

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Hybrid – Committee Room 2, Senedd
and Video Conference via Zoom

Meeting date: 30 September 2024

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Hybrid

Public meeting

(13.30 – 15.05)

1 Introduction, apologies, substitutions and declarations of interest

(13.30)

2 Evidence Session with the Office for the Internal Market

(13.30 – 14.30)

(Pages 1 – 3)

Tim Render, Panel Member, Office for the Internal Market

James Waugh, Director, Office for the Internal Market

[Annual report on the operation of the UK Internal Market 2023 – 2024](#)

Attached Documents:

LJC(6)-27-24 – Paper 1 – Research Briefing

LJC(6)-27-24 – Paper 2 – Written submission by the Office for the Internal
Market to the House of Lords Sub-Committee on the Windsor Framework

Break

(14.30 – 14.35)

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

(14.35 – 14.40)

(Pages 4 – 5)



Attached Documents:

LJC(6)-27-24 – Paper 3 – Draft report

Made Negative Resolution Instruments

3.1 SL(6)518 – The Listed Buildings (Exempt Religious Buildings) (Wales) Regulations 2024

3.2 SL(6)522 – The Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (Wales) Regulations 2024

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

(14.40 – 14.50)

Made Negative Resolution Instruments

4.1 SL(6)516 – The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024

(Pages 6 – 8)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 4 – Draft report

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

(Pages 9 – 13)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 5 – Draft report

4.3 SL(6)520 – The Scheduled Monuments (Partnership Agreements) (Wales) Regulations 2024

(Pages 14 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 6 – Draft report

4.4 SL(6)521 – The Applications for Scheduled Monument Consent (Wales) Regulations 2024

(Pages 16 – 18)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 7 – Draft report

Affirmative Resolution Instruments

4.5 SL(6)523 – The Vehicle Emissions Trading Schemes (Amendment) Order 2024

(Pages 19 – 20)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 8 – Draft report

4.6 SL(6)524 – The Special Procedure Licences (Wales) Regulations 2024

(Pages 21 – 27)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 9 – Draft report

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

(Pages 28 – 30)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 10 – Draft report

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

(Pages 31 – 33)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 11 – Draft report

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

(Pages 34 – 40)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-27-24 – Paper 12 – Draft report

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

(14.50 – 14.55)

5.1 SL(6)507 – The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) Regulations 2024

(Pages 41 – 46)

Attached Documents:

LJC(6)-27-24 – Paper 13 – Report

LJC(6)-27-24 – Paper 14 – Welsh Government response

5.2 SL(6)519 – The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024

(Pages 47 – 52)

Attached Documents:

LJC(6)-27-24 – Paper 15 – Report

LJC(6)-27-24 – Paper 16 – Welsh Government response

6 Inter-Institutional Relations Agreement

(14.55 – 15.00)

6.1 Correspondence from the Welsh Government: Inter-Ministerial Group meetings

(Pages 53 – 56)

Attached Documents:

LJC(6)-27-24 – Paper 17 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Inter-Ministerial Group for Environment, Food and Rural Affairs, 26 September 2024

LJC(6)-27-24 – Paper 18 – Letter from the Cabinet Secretary for Finance and Welsh Language: The Finance: Interministerial Standing Committee, 26 September 2024

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

(Pages 57 – 58)

Attached Documents:

LJC(6)-27-24 – Paper 19 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 September 2024

7 Papers to note

(15.00 – 15.05)

7.1 Statement by the First Minister: Inter-governmental relations

(Pages 59 – 62)

Attached Documents:

LJC(6)-27-24 – Paper 20 – Statement by the First Minister, 24 September 2024

7.2 Correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The UK Emissions Trading Scheme

(Pages 63 – 64)

Attached Documents:

LJC(6)-27-24 – Paper 21 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 26 September 2024

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

(15.05)

Private Meeting

(15.05 – 16.00)

**9 Evidence session with the Office for the Internal Market:
Consideration of evidence**

(15.05 – 15.20)

10 Health and Social Care (Wales) Bill: Draft report

(15.20 – 15.40)

(To Follow)

Attached Documents:

LJC(6)-27-24 – Paper 22 – Draft report

11 International Agreements

(15.40 – 15.50)

(Pages 65 – 71)

Attached Documents:

LJC(6)-27-24 – Paper 23 – Research Briefing

12 Forward Work Programme

(15.50 – 16.00)

(Pages 72 – 83)

Attached Documents:

LJC(6)-27-24 – Paper 24 – Forward Work Programme

LJC(6)-27-24 – Paper 25 – Letter from the Business Committee, 24
September 2024

Office for the Internal Market (OIM) – written evidence (RGD0001)

Office for the Internal Market (OIM) submission to House of Lords Sub-Committee on the Windsor Framework

1. The OIM wishes to thank the Sub-Committee and its officials for the opportunity to provide this written submission. This submission provides an overview of the OIM's role and explains its remit regarding the Windsor Framework (the Framework).¹

Overview of the OIM's role

2. The OIM was established by the UK Internal Market Act 2020 (the Act) and is part of the Competition and Markets Authority. The Act also established market access principles (MAPs) for goods, services and professional qualifications. The OIM's statutory objective is to support, through the application of economic and technical expertise, the effective operation of the UK internal market.² It has two main functions:
 - (a) Providing reports (or advice, where applicable) upon request of one or more of the governments across the UK in relation to (i) proposed regulatory provisions, (ii) regulatory provisions that have been made or passed, or (iii) enacted regulatory provisions which are considered to have detrimental effects on the UK internal market (provided in each case that the regulatory provisions meet the relevant definition in the Act³ and subject to the request meeting the OIM's prioritisation principles⁴).
 - (b) Reporting on the operation of the UK internal market through annual and periodic reports.⁵ The OIM can also review at its own discretion any matter it considers relevant to assessing or promoting the effective operation of the UK internal market and/or the provisions of Parts 1 to 3 of the Act.⁶ Such a review can also follow from a proposal from one (or more) of the four governments across the UK, or a third party.⁷ (In both instances, again subject to the OIM's prioritisation principles.)
3. The OIM's role is therefore to provide expert reports and advice to the

¹ We note that following Joint Declaration No 1/2023 of the Union and the United Kingdom, the Protocol on Ireland/Northern Ireland is commonly referred to as the 'Windsor Framework.'

² See sections 31(2) and (3) of the Act.

³ See sections 34 to 36 of the Act.

⁴ See chapter 4 of the OIM's Operational Guidance.

⁵ See sections 33(5) and (6) of the Act.

⁶ See section 33(1) of the Act.

⁷ See section 33(2) of the Act.

governments across the UK, in particular about the impact of certain regulatory provisions on the UK internal market. This may include regulatory measures affecting trade in goods and services, or the use of a professional qualification. It is important to note that the OIM's role is advisory and not decision-making: decisions about legislation or the functioning of the UK internal market are for the governments and legislatures of the UK.

OIM's remit regarding the Framework

4. The OIM does not collect data specifically about the Framework nor review or advise on the Framework itself, and any legislation necessary to give effect to the Framework falls outside the OIM's statutory remit (although other UK internal market matters relating to Northern Ireland are within its remit⁸). However, through our general monitoring role in relation to the UK internal market, we will capture trade data relating to Northern Ireland, which may be useful when considering the effects of the Framework. We may also refer to the Framework when producing reports or advice, where the presence of the Framework and its effects, or potential effects, are relevant to our analysis. We explain this further below.
5. For the purpose of our functions described in paragraph 2(a) above, it is beyond our statutory remit to consider a regulatory provision to the extent that it contains anything that is necessary to give effect to the Framework (as this would not fall within the relevant definition in the Act).^{9,10}
6. In relation to our monitoring and reporting function, as described in paragraph 2(b) above, the effects of the Framework on the UK internal market may be relevant and therefore reflected in associated work. For example, the Framework may be relevant if the OIM is considering the effects, or potential effects, of regulatory divergence on UK-wide trade within a particular sector.
7. Further, as noted in paragraph 2(b) above, the OIM is required to publish annual and periodic reports. Whilst these reports do not review the Framework (or any legislation necessary to implement it), they may refer to the Framework where appropriate or necessary:
 - (a) The OIM's 2023 Annual Report¹¹ included analysis of trade flows between all four nations of the UK. It also reported on proposed regulatory developments in Northern Ireland, including instances where regulations

⁸ The Framework only applies to a particular aspect of intra-UK trade, namely the movement of goods between Great Britain and Northern Ireland, and to which relevant provisions of the Act, such as the MAPs in relation to goods, do not apply. The Act, and the OIM's remit in relation to other aspects of intra-UK trade such as services and professional qualifications, are unaffected by the Framework.

⁹ The Act sets out the type of regulatory provision which can be the subject of a request to the OIM for advice; see section 30(9).

¹⁰ Those aspects of legislation which go beyond what is necessary to give effect to the Framework – for example additional legal requirements introduced by the Northern Ireland Assembly that go further than EU standards in the relevant area, will fall within the scope of the Act and the OIM's remit.

¹¹ 2023 Annual Report.

in Northern Ireland may be required to remain aligned to the EU as a result of the Framework. It also noted that future regulatory developments in one (or more) of the other nations may, indirectly, lead to regulatory divergence between Northern Ireland and the other nations as Northern Ireland remains aligned to the EU.

(b) The OIM's 2023 Periodic Report¹² sought views from the four governments across the UK on how the MAPs were operating and affecting policymaking, and whether they were effective in supporting the UK internal market. In its response, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland considered the fact that the MAPs do not apply to certain goods moving from Great Britain to Northern Ireland could become more significant in the future.¹³

8. The OIM's 2024 Annual Report (due to be published in Spring 2024) will similarly report on Northern Ireland's role within the UK internal market. We plan to draw on additional sources of information about trade between Great Britain and Northern Ireland and include commentary on these trade dynamics, balancing our remit in legislation and the interest in understanding Northern Ireland's place within the UK internal market.

9. In addition, the OIM is committed to supporting the improvement of intra-UK trade data and a collective understanding of how the UK internal market is operating, including improvements to Northern Ireland trade statistics. An update on the progress of initiatives set out in the OIM's Data Strategy Roadmap¹⁴ will be published in Spring 2024.

10. The OIM is happy to provide clarification of any of the matters covered in this submission to the Sub-Committee should this be of assistance.

¹² 2023 Periodic Report.

¹³ See paragraph 2.29 of the OIM's 2023 Periodic Report. To note that this statement referred to the situation under the Protocol as the Windsor Framework was yet to be agreed.

¹⁴ OIM Data Strategy Roadmap 2023.

Agenda Item 3

Statutory Instruments with Clear Reports 30 September 2024

SL(6)518 – [The Listed Buildings \(Exempt Religious Buildings\) \(Wales\) Regulations 2024](#)

Procedure: Made Negative

These Regulations form part of the implementation of the Historic Environment (Wales) Act 2023 (“the 2023 Act”).

The Regulations make provision to exempt religious buildings from some of the provisions of the 2023 Act which apply to listed buildings.

Parent Act: Historic Environment (Wales) Act 2023

Date Made: 09 September 2024

Date Laid: 11 September 2024

Coming into force date: 04 November 2024



Statutory Instruments with Clear Reports

30 September 2024

SL(6)522 – [The Seed Marketing \(CMS Wheat Hybrids\) \(Temporary Experiment\) \(Wales\) Regulations 2024](#)

Procedure: Made Negative

Regulation 21A of the Seed Marketing (Wales) Regulations 2012 provides that the Welsh Ministers may, by licence, exempt any person or class of person from compliance with any provision within those Regulations for the purposes of a temporary experiment seeking to find improved alternatives to the existing provisions.

These Regulations set up a temporary experiment, with a duration of seven years, to introduce certification standards for seed of hybrid wheat produced via the means of Cytoplasmic Male Sterility (CMS) so that it can be marketed at a lower varietal purity standard (that is, the percentage of the seed that should conform to the variety description) than currently required for hybrid wheat seed.

These Regulations also provide a licencing procedure for those wishing to take part in the experiment, as well as setting out recording and reporting obligations for participants.

Parent Act: Plant Varieties and Seeds Act 1964

Date Made: 11 September 2024

Date Laid: 16 September 2024

Coming into force date: 07 October 2024



Agenda Item 4.1

SL(6)516 – The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024

Background and Purpose

These Regulations form part of the implementation of the Historic Environment (Wales) Act 2023 (“the 2023 Act”).

These regulations set out the procedural requirements for listed building consent applications, including appeals to those applications, special cases, provisions in relation to conservation areas with listed buildings and other miscellaneous matters including prescribed interest rates for the cost of urgent works.

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

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

In regulation 6(4), there is a difference between the English text and the Welsh text. In the English text, it refers to paragraph “(2)(c) or (d)” but in the Welsh text it refers to paragraph “(2)(2)(c) or (d)”.

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

In regulation 19(4)(d), the location of the text for amendment in regulation 9 is incorrectly identified as “in paragraph 9(1)” but it should state “in paragraph (1)”.

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

In regulation 22(9), in the opening words before sub-paragraphs (a) and (b), the modification states that “Regulation 15(1)...applies as if”. However, in sub-paragraph (b) it



states that “paragraph (3) was omitted” which is not found in paragraph (1) of regulation 15. Therefore, the modification does not succeed as currently drafted. It should only refer to regulation 15 in the opening words, and the words “in paragraph (1)” should be included at the beginning of sub-paragraph (a).

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

In Schedule 2, in paragraph 6, in the English text, the structure and drafting of the provision does not succeed because sub-paragraphs (c) and (d) do not complete the sense of the opening words before sub-paragraph (a). In the Welsh text, the words that correspond to “the building and the associated land” at the end of those opening words have instead been included at the beginning of both sub-paragraphs (a) and (b). As a result, the drafting of the provision succeeds in the Welsh text but not in the English text.

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

In Schedule 4, in paragraph 6, a new Schedule 1A is inserted in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. In the new Schedule 1A, in paragraph 1(c) and (d), the modifications introduces a new sub-paragraph (aa) in the Welsh and English text of regulation 6(2) of the Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024. However, the term “concurrent application” (“cais cydredol”) is used in sub-paragraph (aa)(i) but it has not been defined for the purposes of regulation 6 of the 2024 Regulations. There is a definition of that term in the new Schedule 1A, in the modifications made by paragraph 1(i)(iii) and (j)(iii) but it has only been defined for regulation 8 of the 2024 Regulations.

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

In Schedule 4, in paragraph 6, a new Schedule 1A is inserted in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. However, paragraph 1(e) and (f) of the new Schedule 1A fail to identify the regulation where the new paragraph (4) should be inserted when modifying the Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024. In addition, there is also uncertainty as to whether the new paragraph (4) for insertion is correctly numbered or not.

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

In Schedule 4, in paragraph 12(a), a new paragraph 2 is substituted in Part 2 of Schedule 4 to the Developments of National Significance (Wales) Regulations 2016. In the new paragraph 2, there is a difference in the drafting of the modifications found in the second



column for "Regulation 12" and "Regulation 13". In the second column of the entry for "Regulation 12" the modified text of that regulation states "the determination period referred to in section 62L of the Town and Country Planning Act 1990". But in the second column of the entry for "Regulation 13", in paragraph (b), the modified text of that regulation states "the determination period within the meaning of section 62L of the Town and Country Planning Act 1990". The same issue also occurs in Schedule 4, in paragraph 13(a) which has a corresponding provision for Part 2 of Schedule 5 to the Developments of National Significance (Wales) Regulations 2016. It is unclear whether these differences are intentional and have been done for any particular reason.

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

In Schedule 4, in paragraph 15(c), in the description of the location of the amendment, it should note "paragraph (a)(ii)" rather than "sub-paragraph (a)(ii)". In addition, the sub-paragraph number (ii) should be included within the quotation marks before the new text that replaces the existing text.

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

24 September 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

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Legislation, Justice and Constitution Committee

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

Background and Purpose

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

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

Procedure

Negative.

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

Technical Scrutiny

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

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

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

¹ [ascod_20230003_en_001.pdf \(legislation.gov.uk\)](https://legislation.gov.uk/ascod/20230003/en/001.pdf)



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

Merits Scrutiny

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

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

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

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

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

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



Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

25 September 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 4.3

SL(6)520 – The Scheduled Monuments (Partnership Agreements) (Wales) Regulations 2024

Background and Purpose

These Regulations are part of a package of secondary legislation which brings into force and implements the Historic Environment (Wales) Act 2023 ('the 2023 Act'). The 2023 Act protects monuments of special historic interest and provides that the Welsh Ministers must maintain a record (referred to as a "schedule") of monuments in Wales that are of national importance.

These Regulations make provision about partnership agreements relating to scheduled monuments in Wales.

A partnership agreement is an agreement between the Welsh Ministers and an owner of a scheduled monument in Wales, or the land adjoining, or in the vicinity of, such a scheduled monument. There may also be additional parties to a partnership agreement, including any other person with an interest in the monument or associated land. A partnership agreement may relate to more than one scheduled monument. Partnership agreements are voluntary agreements for the long-term management of one or more assets. A partnership agreement may grant scheduled monument consent for an agreed programme of works to be carried out during the lifetime of the agreement.

The framework for a partnership agreement is set out in sections 25 to 29 of the 2023 Act.

Regulation 3 makes provision about the consultation and publicity requirements for agreeing and varying partnership agreements.

Regulation 4 requires the Welsh Ministers to publish a list, by electronic means, of partnership agreements that are in effect. The Welsh Ministers must update the list after entering into a new partnership agreement or if variations are made.

Regulation 5 revokes The Schedules Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021.

Procedure

Negative.

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

Technical Scrutiny



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

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

Regulation 3(5)(b) requires the Welsh Ministers to send the information described in regulation 3(5)(a) to “*any person the Welsh Ministers consider to have an interest in the draft agreement or draft variation, other than a person to whom the draft agreement or draft variation has been sent under paragraph (4)*”. Paragraph (4) includes the owner of a scheduled monument or associated land, an occupier of a scheduled monument or associated land, any local authority in whose area the scheduled monument or associated land is situated, and any local authority which is a guardian of the scheduled monument or associated land. It would be useful to understand which additional persons, or categories of persons might be considered to have an interest in a draft agreement or draft variation.

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 to be of interest to the Senedd

It is noted that some of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. As an example, this includes section 25 of the 2023 Act.

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

Welsh Government response

A Welsh Government response is required to reporting point 1, above.

Legal Advisers

Legislation, Justice and Constitution Committee
25 September 2024



Agenda Item 4.4

SL(6)521 – The Applications for Scheduled Monument Consent (Wales) Regulations 2024

Background and Purpose

These Regulations are made under powers given to the Welsh Ministers by the Historic Environment (Wales) Act 2023 (the “2023 Act”). The 2023 Act forms part of a code of law relating to the historic environment of Wales. These Regulations also form part of that Code.

The 2023 Act protects monuments of special historic interest. A monument may comprise a building, structure, work, cave or excavation, or site. The 2023 Act provides that the Welsh Ministers must maintain a record (referred to as a “schedule”) of monuments in Wales that are of national importance. Particular types of works may only be carried out to a “scheduled monument” if they are authorised by the Welsh Ministers. This authorisation is called “scheduled monument consent” and is granted under Part 2 of the 2023 Act.

The framework for applications for scheduled monument consent is set out in sections 14 and 15 of the 2023 Act. These Regulations make further provision about such applications relating to scheduled monuments in Wales.

Regulation 2 makes further provision about the form and content of an application for scheduled monument consent, how to make such an application and the documents that must be included with it.

Regulation 3 amends the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992 (the “1992 Regulations”). The 1992 Regulations align the procedures for making applications and holding inquiries where an application made under section 6 of the Transport and Works Act 1992 also requires scheduled monument consent.

Regulation 4 makes consequential amendments to the Developments of National Significance (Wales) Regulations 2016.

Regulation 5 revokes the Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017.

Procedure

Negative

The Regulations were made by the Welsh Ministers before it was 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 it was laid before the Senedd.



Technical Scrutiny

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

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

In regulation 3(3)(b), the location for the insertion of the new text by the amendment is identified as "after "consent"..." in paragraph (1) of regulation 4 of the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. However, the word "consent" occurs twice in the existing text of paragraph (1) in regulation 4 of those Regulations. It is found in the opening words before sub-paragraph (a) and in that sub-paragraph itself, both of which are part of paragraph (1) in regulation 4. Therefore, the amendment fails to identify with certainty the location for the insertion of the new text and whether it should only be inserted after the first place the word "consent" occurs or in both places.

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

In regulation 3(6), a new Schedule 3 is inserted in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. In paragraph 1(a) of the new Schedule 3, in the Welsh text, the word "declarasiwn" has been used to convey the meaning of "declaration" in the modification of section 15(1)(aa) of the Historic Environment (Wales) Act 2023. This is consistent with the terminology of the existing Welsh text of section 15 of that Act. It is also consistent with the entry on the Welsh Government's database of terms, BydTermCymru, that notes "declarasiwn" with status A as the fully standardised term for "declaration" and has an additional note that this differs in meaning from another Welsh word "datganiad" in a legal context.

Paragraph 2 of the new Schedule 3 also modifies the Applications for Scheduled Monument Consent (Wales) Regulations 2024. However, in the Welsh text, in paragraph 2(b) of the new Schedule 3, the word "datganiad" rather than "declarasiwn" has been used to convey the meaning of "declaration" in the heading and body of the new regulation 2A and in the heading and opening words of the Form of declaration of the modified text. Therefore, the choice of term for "declaration" in the Welsh text of the modifications in paragraph 2(b) of the new Schedule 3 is inconsistent with that used in the earlier modifications in paragraph 2(a) of the new Schedule 3 and the existing text found in section 15 of the Historic Environment (Wales) Act 2023, and differs from the standardised term on BydTermCymru. In addition, the word "datganiad" is used in the Welsh text of all of the modifications and in the existing text of section 15 of the Historic Environment (Wales) Act 2023 to convey the meaning of "statement". As a result, the reader of the Welsh text will also be unable to distinguish between "declaration" and "statement" because the same word has been used to express both terms in the modifications of paragraph 2(b) in the new Schedule 3.



Merits Scrutiny

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

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

It is noted that section 13(1) and (2) of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made.

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

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

25 September 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 18**

Legislation, Justice and Constitution Committee

SL(6)523 – The Vehicle Emissions Trading Schemes (Amendment) Order 2024

Background and Purpose

As part of the transition to zero emission vehicles (“ZEVs”), the Vehicle Emissions Trading Schemes Order 2023 (“the 2023 Order”) established four Great Britain wide trading schemes to limit both the numbers of new non-ZEVs which may be registered in Great Britain (the “ZEV Mandate”), and the carbon dioxide emissions from such vehicles. The Explanatory Memorandum accompanying the 2023 Order explained that it will contribute to Wales’s and the United Kingdom’s emissions reduction targets and Net Zero goal.

This Order extends the territorial scope of the trading schemes established by the 2023 Order to include Northern Ireland from 1 January 2025. It also makes a number of technical amendments and corrections to the 2023 Order and consequential amendments to assimilated law.

Procedure

Draft Affirmative.

A draft of the Order has been laid before Senedd Cymru, the United Kingdom Parliament, the Northern Ireland Assembly and the Scottish Parliament. The draft must be approved by each of those legislatures before it can be made by His Majesty.

Technical Scrutiny

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

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh.

The Order has been laid before Senedd Cymru, the United Kingdom Parliament, the Northern Ireland Assembly and the Scottish Parliament. The Order has been made in English only. The Welsh Government’s Explanatory Memorandum states as follows (at paragraph 2.2):

“As this instrument will be subject to UK, Scottish and Northern Irish Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.”



Merits Scrutiny

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

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

We note the following extracts from the Explanatory Memorandum regarding consultation in relation to the ZEV Mandate:

“Between 30 March 2023 and 24 May 2023, the previous UK Government, Scottish Government, Welsh Government, and Northern Ireland’s Department for Infrastructure ran a public consultation ...seeking views on “A zero emission vehicle (ZEV) mandate and CO2 emissions regulation for new cars and vans in the UK”...

This consultation informed the development and eventual coming into force of [the 2023 Order]. Owing to the absence of a sitting Northern Ireland Assembly in the autumn of 2023, even though the consultation proposed a UK-wide implementation of the ZEV Mandate it was not possible for it to apply in Northern Ireland. This was communicated in the consultation response ... alongside a commitment from the Department for Infrastructure (Northern Ireland), the previous UK Government, the Welsh Government, and the Scottish Government that it remained their collective intent that Northern Ireland join the ZEV Mandate should a sitting assembly choose to do so. This amending legislation implements that commitment as well as making technical updates and corrections to bring the legislative framework into closer alignment with this consultation and response.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

24 September 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 20**

Legislation, Justice and Constitution Committee

SL(6)524 – The Special Procedure Licences (Wales) Regulations 2024

Background and Purpose

Part 4 of the Public Health (Wales) Act 2017 ("the Act") provides that certain individuals who perform special procedures (as listed in section 57 of the Act) in Wales must be licensed by a local authority. The special procedures are:

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

Part 2 of the Regulations makes provision about applications for special procedure licences including the criteria that must be met in order for an application for a special procedure licence to be granted. Part 2 also makes provision about the form and content of an application form, which is set out in Schedule 1 to the Regulations.

Part 3 of the Regulations makes provision about the form and content of a special procedure licence (as set out in Schedule 2 to the Regulations).

Part 4 of the Regulations makes provision about the mandatory licensing conditions which apply to a special procedure licence (as set out in Schedules 3 to 7 to the Regulations).

Part 5 of these Regulations makes provision about fees in relation to special procedure licences.

Procedure

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

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



In the English language version of the Regulations, the heading 'Part 1' and its title are missing. The Welsh language version of the Regulations include "*Rhan 1 Cyffredinol*".

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

There appear to be words missing from regulation 4(1):

The licensing criteria that must be met by an individual (an "applicant") for a special procedure licence in order for the application to be granted are set out in paragraphs (2) to (4).

Section 62(1) of the Act states that "*Regulations must set out criteria that must be met **on an application** by an individual (an "applicant") for a special procedure licence...*" (emphasis added).

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

Regulation 6(1) states that a special procedure licence must be in two parts, as set out in Schedule 2, however they appear to be set out in separate schedules, both being "*Schedule 2*". The first Schedule 2 sets out the form and content of part 1 of a special procedure licence, and the second Schedule 2 sets out the form and content of part 2 of a special procedure licence. We ask the Welsh Government to confirm whether the form and content of the special procedure licence is set out in a single schedule or two separate schedules.

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

Regulation 6(6) defines "*approved premises or vehicle*" for the purpose of Schedule 2, however the phrase used, in the second Schedule 2, is "*approved premises **and/or** vehicle*" (emphasis added).

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

Regulation 7(3) defines "*the applicable special procedure conditions*" by reference to a table at paragraph (4). The table appears to be in paragraph (3), there is no paragraph (4) in regulation 7. As a consequence, the shoulder notes to Schedules 4 to 7 are incorrect.

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

We query whether the reference in regulation 9(2) should be to section 76(3) of the Act, as opposed to section 76(4) of the Act. Section 76(3) refers to the local authority determining the amount of the compliance fee, having regard to the costs incurred or expected to be incurred.

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



In Schedule 1 to the Regulations, which sets out the form of application for a special procedure licence, question 1.2 asks when does the applicant want the special procedure licence to start, with 'as soon as possible' being an option. Regulation 3(3) states that in the case of a temporary licence, an application must be made at least 28 working days prior to the intended start date of the temporary licence, it may have been helpful to include this information on the application form or in a guidance note.

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

In Schedule 1 to the Regulations, question 5.1 asks if an applicant has been served with a notice under section 61(1) of the Act and it refers to a special procedure licence, the Welsh language version of the form reads "*trwydded gweithdrefn arbennig*", however the translation used in the Regulations and in the Act is "*trwydded triniaeth arbennig*" (emphasis added).

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

In Schedule 1 to the Regulations, Guidance Note 1 states:

(b) if the applicant believes that the special procedure is likely to be carried out by the applicant in the areas of different local authorities, an application is to be made to one of those local authorities.

It is not clear if the applicant is required to state the names of all authorities in whose areas they expect to carry out the special procedure on the application form.

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

In Schedule 1 to the Regulations, Guidance Note 5 advises applicants to consult the non-statutory guidance if they are unsure as to what "basis" they perform special procedures. We ask the Welsh Government to confirm which guidance is being referring to. It would better assist applicants if the guidance was signposted.

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

Applicants are required to disclose unspent convictions for "relevant offences" in an application for a special procedure licence. In Schedule 1 to the Regulations, Guidance Note 8 "*Convictions for relevant offences*" states that what is considered a relevant offence is set out in section 66 of the Act. Given the importance of this information, setting out the relevant offences in the guidance notes would better assist an applicant in the process of completing the application form.

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



In the second Schedule 2, on Part 2 of the special procedure licence, the English language reads "*Approved premises and/or vehicle*" whereas the Welsh reads "*gerbydau*", the plural of vehicle. This appears in both the Welsh and English versions of the Regulations.

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

Paragraph 2(4) of Schedule 3 to the Regulations requires-

In the event of the special procedure licence becoming mislaid, stolen or damaged, the licence holder must apply, within a reasonable period, to obtain a replacement from the issuing local authority.

Setting a specified period of time within which a replacement should be obtained, or providing guidance on what is considered a reasonable period would provide a licence holder with more clarity.

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

Paragraph 4 of Schedule 3 to the Regulations require the licence holder to keep and maintain a register of incidents associated with the performance of special procedures by the licence holder. The licence holder must also register such incidents. Does the Welsh Government consider the drafting of this mandatory condition to be sufficiently clear, and would a licence holder be able to identify what would constitute an 'incident' and know how to register such an incident?

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

In paragraph 6(2) of Schedule 3 to the Regulations, the translation of "*contamination from blood or bodily fluids are likely*" reads as "*halogiad gan waed neu hylifau yn debygol*", the word "*corfforol*" is missing after "*hylifau*" in the Welsh language version.

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

Schedules 3 to 7 to the Regulations set out the mandatory licensing conditions that are to apply to special procedure licences, for the purposes of section 63 of the Act. These mandatory licensing conditions must be "*readily available upon request*" by a client.

We note that definitions have been included in the Schedules, however many of these definitions do not assist the reader in their understanding of the mandatory licensing conditions, as they merely refer to sections of the Act. The inclusion of the definitions at the end of the Schedules also hinders their accessibility.



Merits Scrutiny

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

17. 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

Regulation 4(2) sets out the licensing criteria that must be met by an applicant for a special procedure licence, in order for that application to be granted. The criteria include providing evidence of a criminal record check.

The application form for a special procedure licence, as set out in Schedule 1 to the Regulations, asks at 2.12 whether the applicant is eligible for a basic disclosure certificate issued by the Disclosure and Barring Service, an overseas criminal record certificate, or both. The applicant is also required to tick a box confirming that *“Evidence of basic disclosure certificate / overseas criminal record certificate is enclosed”*.

Guidance Note 8 on the application form states that a basic disclosure certificate will show an applicant’s unspent convictions and conditional cautions.

Part 4 of the application form is titled *“Convictions for relevant offences”* where an applicant is required to declare whether they have an unspent conviction for a relevant offence and to provide information about any relevant offences. A relevant offence is defined in section 66(8) of the Act as:

- (a) an offence under Part 4 (special procedures) or Part 5 (intimate piercing) of the Act;
- (b) an offence (whether under the law of England and Wales or elsewhere) that—
 - (i) involves violence,
 - (ii) is of a sexual nature, or relates to sexual material or images,
 - (iii) consists of tattooing a child under the age of 18,
 - (iv) relates to health and safety at work, or
 - (v) consists of a failure to comply with a requirement of a scheme for licensing or otherwise permitting or regulating the performance of an activity which is a special procedure for the purposes of the Act.

Under section 66 of the Act, where an applicant has been convicted of a relevant offence, a local authority must decide whether the applicant's fitness to perform a procedure to which the application relates has been called into question to such an extent that it would be inappropriate to issue the licence in respect of the performance of that procedure.

We ask the Welsh Government to provide an explanation as to why it considers requiring applicants for a special procedure licence to submit a criminal record check (which would show an applicant’s unspent convictions and conditional cautions, including those not considered



relevant offences) a proportionate means of establishing whether an applicant has unspent convictions for relevant offences. Were any alternative means of establishing whether an applicant has unspent convictions for relevant offences considered?

Further, the Explanatory Memorandum states that:

4.16 The Act provides for all applicants for a special procedure licence to declare any unspent convictions for 'relevant offences' as part of the application process and to submit a recent DBS certificate.

This statement suggests that such provisions are set out in the Act itself, can the Welsh Government clarify this statement?

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

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

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

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

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

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

19. 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

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

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

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

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



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

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

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

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

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

25 September 2024



Agenda Item 4.7

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

Background and Purpose

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

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

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

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

Procedure

Draft Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

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

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

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



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

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

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

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

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

Welsh Government response

A Welsh Government response to the merits point is required.

Legal Advisers

Legislation, Justice and Constitution Committee

23 September 2024

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

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

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

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

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



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

Background and Purpose

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

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

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

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

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

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

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



Procedure

Draft Affirmative.

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

Technical Scrutiny

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

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

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

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

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

Merits Scrutiny

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

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

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

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

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

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

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



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

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

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

Welsh Government response

A Welsh Government response to both points is required.

Legal Advisers

Legislation, Justice and Constitution Committee

23 September 2024

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

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



Agenda Item 4.9

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

Background and Purpose

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

- acupuncture
- body piercing
- electrolysis
- tattooing

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

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

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

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



Procedure

Draft Affirmative.

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

Technical Scrutiny

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

When applying for an approval certificate—

(a) [...]

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

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

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

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

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

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

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

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



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

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

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

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

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

The translation states that the applicant must:

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

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

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

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

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

Please see the non-statutory guidance for further information.

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

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



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

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

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

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

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

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

Merits Scrutiny

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

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

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

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

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



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

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

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

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

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

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

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

24 September 2024



SL(6)507 – The Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024

Background and Purpose

These Regulations make provision for the resolution of disputes in relation to landlord’s consent and variations to the terms of a contract of tenancy of a farm business tenancy under the Agricultural Tenancies Act 1995 (“the 1995 Act”).

Part 1 of the Regulations contains introductory provisions.

Part 2 of the Regulations allows a tenant to refer a request to arbitration where they need the landlord’s consent or the variation of terms of a farm business tenancy under the 1995 Act to enable the tenant to request or apply for relevant financial support under the Agriculture Wales Act 2023, or to meet a statutory duty.

Part 3 provides for a review of these Regulations by 13 June 2031, and at intervals not exceeding 5 years thereafter.

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

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

In regulation 2, the terms “farm business tenancy” and “statutory duty” are defined as having a meaning “In these Regulations”. But both of those terms are only used in regulation 3 of these Regulations. Therefore, the definitions of those terms should appear in regulation 3 as recommended by the Welsh Government’s drafting guidelines – see WLW 4.14(1).

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



In regulation 2, in the definition of “relevant financial support”, in paragraph (a), there is a reference to “section 8 of **the Agriculture (Wales) Act 2023**”. However, that Act has been defined as “the 2023 Act” in these Regulations. It also means that paragraph (a) is inconsistent with the following paragraphs in that definition where the defined term has been correctly used when referring to that Act.

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

In regulation 2, in the definition of “relevant financial support”, there is a difference between the English and Welsh text. In the English text, there is a conjunction “or” after paragraph (f) but there is no conjunction in the corresponding place in the Welsh text. The existence and choice of conjunction is significant as it indicates to the reader whether the paragraphs are cumulative or alternative – see WLW 2.9(7).

4. Standing Order 22.1 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;

In regulation 2, in the definition of “relevant financial support”, in paragraph (g), the description in parentheses after the reference to section 22 of the 2023 Act states “(powers of Welsh Ministers to give financial **assistance** in exceptional market conditions)”. However, it should state “financial **support**” as noted in section 22 of that Act.

5. Standing Order 22.1 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;

In regulation 2, in the definition of “statutory duty”, in paragraph (c), there is an incorrect, outdated use of terminology in the reference to a category of legislation known as “retained direct EU legislation”. This category of legislation should be referred to as “assimilated direct legislation” as noted in section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

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

In regulation 3(8), there is a difference in the period of time given to the tenant to refer the request to arbitration or third party determination when compared with the corresponding provision in regulation 3(9) of the Agricultural Holdings (Requests for Landlord’s Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024. These Regulations give the tenant a “period of 2 months”, but the other set of Regulations give the tenant a “period of 4 months”. It is unclear why there is a difference in the period of time given to the tenant by the corresponding provisions in the different sets of Regulations.

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

In regulation 4(2)(d), there is a difference in the drafting of the text when compared with the corresponding provision found in regulation 4(2)(d) of the Agricultural Holdings (Requests



for Landlord's Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024. In these Regulations, it states "at which **the award** takes effect" but in the other set of Regulations it states, "at which **the award or determination** takes effect". It is unclear why there is a difference between the two sets of regulations, because an award or determination may be made in both sets of Regulations.

Merits Scrutiny

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

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

The title of these Regulations appear in the Explanatory Memorandum as "the Agricultural Tenancies (Requests for Landlord's Consent **and** Variation of Terms) (Wales) Regulations 2024" each time the title is used. We ask that the correct title of these Regulations is confirmed.

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

These Regulations are subject to the negative procedure. It would have been helpful, in the preamble, to refer to section 36A(3) of the 1995 Act. This states that a statutory instrument containing regulations made under section 8A(7) is subject to annulment in pursuance of a resolution of Senedd Cymru.

10. 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.

Section 5 of the Explanatory Memorandum describes the consultation undertaken in advance of making these regulations:

The Agriculture (Wales) White Paper set out Welsh Government's proposals to introduce new dispute resolution provisions for 1986 Act tenancies, and asked whether the proposals should be extended to FBTs. No clear pattern emerged, with conditional support appearing to be more prevalent amongst a small subset.

Those in favour of extending the provisions to Farm Business Tenancies (FBT) felt market conditions limit tenants' power and influence to renegotiate agreements. Whereas those opposed noted the flexibility of the FBT framework has resulted in fewer disputes, and felt any further change could undermine the law of contract and confidence in the let sector.

On balance, Welsh Government decided to proceed with an amendment to the 1986 Act only. However, some stakeholders continued to make strong representations to Welsh Government as the Bill progressed through the Senedd. Subsequent discussions suggested existing provisions within the Act do not, in practice, offer a comprehensive



route to vary clauses in FBTs that extend beyond tenants' improvements, or which are the subject of a consent clause. As a result, some tenants may find their ability to vary restrictive clauses within their lease limited, particularly given their often weak negotiating position. This could then limit their ability to access financial support or comply with statutory obligations, thus risking financial loss and penalties.

Welsh Government conceded there could be a gap in provisions, albeit minimal, and amendment could remove ambiguity in the application of the current rules and be of benefit in a small number of cases without detrimental impacts elsewhere.

Welsh Government response

A Welsh Government response is required in respect of reporting points 1 to 9.

Committee Consideration

The Committee considered the instrument at its meeting on 16 September 2024 and reports to the Senedd in line with the reporting points above.



Government Response: The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) Regulations 2024

Technical Scrutiny points 1 and 2: The Welsh Government notes the points raised, but do not consider them to have any practical impact on the operation of the provision or instrument and will not seek to amend the instrument in respect of these points.

Technical Scrutiny point 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 will take that opportunity to amend the provision.

Technical Scrutiny point 4: 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 and will not seek to amend the instrument in respect of this point. Further, we disagree. The description in parenthesis after the reference to section 22 of the 2023 Act mirrors the description used in section 24(2)(c) and (4) of the 2023 Act.

Technical Scrutiny point 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.

Technical Scrutiny point 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 be addressed by amending regulations which we aim to introduce before the end of 2024.

Technical Scrutiny point 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.

Merit Scrutiny point 8: The Welsh Government notes the point raised and confirms the correct title is that used in the Regulations. The Explanatory Memorandum has been amended accordingly.

Merit Scrutiny point 9: The Welsh Government notes the point raised however as section 36A(3) of the 1995 Act it is not an enabling power, we have followed both our usual drafting practice, and section 3.11.23 of The National Archives' Statutory Instrument Practice, which clearly states "You should not cite provisions that merely specify the relevant Parliamentary procedure".

SL(6)519 – The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024

Background and Purpose

These Regulations are part of a package of secondary legislation which brings into force and implements the Historic Environment (Wales) Act 2023 (“the 2023 Act”).

The 2023 Act received Royal Assent in June 2023. It is a consolidation Act designed to restate primary and secondary legislation, and incorporate some related caselaw and practice. The package of regulations restate secondary legislation relating to the designation, protection and management of the historic environment in Wales. They also make consequential amendments to secondary legislation.

These Regulations make provision about partnership agreements relating to listed buildings in Wales, specifically about consultation and publicity requirements on making or varying such agreements. They replace the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, which are revoked by regulation 7 of these Regulations.

A partnership agreement is an agreement between the owner of a listed building in Wales and either the planning authority or the Welsh Ministers or both. There may also be additional parties to a partnership agreement, including any person who has special knowledge of or special interest in the listed building, generally or specifically. A partnership agreement may grant listed building consent under section 89(1) of the 2023 Act in respect of a programme of works specified in the agreement. The works may only be for the alteration or extension of the listed building to which the agreement applies, although a partnership agreement may relate to more than one listed building. That consent may be subject to conditions.

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

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



The term “partnership agreement” is defined in regulation 2. However, there are numerous instances in these Regulations where variations to this term are used, specifically “agreement” and “existing agreement”. For example, “existing agreement” is used in regulations 3(2) and 6(b), and “agreement” is used in regulations 3(2)(b) and (3), and 6(b)(i) and (ii).

Similarly, the term “planning authority” is defined in regulation 2. However, there are instances where the term “authority” is used, such as in regulation 5(2)(d)(iii) and (5).

Finally, there are three instances in regulation 5(9), in the definition of “owner”, where the term “building”, rather than the defined term “listed building”, is used. There are other instances where the term “buildings” is used, rather than the defined term “listed building”, which appear appropriate as they are not used in the context of a listed building, such as when describing “buildings of architectural or historic interest more generally” in regulation 5(2)(d)(iii) and (7).

Whilst it appears in each of these instances that the intention of the relevant provision remains clear despite the use of a variant term, and it may be possible to rely on section 9 of the Legislation (Wales) Act 2019 to interpret these variations in accordance with the defined terms in regulation 2, it may have been helpful for consistency if the defined terms had been used throughout the Regulations.

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

In regulation 5(2)(d), for clarity it would have been helpful for the opening text to have read, “give a copy of the notice **specified in sub-paragraph (c)** to-” (additional text emphasised), given that regulation 5(2) does not only deal with the provision of a notice and the information it must contain. For example, regulation 5(2)(a) concerns the making of certain documents available for public inspection, rather than the provision of a notice.

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

In regulation 5(9), a “long-term tenant” is defined as meaning “a tenant under a lease which is granted or extended for a fixed term that has at least **2 years** left to run” (emphasis added).

Similarly, an “owner” is defined in the same regulation as including (as well as the owner of the freehold estate) “a tenant under a lease of the building or part granted or extended for a fixed term that has at least **7 years** left to run” (emphasis added).

This appears to create a situation where a tenant under a lease for a fixed term that has at least 7 years left to run may be captured by both the definition of “long-term tenant” and “owner”, as the definition of “long-term tenant” is not limited to tenants subject to a fixed term lease of at least 2 years but less than 7 years.

It is noted that this does not appear to create any inequitable consequences in practice as a planning authority is required to give a copy of a notice set out in regulation 5(2)(d) to any “long-term tenant” and/or “owner” who is not a proposed party to the draft agreement or



draft variation. But it is noted that a planning authority who is the “owner” of a listed building or buildings to which a draft agreement or draft variation relates is subject to regulation 5(7), in accordance with regulation 5(6). This does not apply to a planning authority who is a “long-term tenant”.

The Welsh Government is asked to clarify whether the intention behind regulation 5(9) is that tenants under a lease for a fixed term that has at least 7 years left to run will be captured by both the definition of “long-term tenant” and “owner” and, if that is the case, whether there are any consequences to which the Committee should be made aware.

Merits Scrutiny

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

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

Regulation 4(4) provides that, during the consultation period specified under regulation 4(2)(b), the Welsh Ministers may give notice to the planning authority that they require further time in which to consider the draft agreement or draft variation. Regulation 4(5) provides that, if the Welsh Ministers give this notice, the consultation period is extended for the period specified in that notice.

It does not appear that any statutory limitation is placed on this power to extend the consultation period by notice. For example, no provision is made for a maximum period by which the consultation period may be extended by the Welsh Ministers.

Whilst it is acknowledged that regulation 5(4) and (5) is a restatement of the provision set out in regulation 5(4) and (5) of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, the Welsh Government is asked to clarify how this power is used in practice and whether any consideration has been given to the placing of a statutory limitation on it.

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

It is noted that some of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. As an example, this includes section 76(5) of the 2023 Act, which is referred to in the definition of “listed building” in regulation 2.

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

Welsh Government response

A Welsh Government response is required in relation to reporting points 1-4.



Committee Consideration

The Committee considered the instrument at its meeting on 23 September 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 50**

Legislation, Justice and Constitution Committee

Government Response: The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024

Technical Scrutiny point:

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

The aim of drafting is to make legislation as clear and simple as possible while achieving a reasonable level of certainty. That extends to enabling a reader to read text which flows well. There are other examples of drafters not considering it necessary or helpful to repeat a full defined term where it arises in the context of previous use. See for example sections 17 and 19 of the Historic Environment (Wales) Act 2023 and the use of “consent”. That is a legitimate drafting choice and the Government agrees with the Senedd that the intent of the provisions remains clear in these Regulations.

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

See above as to the aim of drafting. The reference to “the notice” in regulation 5(2)(d) follows immediately from the reference to “a notice” in sub-paragraph (c). So it is not necessary to cross-refer to sub-paragraph (c); see for an analogy the point in Writing Laws for Wales paragraph 5.6(2). The approach is a legitimate drafting choice and the Government does not consider the drafting to be defective.

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

Regulation 5(2)(d) lists the persons on whom the planning authority must give notice. There is an overlap between the definition of “owner” and “long term tenant” which is of no consequence so far as regulation 5(2)(d)(i) and (ii) is concerned.

In relation to the operation of regulation 5(6) and (7) it is the policy intention to only capture circumstances where the planning authority is the ‘owner’, not where it has a lesser interest.

The Government agrees with the Senedd that the overlap in the definitions does not create any inequitable consequences and is content with the operation of these provisions.

Merit Scrutiny point:

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

The provision has not been used in practice. Listed building partnership agreements are intended to be cooperative and supportive arrangements

for the management of historic buildings. Such agreements will vary in scale and complexity and the consultation requirements may differ accordingly. Consequently, no consideration has been given to introducing a statutory limitation. Like any discretionary power it would have to be exercised reasonably and in accordance with other general public law principles.

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

Ein cyf/Our ref: HIDCC/PO/0254/24

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

26 September 2024

Dear Mike,

In accordance with the inter-institutional relations agreement, I wanted to report on the latest meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs on 16 September 2024 which I attended.

The meeting was chaired by Steve Reed MP, Secretary of State for Environment, Food and Rural Affairs.

The meeting was also attended by Mary Creagh MP, Parliamentary Under-Secretary of State (Minister for Nature), Baroness Hayman, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs, Land Reform and Islands, Jim Fairlie MSP, Minister for Agriculture and Connectivity, and Andrew Muir MLA, Minister for Agriculture, Environment and Rural Affairs.

I have issued a Written Ministerial Statement summarising the discussions. The Group agreed to establish stronger intergovernmental relations based on the principles of honesty, trust and respect and, in this context, we agreed new and ambitious Terms of Reference. These will be published on the UK Government website and I will provide you with a link to these in due course.

We agreed a schedule of meetings for 2024 and 2025 to facilitate engagement and oversee several areas of enhanced collaboration.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

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

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

The next meeting will take place 18 November.

I have also copied this letter to the Climate Change, Environment and Infrastructure Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Huw Irranca-Davies'.

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

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



Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

26 September 2024

Dear Mike,

I write for the first time in my role as Cabinet Secretary for Finance and Welsh Language, I look forward to working with you in this capacity. This is to inform you that a meeting of the Finance: Interministerial Standing Committee (F:ISC) will take place on 3 October in Belfast. This will be the first meeting of the F:ISC with the new UK Government and I look forward to a constructive discussion.

The focus of the meeting will be on the economic and fiscal context and plans including the UK Government's spending inheritance. I will outline the Welsh Government priorities for the UK Autumn Budget and UK Spending Review. This includes our shared ambition for driving growth, renewing public services and accelerating net zero. I will also provide an update on the Welsh Government Draft Budget 2025-26 and the Welsh Government Spending Review.

There will be a discussion on fiscal flexibilities where I will outline the importance of the Welsh Government having appropriate budgetary flexibilities, and we will discuss options to enable us to maximise our resources.

The meeting will also have a focus on collaborative working and shared priorities. This is an opportunity to discuss longer-term issues, and how we can work together to make progress including the future of replacement EU funds.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Mark.Drakeford@gov.wales
Gohebiaeth.Mark.Drakeford@llyw.cymru

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I will meet separately with the Chief Secretary to the Treasury to discuss Wales-specific issues. I will report to the Committee on the outcome of the meeting.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive style and is contained within a light grey rectangular border.

Mark Drakeford AS/MS

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

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

Ein cyf/Our ref: MA/HIDCC/10102/24

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

24 September 2024

Dear Mike,

I am writing to inform the Committee of my intention to consent to the UK Government making and laying the Official Controls (Extension of Transitional Period) and Plant Health (Frequency of Checks) (Miscellaneous Amendment) Regulations 2024 (“the 2024 Regulations”).

We have received a letter from Baroness Sue Hayman the Minister for Biosecurity, Animal Health, and Welfare, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations will extend to England, Scotland, and Wales and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under:

- Article 144(6) of, and paragraphs 2 and 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council (‘the OCR’).

The purpose of 2024 Regulation is to extend the implementation period of import checks on certain sanitary and phytosanitary (‘SPS’) goods entering Great Britain (‘GB’) from certain countries, until 1 July 2025.

In addition, this instrument extends an easement which delays the requirement for import checks (that applies to rest of the world countries) in respect of plants, plant products, and other objects (such as machinery and vehicles which have been used for agricultural or forestry purposes) entering Great Britain from the EU, Liechtenstein and Switzerland through a West Coast Port (as listed in the definition of ‘relevant port’ in paragraph 2 of Annex 6 to Regulation (EU) 2017/625 of the European Parliament and of the Council (‘the Official Controls Regulation’), before 1 July 2025. The instrument also adds Swansea Port to the list of West Coast Ports (contained in the aforementioned definition of ‘relevant port’).

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Caerdydd • Cardiff
CF99 1SN

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Correspondence.Huw.Irranca-Davies@gov.wales

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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.

Finally, the instrument extends an easement which delays the requirement for import checks (that applies to rest of the world countries) in respect of certain fruit and vegetables as set out in Schedule 2A of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 imported from the EU, Liechtenstein or Switzerland before 1 July 2025.

The Regulations do not commit Welsh Ministers to adopting any future UK Government position on biosecurity. The Regulations do not diminish or undermine the powers of Welsh Ministers in any way.

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, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Huw Irranca-Davies', written in a cursive style.

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

Y Cyfarfod Llawn

Plenary

24/09/2024

Mae hon yn fersiwn ddrafft o'r Cofnod sy'n cynnwys yr iaith a lefarwyd a'r cyfieithiad ar y pryd.

This is a draft version of the Record that includes the floor language and the simultaneous interpretation.

3. Datganiad gan y Prif Weinidog: Cysylltiadau rhynglywodraethol

3. Statement by the First Minister: Inter-governmental relations

Y Llywydd / The Llywydd 15:00:52

129 Datganiad gan y Prif Weinidog nesaf ar gysylltiadau rhynglywodraethol. Y Prif Weinidog felly i wneud ei datganiad—Eluned Morgan.

The next item is a statement by the First Minister on inter-governmental relations. I call on the Prif Weinidog to make the statement—Eluned Morgan.

Eluned Morgan 15:01:02

First Minister of Wales

130 Diolch yn fawr. The Welsh Government is determined to deliver on our priorities. We will do this by working with public sector partners, those in Wales and beyond, in particular the new UK Labour Government. As First Minister, I commit to bringing energy and respect to this important work, and continue to stand up for Wales's interests within a thriving and vibrant union. Two Governments working together for the benefit of Wales is in the best interests of people right across the country.

- 131 We have not always seen respect in our inter-governmental landscapes over the last decade and a half. Of the 25 years of devolution, half of that time has been spent working alongside a Government that doesn't respect the devolution settlement, and didn't have Wales's best interests at heart. We will shortly be laying and publishing the 2023-2024 inter-governmental relations annual report. I'm not going to dwell on that further, but I invite Members to read it and reflect for themselves on how inter-governmental relationships suffered during the previous UK Government's time in power.
- 132 The formation of the new UK Government has provided a major opportunity to reset relations and begin a new era of partnership between the Welsh and UK Governments. We are determined to work together in the interests of delivering for the citizens of Wales. This doesn't mean that we will always choose the same path as colleagues working in London, but when we do disagree, we'll do that with respect and we'll always ensure that those decisions work in the best interests of the people of Wales.
- 133 That shared commitment to reset relations has already been very evident over the summer. I have had conversations with the Prime Minister, Chancellor and the Secretary of State for Wales to facilitate a collective response to critical immediate issues—on Tata, on public sector pay, on the issues that matter most to the people of Wales. Those conversations have opened a space to work in partnership to support and respect each other's priorities.
- 134 We've seen positive engagement on the UK Government's legislative programme, and we look forward to working with them on Bills in that programme that can benefit Wales. There are clearly areas where we in Wales can share our own experience and expertise, and we stand ready to do so. I also look forward to working together with the new UK Government to strengthen the Sewel convention through a new memorandum of understanding outlining how the nations will work together for the common good.

Daeth y Dirprwy Lywydd (David Rees) i'r Gadair.

The Deputy Presiding Officer (David Rees) took the Chair.

Eluned Morgan 15:03:55

First Minister of Wales

- 135 Mae ein hymgysylltiad gyda'r Canghellor a'r Prif Ysgrifennydd i'r Trysorlys wedi adlewyrchu ailosodiad positif o berthnasoedd ac adfywiad ysbryd cydweithredol. Pan wnaeth cyn Ysgrifennydd y Cabinet dros Gyllid a minnau gyfarfod â'r Canghellor ym mis Awst, fe wnaethom ni gytuno ar yr angen i osod sylfaen am berthynas agos a chynhyrchiol i gyflawni canlyniadau clir ar gyfer ein blaenoriaethau cyffredin yng Nghymru. Fe wnes i dynnu sylw at y materion sy'n bwysig i Gymru, gan gynnwys ein hymgysylltiad yn adolygiad gwariant y Deyrnas Unedig, cyllid teg i Gymru a hyblygrwydd cyllidebol.

136 Rhaid i ni gofio bod record economaidd Llywodraeth flaenorol y Deyrnas Unedig dros y 14 mlynedd diwethaf wedi gadael heriau sylweddol. Bydd mynd i'r afael â'r effeithiau ar unigolion, cymunedau a chyllid cyhoeddus yn cymryd ymdrech ac amser sylweddol. Er hynny, dwi'n hyderus y bydd, yn Llywodraeth newydd y Deyrnas Unedig, gyda ni bartner ymroddedig a fydd yn gweitho gyda ni ar y weledigaeth rŷn ni'n ei rhannu ar gyfer dyfodol Cymru. Wrth gwrs, nid yw perthnasoedd rhynglywodraethol ar draws yr nysoedd hyn yn ddwyochrog yn unig. Mae Llywodraeth Cymru wedi elwa o berthnasoedd cryf gyda'r Llywodraethau datganoledig eraill, a hefyd gyda Chyngor Prydain ac Iwerddon. Byddwn ni'n parhau i adeiladu ar y perthnasoedd cadarnhaol hyn.

Our engagement with the Chancellor and Chief Secretary to the Treasury has very much reflected a positive resetting of relationships and reinvigoration of collaborative spirit. When the then Cabinet Secretary for Finance and I met with the Chancellor in August, we agreed on the need to set the foundations for a close and productive relationship to achieve tangible outcomes for our shared priorities in Wales. I was able to highlight the issues that are important to Wales, including our engagement in the UK spending review, fair funding for Wales and budgetary flexibilities.

We must remember that the previous UK Government's economic record over the past 14 years has left significant challenges. Addressing the impacts on individuals, communities and public finances will require considerable time and effort. However, I am confident that, in the new UK Government, we have a committed partner who will work with us on a shared vision for Wales's future. Of course, inter-governmental relationships across these islands are not simply bilateral. The Welsh Government has always benefited from strong relationships with the other devolved Governments, and with the British-Irish Council. We will continue to build on these positive relationships.

137 The Welsh Government continues to believe that the review of inter-governmental relations, agreed in January 2022, can provide the machinery needed to bring the Governments of the UK together, to discuss the right things at the right time. But there are more connections to be made and strengthened, and that is why we welcome the Prime Minister's proposal for a new council of nations and regions—a way to bring together the Governments and the mayors of combined authorities across the UK. I look forward to participating in the first meeting, which will be held in the coming weeks.

138 In strengthening our intergovernmental relations and the devolution settlement, we'll seek to progress and build on the conclusions and recommendations of the Independent Commission on the Constitutional Future of Wales. The strengthening of inter-governmental relations since the UK elections is something to be really strongly welcomed. The Welsh Government will seek to capitalise on the opportunity to work in partnership with the UK Government for the benefit of the people of Wales.

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

Ein cyf/Our ref: MA/HIDCC/5924/24

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

26 September 2024

Dear Mike,

I am writing to inform you that the UK Emissions Trading Scheme (ETS) Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive), has today contacted ETS scheme participants to seek views on moving the start of the scheme's second free allocation period from 2026 to 2027.

A key role of the UK ETS Authority is to align the Scheme to net zero targets, ensure it is functioning as intended, and supports decarbonisation in ways which maintain business competitiveness. One way of maintaining market competitiveness is the free allocation of UK ETS allowances. Free allocations aim to protect trade-exposed industry in the UK from global competitors which are not subject to carbon pricing (carbon leakage).

To provide UK ETS participants with certainty over their future free allocations, the Authority consulted on a review of the process of assessing free allocations, which was published in December 2023¹. This review is particularly key for Wales as some of our industries, are very trade exposed and harder to decarbonise.

Welsh industry currently receives high levels of support through free allocations. It is important we do not disadvantage Welsh industry, as this would result in these industries relocating to countries that do not have the same climate ambitions, risking increased global emissions and an unfair transition to net zero as a result.

¹ [UK Emissions Trading Scheme: free allocation review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-free-allocation-review)

Following the Free Allocation Review, the second free allocation period, originally planned for 2026, will be used to implement any changes. Moving the scheme's second free allocation period to 2027 would mean any changes from the review are implemented a year later than previously planned. However, it would enable us to align changes to the UK ETS free allocation policy with the UK Government's plans to introduce a UK Carbon Border Adjustment Mechanism (CBAM) in 2027, which is in itself a carbon leakage mitigation measure. The Authority received a significant number of responses to the Free Allocation Review consultation earlier this year indicating a preference for alignment to ensure a consistent approach to carbon leakage mitigation. The move to 2027 will also provide additional time for careful consideration of stakeholder views and policy development in what is a complex and challenging area.

The Authority will be engaging directly with affected stakeholders, the consultation will be open for two weeks and the UK ETS Authority will respond as quickly as possible to give scheme participants certainty over their free allocations in the 2026 scheme year. The consultation will not be translated as affected stakeholders have already expressed their language preference in English.

I will of course write to you again when the Authority Response to the consultation on the Free Allocation Review is published. The information gathered will aid us in refining the scheme and enable us to create more robust mechanisms that will incentivise innovation, drive emission reductions, and secure a resilient, sustainable future for Wales.

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

Yours sincerely,



Huw Irranca-Davies AS/MS

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

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

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Agenda Item 12

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

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