shared it with the Committee. We will also add the timetable to the Statement of Policy Intent. We are confident that the Senedd Committees will hold the Government to account in this regard.</p> |
| <p>Recommendation 6. The Cabinet Secretary should share with the Committee any assessment undertaken by the Welsh Government on the impact on understanding and accessibility of the law arising from the use of the term “Welsh language education” in the Bill.</p> | Accept | No | No | <p>‘Welsh language education’ is defined only for the purposes of Part 3 and Part 4 as it is relevant in the context of provisions where the term is used.</p> <p>The definition appears at the beginning of the section and not in section 49 (Interpretation) so that it is accessible to the reader.</p> <p>The definition itself is unambiguous – it includes two elements:</p> <ol style="list-style-type: none"> a. teaching Welsh (as a subject), and b. education and training through the medium of Welsh. |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| | | | | <p>The policy is that 'Welsh language education' is limited to education and training during school sessions. Section 10(2)(a) reflects this. We have considered in light of the committee's recommendations whether that should be made more clearly. We therefore intend to introduce an amendment during Stage 2 to make it clear that the definition of Welsh language education means education and training during school sessions.</p> <p>Every time the term "Welsh language education" appears in Part 3 and Part 4, these two elements are included. Subject to the Stage 2 amendment, this will apply to school categories, delivery plans, the National Framework and local Welsh in education strategic plans.</p> |
| <p>Recommendation 7. The Cabinet Secretary should provide examples of the types of further provision which regulations made under section 13(1) may include.</p> | Accept | No | Yes | <p>It is premature to give a comprehensive list of what could be included in regulations under section 13(1) for the reasons stated in our letter to the Committee.</p> <p>However, the power in section 13(1) could be used to make provision for how schools should categorise themselves during a transitional period. For example, schools usually change gradually and so for a period a school would provide education for some years in accordance with the range of one category, but provide in accordance with a different category for other years. This would normally be for a short period, and will be explained in the delivery plan that will</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| | | | | be approved. Regulations under section 13(1) could make provision for how the school should categorise itself in that transitional period. Those regulations would be subject to the affirmative procedure. |
| <p>Recommendation 8. The Cabinet Secretary should consider which further limitations may be placed on the regulation-making power to make further provision within section 13(1) and table an appropriate amendment to the Bill.</p> <p>ES 1 14</p> | Reject | No | No | We have considered what further limitations could be placed on the power to make further provision by regulations under section 13(1), and we do not believe this is appropriate. The regulations on the categories will be subject to consultation, and it is important that we have a power that is broad enough to respond to any points raised in that consultation. It would be premature to narrow this power in case that might prevent us from being able to respond to what is expressed during consultation. |
| <p>Recommendation 9. The Bill should be amended to remove the brackets surrounding the words "lifelong" and "national" within section 23 of the Bill, and if deemed necessary, the Bill should be further amended to include fuller context for these words in order to aid understanding.</p> | Accept | Yes | No | We accept that the Bill should be amended to remove the brackets around the words "lifelong" and "national" in section 23. This amendment will be made as a printing change. We have considered whether it is necessary to include a fuller context for these words in order to aid understanding, but we believe that there is no need to amend the Bill to this end. |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| Recommendation 10. The Bill should be amended to include a duty for the Welsh Ministers to consult before laying draft regulations under section 23(9). | Reject | No | No | Depending on the nature of any change, the Government will consult on the content of regulations made under this section but it is not appropriate to place a duty on the face of the Bill. |
| Recommendation 11. The Bill should be amended to require that regulations made under section 23(9) shall not be made until 60 days have elapsed since the laying of draft regulations. | Reject | No | No | We are of the opinion that this is not appropriate or necessary. These regulations would be in relation to what is to be included in a Framework. It does not apply to the result, that is the substance of what is in the Framework. There is a process for consultation on a draft of the Framework in section 26, and on reporting on the Framework in section 27. |
| Recommendation 12. The Cabinet Secretary should consider whether the Bill should be amended to include further detail on what type of “information” a local Welsh in education strategic plan should include in relation to education practitioners working in a local authority’s area. | Reject | No | No | We have considered whether the Bill should be amended to include more detail, and we are of the opinion that it would be premature as it may be necessary to consider what is included in the Code to describe ability in the Welsh language first. Regulations under section 33 will specify what information is to be included, and it is possible that the nature of the information will change over time. Therefore, we are of the opinion that the Bill should not be amended to this effect. |
| Recommendation 13. The Bill should be amended to provide that directions | Reject | No | No | Such directions are not secondary legislation and they are not (as a result) to be made by statutory instrument. The directions are a formal way of |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| issued under section 30 and 32 of the Bill are subject to the made negative procedure. | | | | requiring a local authority to reconsider. As part of an administrative process, it is not appropriate for the directions to be subject to any parliamentary procedure. |
| <p>Recommendation 14. The Cabinet Secretary should consider whether the Bill should be amended to provide further detail on the information which must and may be included in a joint local Welsh in education strategic plan, in addition to the mechanism for their approval and their publication, and the review and amendment process for such plans.</p> | Reject | No | Yes | <p>We have considered whether the Bill should be amended to include more detail, and are of the opinion that there is no need to amend the Bill. Section 33(2) enables the Welsh Ministers by regulations to allow for joint WESPs to be prepared. As a starting point, they will contain the same information as individual local authority plans under section 33(1), but it will be necessary to consider if there is a need for changes to the requirements as more than one authority is involved in the work. If regulations allow for joint WESPs, we will consult with stakeholders to better understand how such collaboration would work, and which modifications might be needed with regard to joint WESPs.</p> <p>We will amend the supporting documents to reflect the point above.</p> |
| <p>Recommendation 15. The Cabinet Secretary should confirm whether the Welsh Government intends to bring forward an amendment to the Bill at Stage 2 to add paragraph 2(4) of Schedule</p> | Accept | Yes | Yes | The Government will introduce an amendment to this end. |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| 2 to section 52(4), and if this is not the intention of the Welsh Government, the Cabinet Secretary should explain why this is the case. | | | | |
| Recommendation 16. The Bill should be amended to include a definition of "Welsh language education" in section 1(1)(c)(i) and section 39(2). | Accept in principle | No | No | The Government will introduce an amendment which will omit the term "Welsh language education" in section 1(1)(c)(i) and section 39(2). |
| Recommendation 17. The Bill should be amended to provide that where the Bill imposes a duty on a maintained school to publish a document electronically, and it does not have its own website, it may ask a local authority to publish the document on its behalf. | Reject | No | No | We are of the opinion that such an amendment would interrupt the general nature of the section. This type of detail would be more suitable for guidance. |
| Conclusion | | | | |
| Conclusion 1. We note the Cabinet Secretary's comments in respect of the Bill's impact on human rights, but believe that, as a matter of good practice, an | Noted | No | No | We are satisfied that the provisions of the Bill comply with the European Convention on Human Rights. As is the case with all of the Senedd's bill proposals, the Welsh Government carries out a full Human Rights assessment before |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|--|
| Explanatory Memorandum should always include a commentary on the consideration given to such implications. | | | | submission, and we are satisfied that the provisions of the Bill comply. |

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language



Llywodraeth Cymru
Welsh Government

Our ref: MA/MDFWL/0003/25

Peredur Owen Griffiths MS
Chair
Finance Committee

13 January 2025

Dear Peredur

Welsh Language and Education (Wales) Bill

I would like to thank the Finance Committee for their scrutiny of the Welsh and Education (Wales) Bill at Stage 1 and for the report published on 13 December 2024.

I have set out the Government's response to the Committee's recommendations and conclusions in the Annex to this letter.

I look forward to continuing to work with Committee Members on the detail of the legislation.

I am sending a copy of this letter to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee.

Yours sincerely,

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

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ANNEX

Welsh Language and Education (Wales) Bill

Government Response to the recommendations from the Finance Committee Report

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| Recommendations | | | | |
| <p>Recommendation 1. The Committee recommends that the Cabinet Secretary confirms when data about Welsh language teaching in the context of school workforce development will become available.</p> | Accept | No | No | Information on members of the school workforce is collected in accordance with the Education (Supply of Information about the School Workforce) (Wales) Regulations 2017. The data is published in the School Workforce Annual Census (SWAC). Any assessment of the number of education practitioners needed in each local authority in order to meet any target set will be included in the first National Framework. |
| <p>Recommendation 2. The Committee recommends that the Welsh Government includes a detailed cost-benefit analysis for all options under consideration within the Regulatory Impact Assessment for this Bill and all future bills introduced by the Welsh Government in the Senedd, in line with its own guidance.</p> | Reject | No | No | The three scenarios set out in the Regulatory Impact Assessment (RIA) were not developed to describe different policy options. Rather, they provide a way of describing the Welsh Government’s assessment of the likely investment required, based on an understanding of the current situation of Welsh language education in relation to the goals articulated in the Bill. The RIA focuses on providing a full estimate of costs for options taken forward in the Bill, rather than also fully costing the ‘do nothing option’ and the ‘alternative option’ in Chapter 7 which were ruled out for other reasons. Chapter 7 does provide an indication of our |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|---|
| | | | | assessment of the relative extent of costs (high, medium, low) for each option. |
| <p>Recommendation 3. The Committee recommends that the Welsh Government provides a full and robust Regulatory Impact Assessment for any regulations made as a result of this Bill and that sufficient time is provided to allow the Senedd to consider any related financial implications that will arise.</p> | Accept | No | No | RIAs will be provided for each set of regulations made under the Bill. The majority of regulations to be made under this Bill will be subject to the Draft Affirmative procedure and the RIA will be laid before the Senedd ahead of the Plenary debate on the regulations, therefore allowing Senedd scrutiny. |
| <p>Recommendation 4. The Committee recommends that the Welsh Government provides a full breakdown of how costs relating to the National Institute for Learning Welsh was estimated and how this compares with the costs relating to the National Centre for Learning Welsh, and updates the Regulatory Impact Assessment after Stage 2.</p> | Accept | No | Yes | Any additional information on National Institute for Learning Welsh costs will be added to the RIA after Stage 2. |
| <p>Recommendation 5. We recommend that the Welsh Government provides cost estimates relating to increased demand for language immersion courses and that these changes are made to the</p> | Accept | No. | Yes | Since publishing the RIA, new local authority level data on late immersion has become available. The RIA will be updated with an estimate of costs relating to increased demand for late immersion.. |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|---|
| Regulatory Impact Assessment after Stage 2. | | | | |
| Recommendation 6. The Committee recommends that any post-implementation review undertaken by the Welsh Government assesses the overall costs and benefits of the Bill and whether this meets the expectations set out in the Regulatory Impact Assessment. | Accept | No | No | As part of post-implementation review, the intention is to assess the overall costs and benefits of the Bill compared to expectations set out in the RIA. |
| Conclusions | | | | |
| Conclusion 1. The Committee is broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment, subject to the comments and recommendations in this report. | Noted | No | No | We have responded to the comments and recommendations individually. |
| Conclusion 2. The Committee supports the provisions within the Bill to allow for collaborative working across schools in developing their Welsh language education delivery plans and notes the cost savings which may arise as a result. | Noted | No | Yes | This point will be made explicit in the RIA narrative. |

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language



Llywodraeth Cymru
Welsh Government

Our ref: MA/MDFWL/0003/25

Buffy Williams MS
Chair
Children, Young Persons and Education Committee

13 January 2025

Dear Buffy

Welsh Language and Education (Wales) Bill

I would like to thank the Children, Young People and Education Committee for their scrutiny of the Welsh Language and Education (Wales) Bill at Stage 1 and for the report published on 13 December 2024.

I am pleased that the Committee supports the general principles of the Bill. I have set out the Government's response to the Committee's recommendations in the Annex to this letter. I hope that the information attached will help inform your further scrutiny as the Bill progresses through Stage 2.

I look forward to continuing to work with Committee Members on the detail of the legislation.

I am sending a copy of this letter to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee.

Yours sincerely,

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

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

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

ANNEX

Government Response to the recommendations from the Children, Young People and Education Committee Report

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|-----------------------|-----------------------|-----------------------------------|--|
| <p>Recommendation 1. The Senedd agrees the general principles of the Welsh Language and Education (Wales) Bill.</p> | <p>Not applicable</p> | <p>Not applicable</p> | <p>Not applicable</p> | <p>The Government welcomes this recommendation and calls on Members of the Senedd to agree to the Main Principles of the Bill following the debate in Plenary on 14 January.</p> |
| <p>Recommendation 2. The Welsh Government commits to bringing forward a more detailed Workforce Impact Assessment. This should be developed with meaningful engagement from the education sector, and its workforce representatives. This Assessment should be used in the development of the Workforce Plan and then should be updated in light of the Workforce Plan. (See recommendation 3).</p> | <p>Accept</p> | <p>No</p> | <p>Yes</p> | <p>The Government has committed to reconsidering the <u>workload</u> impact assessment included in the Integrated Impact Assessment (which will be updated at the end of Stage 2). We will engage with the education sector and its representatives from the workforce when drawing up this assessment.</p> <p>We recognise that the capacity of the workforce to meet the requirements of the Bill is a valid concern. The Government is committed to working and engaging continuously with the sector in implementing the Bill. We will introduce amendments regarding the steps that the Welsh Ministers will take to ensure that there is a sufficient workforce to meet the targets regarding the provision of Welsh language education that will be set on local authorities.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| <p>Recommendation 3. The Welsh Government identifies the most appropriate legislative mechanism to place a duty on the Welsh Ministers to prepare a statutory education workforce plan which includes targets, and a timeframe, for recruitment and retention. This workforce plan should cover all aspects of the education workforce, and look in particular at shortage areas, as well as likely future need, and the ways in which this need will be addressed. It should take account of the variations across Wales.</p> | Accept in principle | Yes | Yes | <p>We accept the critical importance of the workforce to deliver our commitments and aspirations on educational attainment, including in Welsh language learning and learning through the medium of Welsh. We accept that there are a range of issues which need to be addressed which include high quality professional learning, access to support, workload, leadership and data. Improving support for the workforce will help to improve teaching and learning, and wellbeing of school staff, and recruitment and retention. We accept that any workforce plan needs to recognise the role of teachers and school support staff as part of a school ecosystem, as well as some specialist roles. We further accept that any workforce plan should take account of the variations across Wales, and recognise the key roles of governors and local authorities as employers.</p> <p>Any workforce plan needs to be developed in close discussion with our partners in the context of our social partnership commitments, and in particular with employers. The Cabinet Secretary for Education is intending to develop a strategic education workforce plan for the whole education sector to improve -recruitment and retention, wellbeing and high quality teaching and learning, whilst also recognising the flexibility needed in different parts of Wales to address different local priorities, including around a range of subjects which will be priorities. As a result of this need for flexibility and future-proofing, our proposed plan will be non-statutory.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|---|
| | | | | We will table amendments to the Bill in relation to the steps to be taken to ensure that there is a sufficient workforce to deliver against the targets on Welsh language provision that will be set on local authorities through the National Framework on Welsh Language Education and Learning Welsh. |
| <p>Recommendation 4. The Welsh Government sets out how it will seek to make clearer the distinction between teaching Welsh as a subject, and teaching through the medium of Welsh in the definition of Welsh language education.</p> | Accept | No | Yes | <p>Section 8(2) of the Bill states that what is meant by 'Welsh language education' is the teaching of the Welsh language and education and training through the medium of Welsh. This has been limited to maintained schools, to pupils of compulsory school age.</p> <p>Paragraph 3.116 of the Explanatory Memorandum also states this, emphasising that 'teaching Welsh' means teaching Welsh as a subject.</p> <p>We will consider whether we can add to this clarity in the Explanatory Memorandum. We anticipate that it will be appropriate to give practical examples in guidance published by the Welsh Government in due course to help schools and local authorities in the process of categorising schools.</p> |
| <p>Recommendation 5. The Welsh Government provides greater clarity on each of the school language categories, in particular the likely amount of Welsh-medium provision in both Primarily Welsh language and Dual</p> | Accept | No | Yes | <p>We will add to the Explanatory Memorandum and Statement of Policy Intent to provide more clarity about the ranges we anticipate we will consult on when drawing up the regulations.</p> <p>We believe that it is better to detail the range of the categories in regulations, as this will enable us to increase these percentages if appropriate through further regulations, rather than requiring primary legislation to do so.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| <p>Language school categories. In doing this, the Welsh Government should also provide greater clarity as to what the Dual Language school category means. Additionally, we ask the Welsh Government to consider the evidence and views we have heard calling for an additional category to mirror the current non-statutory 3P category</p> | | | | |
| <p>Recommendation 6. The Welsh Government should set out clearly what school activities would be counted towards meeting the 10 per cent minimum of Welsh language provision. In doing so, the Welsh Government should outline whether it still intends to increase the amount of education delivered through the medium of Welsh above that of teaching Welsh as a subject.</p> | Accept | No | Yes | <p>We will add to the Explanatory Memorandum to provide more clarity about the meaning of 'school sessions' and what is included.</p> <p>Section 10(2) says that the categories will refer to the Welsh language education as a percentage of the education and training provided over a school year <u>during school sessions</u> for pupils of compulsory school age.</p> <p>Section 10(5) states that "school sessions" means school sessions commencing and ending at such times as may be determined from time to time in accordance with section 32C of the Education Act 2002. A school day usually consists of two sessions, with a break in between. The Welsh language provision within those school sessions will count towards the 10 per cent.</p> <p>When preparing guidance under section 46 of the Bill, the Government will consider including examples of school</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|---|
| | | | | <p>activities that would count towards reaching the minimum of 10% Welsh language provision.</p> <p>It is up to individual schools to decide how they want to provide Welsh language education within the school sessions. And that will be detailed by the schools in their Delivery Plan.</p> <p>In practice, it is anticipated that schools that provide 10 per cent will do so by teaching Welsh as a subject - bearing in mind that this is a mandatory element of the curriculum. As schools provide an increasing percentage of their education in Welsh, it is reasonable to assume that more of that percentage will be 'education through the medium of Welsh'.</p> |
| <p>Recommendation 7. The Welsh Government should provide clarity on whether the Welsh Language Education Delivery Plans can be incorporated into existing School Development Plans, or whether schools will have to produce separate stand alone plans.</p> | <p>Accept</p> | <p>No</p> | <p>Yes</p> | <p>We will amend the Explanatory Memorandum to clarify the interrelationship between School Development Plans and Welsh language education delivery plans.</p> <p>While the Delivery Plans and the School Development Plans emanate from different legislative provisions, schools may incorporate the delivery plan within the School Development Plan – and there is nothing to prevent schools from doing so. There will be an opportunity in guidance to explain this to schools and we will co-construct templates for delivery plans with schools and local authorities.</p> <p>The delivery plans are established for the first time through this primary legislation. School Development Plans derive from the Education (School Development Plans) (Wales) Regulations 2014.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|---|---------------------|--------------------|-----------------------------------|--|
| <p>Recommendation 8. The Welsh Government should clarify the role of the tertiary education sector in delivery of the National Framework. In doing so they should specify what role Medr will play. This could be done in the Bill's Explanatory Memorandum.</p> | Accept | No | Yes | We will amend the Explanatory Memorandum to clarify the role of the tertiary education sector in the context of the National Framework. |
| <p>Recommendation 9. The Welsh Government should consider how the Bill can be amended to include tertiary education in the definition of Welsh language education for the purpose of the National Framework.</p> | Accept | Yes | Yes | The Welsh Government accepts the recommendation and has considered including tertiary education in the definition of Welsh language education. We believe that the Bill should make it clear that tertiary education is covered by the National Framework, and we will introduce an amendment to this end. |
| <p>Recommendation 10. The Welsh Government strengthens the Bill's provisions on Local Strategic Plans to ensure that they will take account of youth services and other mechanisms to encourage opportunities for Welsh to be used in the community.</p> | Accept in principle | No | Yes | <p>We agree that ensuring opportunities to use the language in the community is crucial, but do not believe that the Local Welsh in Education Strategic Plans are the appropriate instrument to detail the steps taken to this end. The Welsh Government is of the opinion that there could be a risk of losing the focus of the local Welsh Language in Education Strategic Plans if they extended beyond the use of the Welsh language in schools.</p> <p>Rather, the role of the local authorities' Welsh Language Promotion Strategies, which are prepared in accordance with the Promotion Standards under the Welsh Language (Wales) Measure 2011, is to increase the use of the Welsh language locally.</p> |

| Recommendation | Government Response | Change to the Bill | Change to supplementary documents | Comments |
|--|---------------------|--------------------|-----------------------------------|--|
| | | | | <p>The review of Welsh language standards to be carried out in accordance with section 4 of the Bill will be an opportunity for the Welsh Ministers to decide whether there is a need to amend the promotion standards. Section 4 specifically provides that the Welsh Ministers must review the standards with a view to determining whether it is necessary to amend one or more Welsh language promotion standards in order to facilitate the achievement of a target specified in Part 1 of the Bill. Those targets include increasing the use of the Welsh language socially.</p> <p>We will amend the Explanatory Memorandum to explain the interrelationship between the Welsh Language in Education Local Strategic Plans and Welsh Language Promotion Strategies.</p> |
| <p>Recommendation 11. The Welsh Government should provide greater clarity as to how the National Institute will fit into the wider tertiary education sector, in particular how the roles of Medr, Coleg Cymraeg Cenedlaethol and the National Institute will interact.</p> | <p>Accept</p> | <p>No</p> | <p>Yes</p> | <p>The Welsh Government accepts that greater clarity should be given regarding the role of the National Institute in the context of the tertiary education sector. This will be done in the Explanatory Memorandum.</p> |

Part 1
Page 150

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio



Mike Hedges MS
Chair, Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

Llywodraeth Cymru
Welsh Government

13 January 2025

Dear Mike Hedges,

Thank you for the Legislation, Justice and Constitution Committee's report on the Legislative Consent Memorandum for the Product Regulation and Metrology Bill.

Please find enclosed my response to the issues raised in the report.

Yours sincerely,

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

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

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

The Welsh Government's Legislative Consent Memorandum on the Product Regulation and Metrology Bill

Response to the LJC Committee Report

In November 2024, the Legislation, Justice and Constitutional Committee (LJCC) submitted its report on the Welsh Government's Legislative Consent Memorandum on the Product Regulation and Metrology Bill. The report includes 6 recommendations. This is the Welsh Government's response to those recommendations.

1. Introduction

The Product Regulation and Metrology Bill (the Bill) was introduced in the House of Lords on 4 September 2024. At the time of publication, the Bill was at the committee stage in the House of Lords. The Lords' Report is scheduled to be published in February 2025.

The Bill makes provision about the marketing or use of products in the United Kingdom and the units of measurement and the quantities in which goods are marketed in the United Kingdom.

On leaving the EU, the UK set up an independent regime, which the UK Government (UKG) considered was needed to be able to adapt to new technologies such as Artificial Intelligence (AI), as well as to reflect the shift in both what consumers buy and how they buy it. The UKG believe they need new powers to address current and future threats and ensure a continued supply of safe goods.

It was the view of both the UK and Welsh Governments that the Bill required the legislative consent of the Senedd. To this end a Legislative Consent Memorandum was laid in the Senedd on 20 September 2024.

The Legislative Consent Memorandum outlined a number of reasons for the Welsh Government to support the Bill. However, it also highlighted that the Bill, as currently drafted, will in effect lead to the Welsh Government having less powers to introduce reforms in a range of areas, as compared to the period when the UK was part of the EU Single Market. Therefore, it stated, further engagement is required with UK Government with respect to the enabling powers within the Bill and the role of Welsh Ministers and the Senedd.

2. Response to the Recommendations

Recommendation 1

The Committee recommends that

The Cabinet Secretary should continue to provide regular updates to the Committee and the Senedd on its position in respect of the Bill, to enable it to form a view on whether or not it should provide its consent.

Response: Accept

Whilst there are no significant updates at this time, the Welsh Government will provide updates to the Senedd when able to do so.

Officials continue to have had positive discussions with their UK Government counterparts to discuss potential legislative options. Welsh Government hope to obtain further information on the UK Government position in early 2025.

Recommendation 2

The committee recommends that

The Cabinet Secretary should state:

- whether the Welsh Government believes a Bill introduced in the Senedd could be used to amend the Bill – if enacted – to the extent that it applies to devolved areas; and
- whether the Welsh Government considers that following such an approach would be viable, should it be necessary, to resolve its concerns in respect of the Bill.

Response: Accept

The outlined approach would require a full assessment of legislative competence but were such provision within the competence of the Senedd, then it could amend UK Parliament legislation.

We are confident that positive outcomes will be reached with UK Government and so do not believe such an approach will be necessary.

Recommendation 3

The committee recommends that

The Bill should be amended to enable the Welsh Ministers to exercise the delegated powers contained within the Bill in devolved areas.

Response: Accept

We are continuing to discuss the allocation of delegated powers with UK Government, with a view to ensuring devolution is fully reflected.

Recommendation 4

The committee recommends that

The Cabinet Secretary should set out the different ways the Welsh Government is seeking the Bill to be amended to ensure a role for the Welsh Ministers and the Senedd.

Response: Accept

As previously noted, there has been Ministerial and official engagement on this Bill where potential legislative amendments have been discussed.

The Cabinet Secretary for Economy, Energy and Planning met with Lord Leong in October, shortly after the Bill was introduced, where concerns were raised about the need to ensure the Bill is amended to respect devolution.

As outlined in the response to Recommendation 3, officials continue to have positive discussions with their UK Government counterparts to discuss potential legislative options to address the Welsh Government's and Senedd's concerns. Welsh Government are also in touch with their Scotland and Northern Ireland counterparts to understand their perspective on the Bill and the possible legislative options which could address devolved nations concerns.

Welsh Government await to hear an update from UK Government on their position early in 2025 and an update will be provided to the committee shortly after, which will set out next steps with respect to further engagement.

Recommendation 5

The committee recommends that

The Cabinet Secretary should set out the Welsh Government's assessment of the Bill's interaction with the United Kingdom Internal Market Act 2020 and commit

to provide such an assessment in any supplementary legislative consent memoranda laid in respect of the Bill.

Response: Accept in part

The Bill is intended to support the smooth functioning of the UK internal market, which we recognise is critical for businesses and growth across Wales.

Welsh Government assessment is that any regulations introduced using powers in the Bill would align with the principles outlined within the UK Internal Market Act.

Should there be instances of regulatory difference across the UK in areas covered by the Bill, the UK Internal Market Act would apply. For example, this might require an exclusion of the market access principles in the Act.

We have concerns about the way the previous UK Government sought to use the UK Internal Market Act to impose policy choices for England in devolved areas. We will work with the new UK Government to look at how the UK Internal Market Act can better respect devolution, as part of the statutory review of the Act in 2025.

Recommendation 6

The committee recommends that

The Cabinet Secretary should set out the Welsh Government's assessment of the Bill's interaction with UK common policy frameworks and commit to provide such an assessment in any supplementary legislative consent memoranda laid in respect of the Bill.

Response: Accept in part

The interaction with common frameworks will depend on the outcome of discussions around delegated powers. The interaction with individual common frameworks will also be dependent on the manner in which the delegated powers are purported to be exercised.

Agenda Item 6.4

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

Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

Ein cyf/Our ref: PO/HIDCC/0004/25

Mike Hedges MS

Chair

Legislation, Justice and Constitution Committee

Welsh Parliament

Cardiff Bay

Cardiff

CF99 1SN

January 2025

Dear Mike,

Thank you for the opportunity to appear before your committee on 9 December and your follow up letter of 17 December. Please find attached a response to the questions in the Annex to your letter.

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

Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog
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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.

Question 1: During the Sixth Senedd, this Committee has become concerned about the frequent use of framework legislation by the Welsh Government and the impact this has on Members' ability to properly scrutinise Bills. Can you outline why the use of framework legislation has increased and why the Welsh Government believes it is an appropriate way to legislate?

There are a number of reasons why legislation is split between primary legislation and subordinate legislation. There is merit in keeping bills as clear, simple and short as possible, in other words keeping them less cluttered by detail.

There is also merit in keeping a structure to the statute book so that the main principles of the law are set out in primary legislation, with the detail left to subordinate legislation. When we codified the law on the historic environment for example the primary legislation alone was nearly 200 pages long. We have later made seven subordinate instruments under that Act – and had we added the 50 or so pages we have on the process for making applications for consent to the Act it would have made that Act less accessible not more accessible.

There is also significantly greater flexibility in making subordinate legislation as it is not subject to the same timetable constraints as Senedd Bills, and it enables the law to be quickly updated to match changing circumstances or for the law to be corrected or amended in the light of experience.

Where this process works well, it helps the Senedd to focus on the essential points, policy and principle, in its scrutiny – and in turn it helps the Government to focus on what is most important when responding to the Senedd.

Question 2: Will any of the Bills in the remainder of the Welsh Government's legislative programme be framework legislation?

The vast majority of primary legislation provides powers for Ministers to fill in detail. Our interpretation of a true framework Bill is a Bill that sets very little out on the face of the Bill, leaving almost all of the substance to be provided for by regulations. It is never the Government's intention to bring forward such Bills.

Question 3: What impact does the increased use of framework legislation and the consequential increase in subordinate legislation have on the Welsh Government's capacity to make such legislation?

When a Bill project is set up and a decision taken that powers to make subordinate legislation will be proposed in that Bill, consideration has to be given to how and when that subordinate legislation will be brought forward and what that means for the associated implementation programme.

For example, the Infrastructure (Wales) Act 2024 sets out a detailed structure of the infrastructure consenting process and contains a number of quite narrowly drawn regulation-making powers, which allow appropriate detail to be put in. The consultation on the implementation of that Act is underway, and the feedback from that consultation will enable the finalisation of the Regulations.

Another Bill the Committee will be particularly interested in is the planning consolidation Bill. That cannot be described as a framework Bill, but there will be a significant programme of subordinate legislation attached to it. The work for that is already underway, including a

current consultation on what the proposed changes to the law protecting trees and woodlands in Wales will need to consider.

So whether or not a Bill can be described as framework or not, the work on subordinate legislation is considered as part of the implementation programme for all Bills and in the context of the Welsh Ministers overall programme of subordinate legislation.

Question 4: In your view, does the legislative consent process give the Senedd sufficient opportunity to scrutinise UK Bills that are legislating in devolved areas?

I recognise the Senedd has less ability to scrutinise and impact legislation made in Parliament than that made in the Senedd. This is why our involvement in UK Bills is shaped by reference to our principles, and we do our utmost to enable scrutiny through the LCM process.

Question 5: What changes have occurred within inter-governmental relations (IGR) related to the legislative consent process since the new UK Government has been in power?

There have been clear improvements in engagement, with earlier sharing of drafting as an example. This, in turn, has enabled us to lay legislative consent memoranda more swiftly and effectively than under previous UK legislative programmes.

There have also been improvements in the ways in which the governments are working together to explore specific issues on individual Bills, and we hope that positive updates can be shared with the Senedd on those in due course.

Question 6: The Welsh Government has spoken about working in partnership with the UK Government on Bills such as the Tobacco and Vapes Bill. Is it appropriate for legislation in devolved areas to be developed in this way, with a limited role for the Senedd? What consideration has the Welsh Government given to legislating in parallel to the UK Parliament through a Bill introduced to the Senedd instead of a UK Government Bill in order to facilitate policy collaboration?

When working with UK Government we will look to ensure that legislation in devolved areas is reflective of the Welsh context.

We seek to ensure that the Senedd is kept informed of our work with the UK Government on the specific application of provision for Wales in UK legislation, in particular through the legislative consent process.

Examples such as the Tobacco and Vapes Bill are a useful example of when using a UK Bill, across the whole of the UK, would be appropriate. There is a clear UK-wide policy alignment, as well as relevant legislative competence reservations involved.

Question 7: What impact does the resource allocated to support provision in UK Bills have on the available capacity to support the Welsh Government's legislative programme?

As a government, we are focussed on the delivery of our priorities for the people of Wales. But the reality of course is that with this, comes pressures – this is not unique to the legislative programme, and it is the case across the Programme for Government too.

Cabinet has agreed a legislative programme that we have sequenced and resourced to ensure we deliver our legislative priorities.

Ministers and senior officials closely monitor the delivery of the legislative programme, and we take action where needed to redeploy resources to priority work, including Senedd Bills, subordinate legislation and UK legislation.

By necessity we need to react to a subsequent UK legislative programme which may include provisions for Wales and in devolved areas.

There is an inherent need for resource to be afforded to that legislation, in order to assess its suitability for Wales, to identify specific issues for discussion with the UK Government, to give detailed consideration of the drafting, and to ensure the effective discharge of the legislative consent process.

In line with our principles, there continue to be situations where we take the view it would be in Wales' best interests for provision in devolved areas to be made in UK legislation.

Question 8: What consideration is the Welsh Government giving to the resources and capacity that will be needed to support a full legislative programme in an enlarged Senedd?

The increase in the size of the Senedd and potential increase in the number of Ministers will inevitably have implications for the Welsh Government's own ways of working, including its administration and delivery in response to increased scrutiny.

For example, in future Senedd terms of four rather than five years, it will be necessary to use the final year to introduce and scrutinise legislation, otherwise we risk significantly curtailing the Senedd's legislative output.

The Government is committed to working with the Senedd to consider ways in which the process for agreeing timetables for Government Bills can be strengthened so that committees can take a more informed decision about scrutiny periods.

In future we may well want to move towards a greater number of smaller, or potentially single-issue Bills, which arguably would not require the same amount of time to be allowed for Stage 1 consideration as the larger, more complex proposals that have typically been introduced.

We are continuing to engage through the Future Senedd Committee to explore these issues as there will be implications for the Senedd as much as for the Government in terms of ways of working and resourcing.

Question 9: Does the capacity available in the Welsh Government influence decisions on whether to legislate through the Senedd or to use a UK Government Bill introduced to the UK Parliament?

Consistent with our principles on UK legislation, the requirements of delivering our own legislative programme are relevant factors in relation to our positions on some UK Bills, in

the context of considering the potential timeframe in which equivalent legislation could be developed. In some instances, however, there will be UK Bills that the Senedd could not pass with its current legislative competence, and other issues that would not sit within our priorities but which nonetheless have regard to devolved matters.

Question 10: The Welsh Government Consolidated Accounts 2023-24 refer to a “review of the approach to developing legislation across the Welsh Government”. Why was this review felt necessary, what were its aims and why wasn’t it referred to when responding, in June 2024, to a Committee recommendation calling for a similar review?

As a responsible Government, we keep our all of systems and processes under continuous review, including our approach to developing legislation.

The combined impact of Brexit and the coronavirus pandemic placed huge pressures on the Government and, as we are sure the Committee would expect, we were keen to take stock earlier this Senedd term to ensure that a sustainable basis for the delivery of the legislative programme was in place.

As the Counsel General and Minister for Delivery explained during the evidence session with the Committee in December, this review was intended for internal purposes only, as it focused on internal systems and ways of working.

Regarding our June 2024 response, we considered the recommendation from the Committee to relate to our capacity in relation to UK legislation and our response therefore set out that we disagreed with the premise that Welsh Government have a reliance on UK Bills. Rather there are instances, including the Renters Reform Bill, whereby we have recommended the Senedd consent to provision on the basis that it is both sensible and advantageous for Wales.

As we move into the final stages of this Senedd term and look towards the next Senedd, it is essential that we continue to review our working practices.

As referenced in answer to question 8 above, the impact of Senedd reform in terms of four-year terms, expanded membership and enhanced scrutiny provide an opportunity for us to further review whether there are things we can do to improve our ways of working. The Business Committee recently agreed a proposal from the Senedd Commission for a review of the public and Member Bills process, with which the Government is looking forward to engaging.

Question 11: Welsh Ministers have conducted a number of bilateral meetings with their counterparts in the UK Government since the general election. How will the Welsh Government ensure that the substance of these meetings is open and transparent to the Senedd and the public?

We endeavour to provide relevant committees with written updates on the substance of discussions, taking into account any confidentiality requirements, in accordance with the Inter-Institutional Agreement between Welsh Government and the Senedd.

Question 12: When does the Welsh Government intend to publish the IGR annual report for 2023 – 2024?

Work is currently underway to finalise the IGR 2023 – 2024 IGR annual report. We aim to publish the report in the near future.

Question 13: How many appointments has the Welsh Government made to the IGR secretariat? Have all appointments now been made?

The IGR Secretariat is currently at full complement.

The Welsh Government has also seconded in a member of staff to the Secretariat, following an internal recruitment process.

Question 14: What progress has the Welsh Government made towards the recommendations of the Commission on Justice in Wales and its stated aim of the devolution of justice?

As the Committee will be aware, the Commission on Justice in Wales made a total of 78 recommendations. When the report was first published, the First Minister at the time was clear that the Welsh Government would prioritise the recommendations within the gift of the Welsh Government and other actors within Wales.

The report was published at the end of 2019 and so the pandemic impacted the pace in which we could progress the recommendations. However, we were able to make progress in a number of areas including the creation of the Law Council of Wales, securing changes to the Civil Procedure Rules and undertaking a Family Drug and Alcohol Court pilot.

We did try to progress some recommendations with the previous UK Government, without much success. Delivering Justice for Wales, which was published in 2022, provides further detail on our progress, including our discussions with the previous UK Government.

In terms of the central recommendation of the Commission, our ultimate objective is to secure the devolution of policing and justice in its entirety. That was of course also recommended more recently by the Independent Commission on the Constitutional Future of Wales, chaired by Rowan Williams and Laura McAllister.

In recent years, we have focussed our efforts on considering the legislative and practical steps required to devolve youth justice and probation. Our approach has predominantly involved commissioning experts to undertake reviews in these areas. This includes the following reviews which have all now concluded:

- [The Future of Youth Justice in Wales \(Wales Youth Justice Academic Advisory Group\)](#)
- [Youth Justice and the Youth Court in Wales \(Dame Vera Baird and Professor Stewart Field\)](#)
- [Preparing for the devolution of policing in Wales \(Carl Foulkes QPM\)](#)
- [Building a Welsh probation service \(Wales Centre for Public Policy\)](#)

Our next step is to use the material and insights from these reports to inform our discussions with the UK Government on their manifesto commitments to undertake a strategic review of probation services and to explore the devolution of youth justice. We are now having conversations with the new UK Government on a range of matters in this area, including their commitments on devolution as well as progress on programmes of joint work like the Youth Justice and Women's Justice Blueprints.

Question 15: How has the Welsh Government been working with the new Secretary of State for Justice to improve justice outcomes for people in Wales?

We are working not just with the new Secretary of State but also with her whole ministerial team. For example, the Cabinet Secretary on Social Justice has had productive discussions with both Lord Timpson and Sir Nicholas Dakin, who is the minister for youth justice. That includes discussions on key matters like managing the early release of prisoners, and conditions in Parc prison.

There are also important discussions happening on how we build on the successes of the Youth Justice Blueprint and Women's Justice Blueprint. Although the Blueprints were agreed under the former UK Government, work has accelerated further under them since the election.

The Blueprints set out a collective vision for how we want the justice system to support women and children – both those in contact with the justice system directly and those at risk of coming into contact with it. This vision is for trauma-informed, evidence-based models of support which address the underlying drivers of criminality and empower people to live fulfilling, crime-free lives.

Many of these underlying drivers such as poverty, Adverse Childhood Experiences and mental health are devolved, which is why we must work together across our governments to drive change and transform lives for the better.

We are currently finalising a Prevention Framework which will confirm our approach to supporting children at risk of offending – from first class universal services through to targeted support for those with greater needs and vulnerabilities. The Draft Framework, alongside the Wales Violence Prevention Unit's Wales Without Violence research, has been shared with the UK Government to support the Home Secretary's work on Prevention Partnerships. We are actively involved in this work under the Safer Streets Mission.

Under the Women's Justice Blueprint, we have diverted over 2,300 women into early intervention support and delivered 11 engagement events to over 270 sentencer professionals. 500 practitioners have received gender-informed training, and 89 families have received support through the Visiting Mum scheme. The ONE Wales service, which we jointly fund with criminal justice partners under the Blueprint, is in place to provide holistic 1:1 support for women in the criminal justice system across the whole of Wales.

We are in active discussions with HMPPS in Wales and partners about next steps for our work on women's justice, building on the existing work of Blueprint and understanding where we can go further to support women and girls.

The Lord Chancellor's announcement of both the Women's Justice Board and the independent Sentencing Review are vital steps forward. We are looking forward to engaging with the UK Government on both of these areas, and the Cabinet Secretary for Finance and Welsh Language attended a Ministerial roundtable on Women's Justice with UK Government Ministers in October.

Question 16: Does it remain the Welsh Government's intention to bring forward legislation in this Senedd term to reform the Welsh Tribunals? What could the impacts be on access to justice if this reform is not brought forward in this Senedd term?

Tribunal reform is very much at the heart of our ambition for the justice system in Wales and the reforms we propose cannot be delivered without legislation. We are working diligently to prepare that legislation, and we are determined to develop it thoughtfully and consultatively to ensure that we get it right. This is because the legislation will govern how our tribunals operate for years to come. We cannot, however, confirm at this time when a Bill will be introduced into the Senedd – that is a matter for the next legislative statement about the upcoming legislative programme.

Until legislation is made and implemented, the system as it currently stands will continue to function and will continue to provide the people of Wales with effective access to justice, but the wider benefits we see arising from our proposals for reform will only be realised when we legislate to deliver change.

Question 17: What is the Welsh Government’s assessment of the situation at HMP Parc and any progress made since reports of a high number of deaths at the prison earlier this year?

Our thoughts go out to the friends and families of those that have died at HMP Parc. Investigations into the deaths have been launched by the Prison and Probation Ombudsman and he will publish his reports once they conclude. Whilst every death is a tragedy, it is important people do not speculate and wait for the reports to be published by the ombudsman.

Prisons and offender management are the responsibility of the UK Government, and they remain the best and most appropriate source of information about operational matters across the prison system in England and Wales. We work closely with HM Prison and Probation Service on areas where we do have responsibilities such as health and social care and will continue to work together to help mitigate the risk of future harm to staff and prisoners.

Throughout the year Ministers have had regular briefings about HMP Parc. The Cabinet Secretary for Social Justice Trefnydd and Chief Whip and Minister for Mental Health and Wellbeing visited HMP Parc alongside Lord Timpson and Minister Davies-Jones on 5 December. As part of the visit, they were able to see first-hand the steps the senior leadership team are taking to improve safety and security for both staff and prisoners at the site.

Question 18: What is the Welsh Government’s position on the impact of the UK Internal Market Act on Welsh legislation?

We recognise the UK Internal Market Act (“the Act”) has an impact on Welsh legislation. We sought to test the scope of that impact through a judicial review, but this was not resolved as the challenge was considered premature.

The legal argument we made was that the Act would not affect the Senedd’s ability to pass primary legislation in non-reserved areas, but this has not been tested in court.

We have always recognised the provisions of the Act apply fully to Statutory Instruments made under powers provided for in Acts of the UK Parliament.

Question 19: Is the UK Internal Market Act considered by Ministers and officials when decisions are made about whether to work collaboratively with other governments in the UK on policy proposals?

The UK Internal Market Act would be considered on a case-by-case basis, depending on its relevance to the policy concerned.

Where there are shared policy outcomes and considerations we will consider working collaboratively with other governments in the UK. Where collaboration is beneficial, we prefer to do so through the Common Frameworks process.

We recognise there are times the UK Internal Market Act could impact on our policy ambitions outside of the Common Frameworks. In those cases, we would seek to work collaboratively with other Governments to overcome any practical implications.

Question 20: On what basis has the Welsh Government withdrawn from the joint deposit return scheme with the other UK nations? The Welsh Government's written statement references that it has not been possible to address issues caused by the UK Internal Market Act. Why is this the case? Did you discuss with the current UK Government about seeking an exclusion from the Act's market access principles to enable a Welsh scheme to include glass?

The Welsh Government has not withdrawn from a joint DRS. In partnership with the UK and Devolved Governments, we had been working to establish a joint process for appointing the Deposit Management Organisation for our respective schemes. Given the way that the UK Internal Market Act operates, as we were legislating through powers contained in UK rather than Senedd legislation, tailoring the scheme to Wales' needs would potentially engage the mutual recognition principle and therefore require an exclusion. The current UK Government has inherited a challenging piece of legislation in the UK Internal Market Act, and it became apparent that it was not going to be possible for the UK Government to complete their intended process to assess a UKIMA exclusion request within the timescale needed to commence the joint appointment of the Deposit Management Organisation. We are fully supportive of the other three nations going ahead and are sure this will make a significant improvement in their recycling rates.

As a Government, we remain committed to bringing forward a DRS which will deliver the best possible benefits for Wales by supporting our ongoing transition to a circular economy, particularly given we our different starting point as the second best nation in the world for recycling. Our active engagement with industry has highlighted that there are currently a range of views on how best to achieve the transition to reuse. We will therefore continue our active engagement to develop a scheme that supports the transition to reuse for all drinks containers including those made from glass. In doing so we will also continue to draw from international best practice.

Question 21: Has the Welsh Government made any assessment about the interaction between the Product Regulation and Metrology Bill and the UK Internal Market Act's market access principles?

The UK Government has been largely silent on the question of the Bill's potential interaction with the UK Internal Market Act, despite both instruments having a role in regulating domestic UK trade. It is Welsh Government's view that the Bill could have some positive impacts in situations where the devolved nations have a shared ambition to align with the EU. Regulations made using powers in the Bill could have interactions with the market

access principles in the UK Internal Market Act, as could any regulations made in relation to domestic trade in goods and services. These will need to be considered on a case-by-case basis.

Question 22: What discussions has the Welsh Government had with their counterparts in the UK Government about introducing a requirement for consent in the regulation-making powers in the Product Regulation and Metrology Bill?

The Cabinet Secretary for Economy, Energy and Planning met with Lord Leong on the 2 October. The Cabinet Secretary highlighted her concerns about the broad scope of the regulation making powers in the Bill and the absence of any equivalent powers and/or consent mechanism for Welsh Ministers in relation to devolved areas. Lord Leong said that he understood these concerns and the Cabinet Secretary welcomed the offer of further engagement with UK Government on the Bill's powers and the role of the Welsh Ministers and the Senedd in this area. Since then, a number of positive conversations have taken place at official level on how these concerns could be addressed and further updates are awaited from the UK Government.

Huw Irranca-Davies MS,
Deputy First Minister and Cabinet Secretary for Climate Change and
Rural Affairs

Julie James MS,
Counsel General and Minister for Delivery

17 December 2024

Dear both,

Scrutiny session follow-up, 9 December 2024

Thank you for appearing before the Committee on 9 December to give evidence on aspects of your portfolios which fall within our remit.

We have some further questions that we were not able to reach during the session, in the attached Annex.

We would be grateful for your response by 15 January 2025.

Yours sincerely,



Mike Hedges
Chair

ANNEX

Question 1: During the Sixth Senedd, this Committee has become concerned about the frequent use of framework legislation by the Welsh Government and the impact this has on Members' ability to properly scrutinise Bills. Can you outline why the use of framework legislation has increased and why the Welsh Government believes it is an appropriate way to legislate?

Question 2: Will any of the Bills in the remainder of the Welsh Government's legislative programme be framework legislation?

Question 3: What impact does the increased use of framework legislation and the consequential increase in subordinate legislation have on the Welsh Government's capacity to make such legislation?

Question 4: In your view, does the legislative consent process give the Senedd sufficient opportunity to scrutinise UK Bills that are legislating in devolved areas?

Question 5: What changes have occurred within inter-governmental relations (IGR) related to the legislative consent process since the new UK Government has been in power?

Question 6: The Welsh Government has spoken about working in partnership with the UK Government on Bills such as the Tobacco and Vapes Bill. Is it appropriate for legislation in devolved areas to be developed in this way, with a limited role for the Senedd? What consideration has the Welsh Government given to legislating in parallel to the UK Parliament through a Bill introduced to the Senedd instead of a UK Government Bill in order to facilitate policy collaboration?

Question 7: What impact does the resource allocated to support provision in UK Bills have on the available capacity to support the Welsh Government's legislative programme?

Question 8: What consideration is the Welsh Government giving to the resources and capacity that will be needed to support a full legislative programme in an enlarged Senedd?

Question 9: Does the capacity available in the Welsh Government influence decisions on whether to legislate through the Senedd or to use a UK Government Bill introduced to the UK Parliament?

Question 10: The Welsh Government Consolidated Accounts 2023-24 refer to a "review of the approach to developing legislation across the Welsh Government". Why was this review felt necessary, what were its aims and why wasn't it referred to when responding, in June 2024, to a Committee recommendation calling for a similar review?

Question 11: Welsh Ministers have conducted a number of bilateral meetings with their counterparts in the UK Government since the general election. How will the Welsh Government ensure that the substance of these meetings is open and transparent to the Senedd and the public?

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