

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 2, Senedd

Meeting date: 3 December 2024

Meeting time: 09.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Hybrid

Public meeting

(09.30 – 09.40)

- 1 Introduction, apologies, substitutions and declarations of interest

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

Affirmative Resolution Instruments

- 2.1 SL(6)548 – The Developments of National Significance (Fees) (Wales)
(Amendment) Regulations 2024

(Pages 1 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–35–24 – Paper 1 – Draft report

- 2.2 SL(6)549 – The Environmental Protection (Single–use Vapes) (Wales)
Regulations 2024

(Pages 4 – 7)



[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-35-24 – Paper 2 – Draft report

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

3.1 SL(6)542 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) (No. 2) Regulations 2024

(Pages 8 – 11)

Attached Documents:

LJC(6)-35-24 – Paper 3 – Report

LJC(6)-35-24 – Paper 4 – Welsh Government response

3.2 SL(6)544 – The Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Wales) Order 2024

(Pages 12 – 14)

Attached Documents:

LJC(6)-35-24 – Paper 5 – Report

LJC(6)-35-24 – Paper 6 – Welsh Government response

3.3 SL(6)545 – The School Teachers’ Pay and Conditions (Wales) Order 2024

(Page 15)

Attached Documents:

LJC(6)-35-24 – Paper 7 – Letter from the Cabinet Secretary for Education, 28 November 2024

4 Inter-Institutional Relations Agreement

4.1 Correspondence from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip: Forthcoming Intergovernmental Meetings

(Pages 16 – 17)

Attached Documents:

LJC(6)–35–24 – Paper 8 – Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, 22 November 2024

5 Papers to note

5.1 Correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: Review of the Water Sector

(Pages 18 – 21)

Attached Documents:

LJC(6)–35–24 – Paper 9 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 25 November 2024

LJC(6)–35–24 – Paper 10 – Letter to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 13 November 2024

5.2 Correspondence from the Cabinet Secretary for Housing and Local Government: The draft Senedd Cymru (Representation of the People) Order

(Page 22)

Attached Documents:

LJC(6)–35–24 – Paper 11 – Letter from the Cabinet Secretary for Housing and Local Government, 25 November 2024

5.3 Written Statement by the Cabinet Secretary for Finance and the Welsh Language: Introduction of the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill

(Pages 23 – 24)

Attached Documents:

LJC(6)–35–24 – Paper 12 – Written Statement by the Cabinet Secretary for Finance and the Welsh Language, 25 November 2024

5.4 Written Statement by the Minister for Children and Social Care: Eliminating profit from the care of children looked after – update on timescale and permitted models

(Pages 25 – 28)

Attached Documents:

LJC(6)–35–24 – Paper 13 – Written Statement by the Minister for Children and Social Care, 27 November 2024

5.5 Correspondence from the Counsel General and Minister for Delivery: The Legislation (Procedure, Publication and Repeals) (Wales) Bill

(Pages 29 – 41)

Attached Documents:

LJC(6)–35–24 – Paper 14 – Letter from the Counsel General and Minister for Delivery, 29 November 2024

LJC(6)–35–24 – Paper 15 – Letter to the Counsel General and Minister for Delivery, 15 November 2024

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

Private meeting

(09.40 – 09.50)

7 Welsh Language and Education (Wales) Bill: Draft report

(Pages 42 – 92)

Attached Documents:

LJC(6)–35–24 – Paper 16 – Draft report

8 Update in relation to HM Prison Parc

SL(6)548 – The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024

Background and Purpose

The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 (“these Regulations”) amend the Developments of National Significance (Fees) (Wales) Regulations 2016 (“the Fees Regulations”) to provide that the fee for the Welsh Ministers determining applications for electricity generating projects below 50MW is only payable where the application is determined by the Welsh Ministers as a result of a direction under paragraph 9 of Schedule 4D to the Town and Country Planning Act 1990.

According to the Explanatory Memorandum, the amendment made by these Regulations is consequential on amendments the Welsh Ministers intend to make in future regulations, which will be called the Developments of National Significance (Wales) (Amendment) Regulations 2024 (“the Future Regulations”).

Procedure

Draft affirmative

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

Regulation 2(c) of these Regulations inserts a number of defined terms into regulation 12(10) of the Fees Regulations. In particular this provision provides that, for the purposes of regulation 12, “the 2016 Regulations” means the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016.

Existing regulation 2(1) of the Fees Regulations contains definitions that apply to the whole of those Regulations. In particular, regulation 2 provides that “the 2016 Regulations” means the Developments of National Significance (Wales) Regulations 2016.

The amendment made by regulation 2(c) of these Regulations appears to have the desired legal effect, because the specific definition of “the 2016 Regulations” for the purposes of



regulation 12 will override the general definition of “the 2016 Regulations” that would otherwise apply in accordance with regulation 2(1).

However, giving the same term different meanings within the same set of Regulations could cause confusion to the reader (see Writing Laws for Wales at 4.4(6)), particularly when existing regulation 2(1) has not been amended to reflect that the general definition does not apply for the purposes of regulation 12 (see Writing Laws for Wales at 4.5(8)).

The Welsh Government is asked to explain why it chose to use a term already given a different meaning elsewhere in the Fees Regulations, rather than creating a new term, which would have been clearer for the reader.

Merits Scrutiny

The following three points are 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.

Paragraph 2.1 of the Explanatory Memorandum states that:

The making of the Developments of National Significance (Wales) (Amendment) Regulations 2024 will be subject to the Senedd’s approval of the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024, and if approved, it is anticipated that both sets of Regulations will be made simultaneously on 11 December.

The Welsh Government is asked why it is necessary for both sets of Regulations to be **made** simultaneously, when any need to coordinate the commencement of provisions could be managed through the coming into force provisions in the respective Regulations.

The Welsh Government is also asked to confirm that it does not intend to delay the signing of these Regulations by the Welsh Ministers if they are approved by the Senedd, in order to align with the making of the Future Regulations.

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

Paragraph 2.2 of the Explanatory Memorandum states that:

The amendment made by the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 is consequential on the Developments of National Significance (Wales) (Amendment) Regulations 2024. It would not be possible to interpret the regulatory impacts made by each statutory instrument in isolation without explaining the wider legislative context. Hence, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.



The Committee's scrutiny of these Regulations has been made more difficult by the fact that the Welsh Ministers have not laid the Future Regulations at the same time, to enable the Senedd to consider the full details of the policy it is being asked to approve. The limited information provided in the Explanatory Memorandum is no substitute for the text of the Future Regulations themselves.

The Explanatory Memorandum describes these Regulations as being consequential on amendments to be made in the Future Regulations. It therefore appears that the key policy detail is contained in the Future Regulations rather than in these Regulations. In light of this, the Welsh Government is asked:

- a. Why the Future Regulations were not made and laid at the same time as these Regulations were laid in draft before the Senedd, with aligned coming into force provisions?
- b. If there is a reason that these Regulations and the Future Regulations could not have been laid at the same time, the Welsh Government is asked why both sets of Regulations could not have been combined in accordance with section 40 of the Legislation (Wales) Act 2019 ("the 2019 Act")?
- c. If it would not have been possible to use section 40 of the 2019 Act, the Welsh Government is asked to explain why the Future Regulations, which contain the key policy change, were not made and laid first, in order that the Senedd could choose whether to annul those Regulations before considering whether to approve the consequential changes to the fees regime provided for by these Regulations?

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

It is noted that these Regulations were not subject to formal consultation for the reasons set out in paragraph 5.1 of the Explanatory Memorandum. In particular, the Explanatory Memorandum notes that the change made by these Regulations is time limited, as the developments of national significance system will be replaced when the Infrastructure (Wales) Act 2024 comes into force.

Welsh Government response

A Welsh Government response is required to reporting points 1 to 3.

Legal Advisers

Legislation, Justice and Constitution Committee

26 November 2024



Agenda Item 2.2

SL(6)549 – The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024

Background and Purpose

These Regulations prohibit the supply (including for free) of single-use vapes in Wales. The Explanatory Memorandum states that the policy objectives are to:

- Rapidly reduce environmental harm caused by the consumption of critical raw materials and incorrect disposal of single-use vapes in residual waste streams and being littered.
- Encourage wider and more sustainable behaviour change around the consumption of single-use products to tackle the throw-away culture.
- Encourage a shift towards reusable alternatives.

Corresponding regulations are being made for England and Scotland that are intended to be brought into force at the same time as these Regulations.

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 5 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 the preamble, section 140(1)(d) of the Environmental Protection Act 1990 is cited as one of the enabling powers upon which these Regulations rely. Section 140(1)(d) enables the Welsh Ministers to make Regulations that prohibit or restrict the storage of any specified item or article to prevent them from causing pollution of the environment and harm to the health of animals. However, these Regulations do not appear to make any provision in relation to the storage of single-use vapes. Therefore, this power does not appear to have been exercised in the making of these Regulations by the Welsh Ministers. The Committee notes that section 140(1)(d) of the Environmental Protection Act 1990 has not been cited in the preamble of England and Scotland's corresponding regulations that rely on the same enabling Act.

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



Regulation 9(4)(e) includes, as a condition which may give rise to a warrant for entry being granted, the circumstance where an application to enter the premises would defeat the object of the proposed entry. It is not clear what application is being referred to in this context, or to whom it might ordinarily be made when it would not defeat the object of the proposed entry.

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

In regulation 10(1)(d), there is a difference between the English and Welsh text. In the English text, it states “sub-paragraph (c)” but in the corresponding place in the Welsh text it states “f (c)”. Therefore, in the Welsh text, there is no word to convey the meaning of “sub-paragraph” and the reference is also incorrect.

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

In the Schedule, in paragraph 29(2), the term “costs” is defined but it is not stated where in these Regulations the term bears that meaning. The term “costs” is also used in paragraph 26(2) of the Schedule in a slightly different context. The Committee therefore queries whether paragraph 29(2) should note where the term “costs” bears the meaning given to it in that provision?

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

Paragraph 29(4) of the Schedule to the Regulations allows a person upon whom an enforcement cost recovery notice has been served to require that the regulator provide a detailed breakdown of the amount. However, there is no information provided as to how that person must go about exercising this right, for example, whether the request has to be in writing and/or has to be within a set timescale. There is also no requirement upon the regulator to provide the information in any set form or timescale. It would assist any person seeking to rely on this provision to have additional information on how to go about it. It is noted that paragraph 29 of the Schedule goes on to require the regulator to provide guidance on this process, but there is no requirement for such guidance to cover these issues.

Merits Scrutiny

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

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

In the preamble, in paragraph (a), it states that the Welsh Ministers consider it appropriate to make these Regulations to prevent the articles specified in them from causing pollution of



the environment and harm to the health of animals. There is no reference to the health of “plants”, which is found in the preamble of the regulations that will apply in England. The prevention of harm to animals or plants along with human health and the environment is noted in section 140(1) of the Environmental Protection Act 1990 as a purpose for exercising the powers found in that section. Clarification is therefore requested as to why “plants” is not included in the preamble to the Regulations.

Welsh Government response

Government response: The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024

Technical Scrutiny point 1: The point is gratefully noted. The main offence introduced by the Regulations can be committed by having single-use vapes in one’s possession for supply. It is envisaged that “having in possession” may take the form of storage of single-use vapes on business premises (e.g. in a locked cupboard in the back of a shop). On this basis, it is considered necessary for the Regulations to cite section 140(1)(d) of the Environmental Protection Act 1990.

Technical Scrutiny point 2: The point is gratefully noted. This is a standard provision used in many environmental SIs and we consider that its meaning is both clear and commonly understood. The Welsh Government does not consider an amendment is required.

Technical Scrutiny point 3: The Welsh Government is grateful to the Committee for identifying this minor equivalence point between the English and Welsh texts. We accept the point raised and will be making the corrections identified in the table annexed to this response prior to the making of the Regulations.

Technical Scrutiny point 4: The point is gratefully noted. In respect of paragraph 29(2) to the Schedule, the Welsh Government considers it is clear from both the heading and text of paragraph 29(1), and from the non-exhaustive list of matters which may be included as “costs”, that “costs” relates to the recovery of costs associated with the service of a stop notice or compliance notice. It is therefore clear that this definition of “costs” is limited to paragraph 29 only. Similarly, the Welsh Government considers that it is clear from the reading of paragraph 26(2) that “costs” has a narrower definition applicable only to paragraph 26 (being those costs incurred in fulfilling the unfulfilled requirements of a compliance notice or a third-party undertaking that has not been complied with). The Welsh Government does not consider an amendment is required, as, in the circumstances, the legal meaning is clear.

Technical Scrutiny point 5: The point is gratefully noted. We will bring this point to the Regulators’ attention, for their consideration as to whether this point should be addressed in guidance.

Merit Scrutiny point 1: The point is gratefully noted. It is well known that littering of single-use vapes can cause harm to animals via ingestion, poisoning and choking hazards. The impact of littering of single-use vapes on plants has generated less research and is therefore less



certain. Section 140(1) of the Environmental Protection Act 1990 states that Regulations may be made where there is a potential for harm to the health of animals or plants; it is not necessary for the harm to encompass both. The absence of “plants” from the preamble does not have any practical impact on the operation of the instrument (nor does it lessen any protection that the regime introduced by the SI will nonetheless offer to plants). The Welsh Government will not seek to amend the instrument in respect of this point.

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

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
Rheoliadau Diogelu’r Amgylchedd (Fêps Untro) (Cymru) 2024	The Environmental Protection (Single-use Vapes) (Wales) Regulations 2024
In paragraph 1(1) of the Schedule, in the opening words before paragraph (a), “i” will be inserted before “is-baragraff (2)”.	N/A.
In Regulation 10(1)(d), the reference to “f (c);” will be changed to “is-baragraff (c)”.	N/A.

Legal Advisers

Legislation, Justice and Constitution Committee

25 November 2024



Agenda Item 3.1

SL(6)542 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) (No. 2) Regulations 2024

Background and Purpose

These Regulations amend the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004 (the “principal Regulations”), which make provisions as to the drugs, medicines or other substances that may be ordered under certain circumstances for patients in the provision of medical services under a general medical services contract (“GMS contract”) within the meaning of section 42 of the National Health Service (Wales) Act 2006.

The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024 (the “2024 Regulations”) made in July 2024 amended the principal Regulations. They placed restrictions on the prescribing of gonadotrophin releasing hormone (GnRH) analogues by general medical practitioners in Wales when used to suppress puberty as part of treating gender incongruence or gender dysphoria in children and young people under 18 years of age.

These Regulations extend these restrictions beyond treatment provided by a general medical practitioner to treatment provided under a GMS contract. This will capture prescribers such as an independent nurse prescriber or an independent pharmacist prescriber who is prescribing under a GMS contract. The Explanatory Note explains that this *“change recognises the increase in the use of independent prescribers (including medical and non-medical prescribers) in GMS settings and makes clear that the restrictions apply to any person prescribing under a general medical services contract including prescribing by independent prescribers.”*

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 2(3)(b) of these Regulations omits the definition of a “*general medical practitioner*”, which was previously inserted by the 2024 Regulations, from Schedule 2 to the principal Regulations. This follows on from the amendment to column 2, paragraph (2), in the entry for “GnRH analogue”, by regulation 2(3)(a) of these Regulations, which removes the reference to a “*general medical practitioner*” in that entry.

However, it is noted that the table in Schedule 2 to the principal Regulations makes several other references to “*general medical practitioners*” in the entries relating to “Oseltamivir (Tamiflu)” and “Zanamivir (Relenza)”. As a result of the amendment made by regulation 2(3)(b), those references will no longer have a defined meaning.

The Welsh Government is asked to clarify the interpretation of “*general medical practitioners*” in Schedule 2 to the principal Regulations, following the amendment made by regulation 2(3)(b).

Merits Scrutiny

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

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

The 2024 Regulations adopted a definition of a “*general medical practitioner*” as a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council under section 2 of the Medical Act 1983 (the “1983 Act”). This definition was inserted into Schedule 2 to the principal Regulations.

The Committee considered and [reported](#) on the 2024 Regulations on 16 July 2024. It reported on a lack of clarity concerning that definition by noting that the General Practitioner Register was maintained under section 34C, rather than section 2, of the 1983 Act. The Welsh Government’s [response](#) to the Committee’s report accepted the lack of clarity and explained that the provision would be made clearer “*at the next available opportunity, and within the next 12 months*”. In a [letter](#) to the Cabinet Secretary for Health and Social Care on 24 September 2024, the Committee expressed disappointment that this lack of clarity would remain on the statute book for up to another 12 months.

The policy intention behind these Regulations is to extend the restrictions on the prescription of puberty blockers beyond general medical practitioners. This policy change was set out in the Cabinet Secretary’s [response](#) to the Committee on 7 October 2024 and further detail is provided in the Explanatory Memorandum to these Regulations.



As a consequence, the definition of a "*general medical practitioner*" that was inserted into Schedule 2 to the principal Regulations by the 2024 Regulations is omitted by regulation 2(3)(b) of these Regulations.

Welsh Government response

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

Committee Consideration

The Committee considered the instrument at its meeting on 11 November 2024 and reports to the Senedd in line with the reporting points above.



Government Response: The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) (No. 2) Regulations 2024

Technical Scrutiny point 1: The references to “general medical practitioners” in the entries relating to “Oseltamivir (Tamiflu)” and “Zanamivir (Relenza)” was inserted by the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2013 and were not given a defined meaning. The provisions relate to the notification procedures by the Welsh Ministers and have operated effectively without apparent issue during that time. The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024 inserted a definition of “general medical practitioner” in respect of the restriction on prescribing puberty blockers. The effect of the No. 2 Regulations was to broaden this restriction and the inserted definition not being necessary for this purpose was removed. Therefore, the position in respect of “general medical practitioner” reverts to the prior state which has not appeared to result in any difficulties.

Agenda Item 3.2

SL(6)544 – The Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Wales) Order 2024

Background and Purpose

This Order amends the Animal Gatherings (Fees) (Wales) Order 2018 (“the Animal Gatherings Order”). It increases fees payable to the Welsh Ministers under the Animal Gatherings Order for services provided by the Animal and Plant Health Agency.

This Order also revokes the Diseases of Animals (Fees for the Testing of Disinfectants) Order 1991 (“the 1991 Order”) in relation to Wales.

Procedure

Negative

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

Technical Scrutiny

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

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

There are inconsistencies in the Schedule to this Order, which is to replace the existing Schedule to the Animal Gatherings Order. In column 1 of Table 1, in the first and second entries, licences are described as being “*for sale premises or [for use as] a collection centre...*”. In the third and fourth entries, the licences are described as being “for premises used for animal sales or for use as a collection centre”.

Therefore, the entries vary by referring to “sale premises” or “premises used for animal sales”. The descriptions in these entries in column 1 of Table 1 should be consistent with each other if they all refer to the same activity on the premises. The heading of Table 1 refers to “premises for animal sales or collection centres” which suggests that the third and fourth entries are correct.

In addition, “animals” is a defined term in articles 2 of both the 2018 Order and the Animal Gatherings (Wales) Order 2010, which means that its inclusion is significant as it bears a specific meaning in these entries.



Merits Scrutiny

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

- 2. Standing order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment**

This Order prescribes the amount of a charge for various licences and applications as set out in the Schedule.

Welsh Government response

A Welsh Government response is required to the technical reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 25 November 2024 and reports to the Senedd in line with the reporting points above.



Government Response: The Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Wales) Order 2024

Technical Scrutiny Point 1: The Welsh Government accepts that there is an inconsistency between the wording of the entries in Column 1 of Table 1 and will take steps to correct this when the instrument is next amended. However, the Welsh Government is satisfied that this difference does not undermine the legal effect of the instrument.

The wording replicates that of the Animal Gatherings (Fees) (Wales) Order 2018 (the “2018 Order”), which is amended by this instrument. The 2018 Order makes provision for the determination of fees payable to the Welsh Ministers for the issue, amendment or renewal of licences for animal gatherings under the Animal Gatherings (Wales) Order 2010, amongst other provisions.

At present, the prescribed fees included in the 2018 Order are scheduled to be reviewed in 2026. However, in the meantime, should the powers under section 84(1) of the Animal Health Act 1981 be exercised by statutory instrument to prescribe other fees, the Welsh Government will consider amending Column 1 of Table 1 in that earlier instrument, if appropriate.

Mike Hedges MS
Chair of Legislation, Justice and Constitution Committee

28 November 2024

Dear Mike,

As you will be aware, I made the School Teachers' Pay and Conditions (Wales) Order 2024 ("the Order") on 6 November which was laid before the Senedd on 8 November and is due to come into force on the 29 November 2024. The Legislation, Justice and Constitution Committee considered the Order on 25 November and the Welsh Government responded to the Technical Scrutiny point raised in the report.

The Order is made under sections 122(1), 123 and 124 of the Education Act 2002 ("the Act"). Section 124(3) of the Act provides that an Order made under section 122 can make provision by reference to a document, which must also be published. The School Teachers' Pay and Conditions (Wales) Document 2024 ("the Document") referred to in the Order was published on 6 November. However, since publication a technical error has been identified in the Document.

The Document correctly states that a 5.5% uplift has been applied to all statutory scale points and allowances. However, the Additional Learning Needs allowances provided in Section 2, part 4 of the Document do not accurately reflect this.

I will republish the Document with these figures corrected to accurately reflect the 5.5% uplift prior to the Order coming into force on 29 November.

Yours sincerely



Lynne Neagle AS/MS
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Lynne.Neagle@llyw.cymru
Correspondence.Lynne.Neagle@gov.wales

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

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

Agenda Item 4.1

Ysgrifennydd y Cabinet dros Gyfiawnder Cymdeithasol, y
Trefnydd a'r Prif Chwip
Cabinet Secretary for Social Justice, Trefnydd and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JH/PO/350/24

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

SeneddLJC@senedd.wales

22 November 2024

Dear Mike,

Inter-Institutional Relations Agreement: Forthcoming Intergovernmental Meetings

I am writing in accordance with the Inter-Institutional Relations Agreement to notify you of the establishment of the Four Nations Group on the UK Government Child Poverty Strategy. The purpose of the group is to embed Scotland, Wales and Northern Ireland into the development of a UK-wide strategy on Child Poverty. The group will provide the opportunity for Scotland, Wales and Northern Ireland to inform the development of the UK-wide strategy and ensure the proposed strategy complements existing and developing strategies in Scotland, Wales and Northern Ireland.

I attended the inaugural meeting on the 13th of November. The meeting was chaired by Alison McGovern MP - Minister for Employment and Catherine McKinnell MP – Minister for School Standards. Also in attendance was Shirley-Anne Somerville MSP – Cabinet Secretary for Social Justice, Scottish Government and Emma Little-Pengelly – Deputy First Minister and Junior Minister Aisling Reilly, Northern Ireland Executive.

During this meeting I emphasised the need for collaborative working across government to tackle child poverty. I also sought to ensure that our strategies complement each other and do not duplicate, particularly around areas of reserved and devolved competencies, to highlight approaches here in Wales to tackling child poverty and mitigating the worst impacts of living in poverty and to press Wales priorities particularly in non-devolved areas.

Unfortunately, it was not possible to provide prior notification of this meeting due to it being called at short notice.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@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.

This forum is likely to meet on a monthly basis up until the publication of the UK Government Child Poverty Strategy, which is proposed for the Spring of 2025. Unfortunately as meetings are likely to be called at short notice it will not be possible to provide advance notice of the dates of each meeting. I will, however, provide an update following each meeting and will inform you when the group concludes its work.

I am copying this letter to Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs; the Children, Young People and Education Committee; and the Equalities and Social Justice Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first name.

Jane Hutt AS/MS

Ysgrifennydd y Cabinet dros dros Gyfiawnder Cymdeithasol, y Trefnydd a'r Prif Chwip
Cabinet Secretary for Social Justice, Trefnydd and Chief Whip

Agenda Item 5.1

Huw Irranca-Davies AS/MS

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: HIDCC/PO/0335/24

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

25 November 2024

Dear Mike,

Thank you for your letter of 13 November regarding the Independent Commission and the Review of the Water Sector. The Welsh Government recognises the significance of this independent review and its potential to provide meaningful recommendations for the future of water governance.

The Commission has been established to provide comprehensive recommendations addressing the water sector across both England and Wales. During my recent meeting with Sir Jon Cunliffe, I was reassured the unique characteristics of Wales' water governance model, policy approach, and industry will be fully considered, alongside the wider landscape of water regulation. A Welsh representative on the Commission will be key in ensuring Wales's unique perspectives are integrated throughout the review as well as bringing their own personal expertise and insight. The Commission's independent Chair, Sir Jon Cunliffe, will announce the nominee for that role in due course. Until the Commission completes its work, it would be premature to comment on its possible conclusions or recommendations.

The Welsh Government and DEFRA are contributing to the Commission collaboratively. Officials from both governments are working closely to provide the necessary insights to inform the Commission's work. The Commission is expected to report back to both governments during Quarter 2 of 2025. At that point Welsh Government and DEFRA will consider the recommendations and assess next steps. As part of this process, we are committed to consulting on any proposed reforms.

As I have said, our waterways are not confined by borders. The Commission's review and subsequent recommendations must respect the devolution settlement and ensure a coherent approach to shared challenges. I am pleased that both the Welsh and UK Governments are committed to close collaboration in tackling these issues. Any solutions must be founded on consensus, recognising when cross-border alignment is essential and when distinctive approaches are required for Wales.

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

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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.

Should the recommendations necessitate legislative change, we will carefully evaluate the most appropriate legislative pathway. This will involve discussions with the UK Government, particularly for areas that cross borders, to ensure any legislative solutions are practical, efficient, respect devolved responsibilities and maintain alignment where this is beneficial to both countries. Whether through a Senedd Bill or a UK Bill, we will prioritise solutions that reflect Wales' needs while maintaining our commitment to collaboration.

Once the Commission reports we will consider its recommendations in detail and determine appropriate next steps. This will include engaging stakeholders, communities, and businesses to ensure our response is well-informed and reflects the needs of Wales.

The Commission's independence and the collaboration between the Welsh and UK Governments provide a strong foundation for delivering meaningful reforms. I look forward to considering the Commission's recommendations and ensuring that Wales' unique context is integral to future changes to water governance.

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

Huw Irranca-Davies MS

Deputy First Minister and Cabinet Secretary for

Climate Change and Rural Affairs

13 November 2024

Dear Huw

Written Statement: Independent Commission and Review of the Water Sector

At our meeting on Monday 4 November 2024 we noted your written statement concerning the joint launch with the UK Government of an Independent Commission and Review of the Water Sector. This matter is of interest to us given our consideration of the Welsh Government's legislative consent memorandum on the UK Government's Water (Special Measures) Bill and our scrutiny of intergovernmental relations.

In the statement, you refer to the "fresh approach of our two governments to cross-border cooperation on an issue which affects us all". You also note that "water is a complex and highly sensitive aspect of the devolution settlement in Wales, *which needs to be considered when developing future arrangements*" and that recommendations from the Commission "will *form the basis of further legislation to attract long-term investment* and clean up our waters for good." [Our emphasis].

In addition you state that "*We* have clear priorities for reform and a *shared sense* of the work that will be needed across both countries' policy and regulatory regimes to make this change happen. There will need to be a *consensus for action*, and this includes where distinctive solutions are needed in Wales and in England to *deliver a reset* and secure a resilient water sector and framework that will work for the long term." [Our emphasis].

Reference is also made to "This crucial work will complement the wide range of work on water quality that is already underway in other areas" and "our continued collaboration with our counterparts in England on this vital issue."

We anticipate that a primary legislative solution may be required to deliver some of the Commission's potential recommendations and that this will likely arise during the Seventh Senedd. Given that it is likely that the UK Government would introduce a Bill to implement recommendations for England arising from the Commission's work, a few questions arise:

- (i) How will the Welsh Government approach the Commission's work and implement its recommendations that relate to Wales, and are your officials working and preparing on the basis (during this Senedd) that a Bill will be introduced into the Seventh Senedd?
- (ii) As part of the cross-border cooperation you refer to in your written statement, what representations have you made to the UK Government about future legislative solutions to deliver the Commission's recommendations? Have you or your officials discussed with counterparts in the UK Government using a UK Bill to deliver the recommendations that relate to Wales?
- (iii) In terms of your collaboration with your counterparts in the UK Government, how might this be affected if legislation was introduced to the Senedd, rather than the UK Government legislating for Wales?
- (iv) What information have you provided to the Commission about possible future legislative solutions and your preferred approach?
- (v) Your statement refers to "a dedicated representative of the sector in Wales" being on the Commission, and seeking the views of Wales' experts to ensure the Welsh perspective is considered at the highest level. On what basis will these representatives input to the Commission: on the basis of a Bill coming before the Senedd or a joint legislative solution in a UK Bill?

I look forward to receiving a reply by 28 November 2024. I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



Mike Hedges

Chair

Agenda Item 5.2

Jayne Bryant AS/MS
Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
Cabinet Secretary for Housing and Local Government



Llywodraeth Cymru
Welsh Government

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

25 November 2024

Dear Mike,

The Welsh Government has today published a consultation on the draft *Senedd Cymru (Representation of the People) Order* (known as “the Conduct Order”). The draft Order outlines the procedures for conducting elections to the Senedd, how the election and its campaign should be managed, and addresses the process for legal challenges to an election.

The draft Order updates and consolidates the existing provisions on the conduct of Senedd elections set out in the *National Assembly for Wales (Representation of the People) Order 2007* and those in the related amending orders. While the law has largely been re-stated as part of an accessible, bilingual framework for the first time using modern and clear language, the draft Order also reflects wider developments since the 2021 Senedd election.

The consultation paper, draft Order and draft explanatory memorandum can be accessed via the following link: <https://www.gov.wales/draft-senedd-cymru-representation-people-order>.

We are aware that there is an issue with the formatting on the second level of the sub-paragraphs in the published version of the Welsh SI which we are looking to rectify. In any case this will be rectified before the SI is laid before the Senedd next year.

Yours sincerely,

Jayne Bryant AS/MS

Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
Cabinet Secretary for Housing and Local Government

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Jayne.Bryant@llyw.cymru
Correspondence.Jayne.Bryant@gov.Wales

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**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	Introduction of the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill
DATE	25 November 2024
BY	Mark Drakeford MS, Cabinet Secretary for Finance and the Welsh Language

The Visitor Accommodation (Register and Levy) Etc. (Wales) Bill is being introduced to the Senedd today.

As one of our Programme for Government commitments, the Bill is a step towards ensuring fairness in the funding of local services and infrastructure, which supports our thriving tourism industry. It paves the way for local authorities to introduce a levy on overnight stays in visitor accommodation, if they choose to do so.

One of the Welsh Government's tax principles is that our taxes should be developed through collaboration and involvement. Through consultation, continued engagement and the discovery work led by the Welsh Revenue Authority, we have received consistent feedback that we need a form of registration in place to support the levy. This has informed our decision to include a national register of all those providing visitor accommodation in Wales within the Bill.

The register will provide valuable data to inform future tourism development and assist in the efficient collection of the levy, wherever it is introduced.

This Bill is rooted in the principle of fairness. By giving local authorities the power and choice to introduce a visitor levy, based on their local circumstances, it ensures those who benefit from tourism will make a small but important contribution to the maintenance of local areas. They will also be investing in the future of Wales.

Visitor levies play a crucial role in supporting communities and protecting the environment all over the world. Many countries have seen real benefits from the reinvestment of visitor levy funds. We believe such success can be replicated in Wales.

The visitor levy rate is set in the bill as 75p per person per night for stays at campsites (pitches) and hostels and £1.25 per person per night for stays in all other types of accommodation.

If all local authorities introduced a levy, it could potentially generate up to £33m across Wales. Amid significant budget pressures, this additional revenue has the potential to make a substantial positive impact on our communities. The tourism sector is an important part of the Welsh economy, and ensuring its long-term sustainability is a priority.

I welcome the scrutiny of this Bill by Members of the Senedd. It is an opportunity to invest in the future of the visitor economy.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Eliminating profit from the care of children looked after - update on timescale and permitted models**

DATE **27 November 2024**

BY **Dawn Bowden MS, Minister for Children and Social Care**

I am writing to update you on the Health and Social Care (Wales) Bill introduced on 20 May 2024 and currently in Stage 2 scrutiny. As you will know the Bill contains provisions around the care of children looked after including detailing permitted future models of provision underpinned by planning related to timescales for implementation.

The Welsh Government has given careful consideration to Committee recommendations and what key stakeholders have told us. This includes consideration around extending timescales for implementation of the transitional provisions which have been a feature of the Bill since inception ('the transitional period'). The operation of these transitional provisions for a stable, identified period has always been intended to give local authorities sufficient time to plan and build up their own provision and give those providers of restricted children's services who wish to re-establish their business under a permitted not-for-profit model sufficient time to do so. Having such a period also reduces the risk of disruption to existing child placements by enabling current "for-profit" providers of the new restricted services to continue to operate while replacement provision is developed and put in place.

Changes to the Transitional Period Timetable

Under our current transition plans, new providers registering with Care Inspectorate Wales to provide a restricted children's service will have to have not-for-profit status from 1 April 2026. Existing for-profit providers will be subject to transitional restrictions from 1 April 2027 unless they re-establish their business as a permitted not-for-profit model. The transitional restrictions will prevent such providers from registering new homes or approving new foster carers; the provisions will also mean that local authorities in Wales will only be able to place children with such providers with the approval of Welsh Ministers.

I am aware that both existing providers and local authorities have concerns around the proposed timetable and have highlighted the risk of a gap in provision of children's home and fostering service placements and a consequential adverse impact on children and

young people. I fully understand that local authorities require time to develop sufficiency of in-house and not-for-profit provision, particularly residential homes, and the time it takes to obtain registration as a charitable organisation for any for-profit provider wishing to re-establish under the permitted not-for-profit models. I am also aware of the financial challenges given the broader budgetary pressures within local authorities.

The Welsh Government has been supporting local authorities to develop their in-house children's care provision for several years through various different capital and revenue funding streams. Current capital streams include the Housing with Care Fund (HCF) and the Integration and Rebalancing Capital Fund (IRCF), with revenue funding being available via the Regional Integration Fund (RIF) and the Social Care Reform Fund. We will of course continue to provide support via both revenue and capital funding as we move forward. However, a longer period before the transitional restrictions come fully into effect for existing providers would allow local authorities to spread these costs.

I have carefully considered the merits of different timescales to strike an appropriate balance between enabling additional planning and implementation time for local authorities and providers whilst maintaining the policy intent to eliminate profit from the care of children looked after. Securing long-term sustainable provision that best meets the needs of our most vulnerable children is vital but we must also mitigate against any potential adverse unintended impacts on them.

To that end I am minded to adjust the transitional arrangements accordingly:

- Spring 2025 – anticipated Royal Assent for Bill
- From 1 April 2026 – no new for-profit providers of restricted children's services (care home, fostering and secure accommodation services) are able to register in Wales
- From 1 April 2027 – no additional beds or foster carers able to be added by existing for-profit providers of a children's care home, secure accommodation service or fostering service.
- 1 April 2030 – no new placements of children within existing for-profit children's care homes, fostering and secure accommodation service providers by English placing authorities except in exceptional circumstances specified in regulations. No new placements from Welsh placing authorities unless there is Ministerial approval via the supplementary placements process set out in the Bill.

Not-for-profit models

Our legislation sets out that future permitted operating models (not-for-profit entities) have to satisfy the principle there must be no payment of dividends to shareholders or members and that trading surpluses should be reinvested into the service (including building appropriate reserves and capital expenditure). A not-for-profit entity will also be required to have objects or purposes that primarily relate to the welfare of children or such other public good as the Welsh Ministers determine.

A not-for-profit entity is defined in the Bill as:

- (a) a charitable company limited by guarantee without a share capital,
- (b) a charitable incorporated organisation,
- (c) a charitable registered society, or
- (d) a community interest company limited by guarantee without share capital.

Feedback from for-profit residential care providers has included proposals to expand these permitted models to include other models such as an Employee Ownership Trust (EOT) and a co-operative society. I have given this matter careful consideration but have concluded that, in order to ensure the integrity of both our legislation and policy intent, it would not be appropriate to add Employee Ownership Trusts or co-operatives, as defined under the Co-operatives and Community Benefit Societies Act 2014, to the list of permitted models within the Bill.

An EOT owns shares in an operating company on behalf of all employees and is overseen by Trustees who look after their interests. If EOTs were a permitted model this would mean in effect we were adding a company limited by shares as an acceptable model. This is because, regardless of the way in which the EOT owned the shares in the operating company, the operating company itself would be a company limited by shares. The structure around the EOT also means that the burden of regulation will fall solely on Care Inspectorate Wales, unlike the existing models set out in the Bill.

There have been similar calls for co-operatives to be added to the list of permitted models. As you will know, co-operative societies are strongly encouraged by the Welsh Government, but Co-operatives, as defined under the Co-operatives and Community Benefit Societies Act 2014, are required to be set up for the benefit of co-operative members, a requirement which does not align with our policy, which is for the welfare of children to be the primary purpose. However, there are arrangements adopted by organisations that adhere to the cooperative values and principles, and where these are operated within one of the four types of undertaking permitted in the Bill, these could meet the not-for-profit requirements. We will continue to work with organisations in this space.

The Welsh Government remains fully committed to ensuring that we do not have a market for the care of looked after children and to ensure that all public money invested in accommodation and fostering services is not extracted out as profit or shares or bonuses but re-invested to support better outcomes for our most vulnerable children and young people.

I am keen to ensure transition can be undertaken in a careful and considered way, and support will be provided by the Welsh Government to both for-profit and not-for-profit providers as part of this process.

Julie James AS/MS
Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery



Ein cyf/Our ref: CG/PO/359/2024

Llywodraeth Cymru
Welsh Government

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

29 November 2024

Dear Mike

Legislation (Procedure, Publication and Repeals) (Wales) Bill

Thank you for your letter of 15 November regarding the Bill. My response follows.

The marshalled list for legislation

We briefly discussed the marshalled list during my evidence to the Committee.

Amendments to Bills are numbered in the order in which they are tabled, but the consideration of amendments is determined, usually, in the order in which they affect the Bill. Once all the amendments have been tabled they are then assembled and arranged (in other words 'marshalled') into the order in which they will be considered and voted upon. A "marshalled list" showing this order is then produced.

I agree with the sentiments expressed by Members of the Committee that both the marshalled list and voting on amendments as they affect the Bill rather as they are debated, can be confusing for those outside the immediate proceedings. We need to consider how to encourage fuller engagement in the legislative process and the way we amend Bills is an important part of that.

As my officials mentioned in evidence to you, the marshalled list and our current system of considering amendments is based on a paper-based print orientated world. This is a world we should have moved on from in other circumstances. We need to consider how technology that already exists could enable amendments to be viewed and voted upon in a more accessible and understandable way. I am keen for the Senedd and the Government to consider the opportunities that may be available to improve the current process.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Cwnsler.Cyffredinol@llyw.cymru
correspondence.Counsel.General@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.

Borrowing powers of the Welsh Development Agency

The Welsh Development Agency (WDA) was established under the Welsh Development Agency Act 1975 (“the 1975 Act”). The WDA was abolished in 2006 and its functions were transferred initially to the National Assembly as constituted in 1999 and then in turn (by virtue of the Government of Wales Act 2006) to the Welsh Ministers.

Although the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3226) abolished the WDA and transferred its functions, property, rights and liabilities, the 1975 Act was retained albeit in amended form. A borrowing power that the WDA had under Schedule 3 to the 1975 Act was also transferred to the Welsh Ministers. However, this had become only a theoretical power by the time it was transferred. This was because under (UK) Treasury rules, if the Welsh Ministers (or indeed the former WDA) had exercised the power, the money would have been treated as a receipt, passing directly to the Welsh Consolidated Fund, producing no additional net resources for Wales. In other words, the sum borrowed would have been deducted from the moneys allocated to the Welsh Consolidated Fund by the Treasury – meaning, in practice, it was a power that could not be used.

The Wales Act 2014, which enabled the Welsh Ministers to borrow in limited circumstances (without that restriction), eventually repealed the power in the 1975 Act.

Response to questions in the Annex to the Committee’s letter

Question 1: With regard to your responsibility for overseeing the timetable for, and delivery of, the Legislative Programme, please outline why the decision was made to attach a higher priority for the introduction of this Bill over the potential introduction of a Senedd Bill including provisions which currently appear within UK Government legislation, such as within the Renters’ Rights Bill.

During my evidence on 4 November I explained that this Bill has been developed by our Legislative Counsel, who have worked on it as and when time has allowed. It has not been prioritised above other legislation, it is merely the case that it is now ready and a slot was available for introduction.

I do not view this Bill today as being more important than another one. Instead it is just part of the work we have been doing for some time: quietly and persistently working to improve the accessibility of Welsh law.

The Cabinet Secretary for Housing and Local Government has already provided evidence to the Committee on the Renters’ Rights Bill, which I note amends Welsh housing legislation.

Question 2: The Explanatory Memorandum (EM) does not reference the Bill’s impact on human rights. Please indicate:

- **whether the Welsh Government has undertaken an assessment of the human rights implications of the Bill’s provisions; and**
- **in particular, whether the Welsh Government believes that section 2 of the Bill will have any impact on human rights.**

The Government has undertaken an assessment of the human rights implications of the Bill, and I am satisfied that its provisions are compatible with the Convention rights. Furthermore, I consider that the Bill has a positive impact on both human rights and the rule of law, because it puts the arrangements for the scrutiny and publication of legislation on a clearer legal basis and removes unnecessary clutter from the law of Wales.

The Government does not consider that section 2 gives rise to any issues about compatibility with the Convention rights. In any case where a road traffic order engages Convention rights, the Welsh Ministers will be required to act compatibly with those rights in making and enforcing the order. There are also statutory procedures for making and publicising road traffic orders, for example in SI 1990/1656 and SI 1992/1251 made under the Road Traffic Regulation Act 1984; and new section 37Z of the 2019 Act (inserted by section 3 of the Bill) will require the Welsh Ministers to publish all Welsh subordinate instruments they make that are not required to be made by Welsh statutory instrument.

Question 3: The EM, at paragraph 82, states that there is “no immediate intention” to use the powers in new section 37F(2)(c) and Schedule 1A, paragraph 6(3)(c), of the Legislation (Wales) Act 2019 (the 2019 Act), as inserted by section 1 of the Bill. The EM goes on to state that it is however “prudent to ensure there is an appropriate mechanism available to enable specific enactments to be listed if the Senedd or the Welsh Ministers consider particular instruments need not be laid before the Senedd.”

Please provide:

- **further justification for the inclusion of these powers, in the apparent absence of an intention to use them; and**
- **an explanation of why it was decided to confer these powers on the Welsh Ministers, rather than leave it for the Senedd to decide in each enactment.**

As I outlined to the Committee in my evidence, the intention with new Parts 2A and 2B is to codify and modernise existing legislative arrangements to reflect both the realities of devolution and of current practice. Section 37F captures both existing arrangements and practices, as well as improving on the current position.

At present if an enactment does not provide that a statutory instrument must be laid before the Senedd (either as part of the procedure for its making or otherwise), then the instrument would not be laid. New section 37F provides a ‘default’ such that Welsh statutory instruments not subject to a procedure under section 37C, 37D or 37F, must be laid. This will mainly affect commencement orders and certain other orders

However, there are some exemptions from the default requirement: “local” instruments that are not currently required to be laid, and those subject to the special Senedd procedure (and which would therefore be laid under that procedure). Officials have undertaken an exercise to identify any other enactments where there is not currently a requirement to lay an instrument before the Senedd, the effect of which should be maintained. To date that work has not identified any relevant enactments, however we cannot be sure that such an existing enactment would not be uncovered at a future point. The powers at section 37F(2)(c) and paragraph 6(3)(c) of Schedule 1A therefore provide a mechanism for adding such enactments to the list of exemptions from the default requirement.

I trust the Committee will therefore understand that I do not agree with your characterisation of the Government’s intentions in your correspondence. As set out in the Explanatory Memorandum there is no “immediate intention”, which is not the same as no intention ever.

It remains open to the Senedd to decide that powers in a future Bill to make subordinate legislation as a Welsh statutory instrument need not be exercised subject to a procedure. And in those cases, it is also open to the Senedd to set out that section 37F would not apply. The Bill does not constrain the powers of the Senedd in this regard.

Question 4: Please outline in more detail how new section 37Z(2) of the 2019 Act, which requires the Welsh Ministers to prepare and publish a determination about the numbering and classification of Welsh subordinate instruments, will operate in practice.

In developing new Part 2B we sought to ensure that where certain aspects of publication affected both Acts and Welsh statutory instruments, we made comparable provision. For example, section 37J deals with the numbering of Acts and section 37P makes analogous arrangements for instruments. Similarly, we have sought to ensure like for like arrangements exist for publication and preservation.

Because subordinate legislation made by the Welsh Ministers other than as a Welsh statutory instrument is not published by or on behalf of the King's Printer, we have not included the detailed arrangements for publication of this legislation in the Bill/Part 2B. Instead, as noted by your Committee, new section 37Z(2) requires the Welsh Ministers to prepare and publish a determination on such matters.

I expect the determination to set out the detailed requirements that officials will follow when arranging publication. As such it will need to outline the approach to be taken on numbering - for example, a new series to start each calendar year, where the number is to be located on different types of subordinate legislation, etc. It will also set out how such subordinate legislation is to be classified. For example, by subject and if so, whether a subject heading is recorded on the subordinate legislation or whether this forms part of a register of subordinate legislation.

The overall intention is that all subordinate legislation will be published when it is made. Where legislation has been superseded (for example, a Code of Practice has been updated), the current working assumption is that if the earlier version is replaced and is not on the Government's website a reference to it will be shown and it will be available on request. To support these publication ambitions it is necessary that a full record is made, and individual legislation is capable of identification (through numbering and classification).

The determination will serve as a clear point of reference to strengthen our approach to publishing subordinate legislation.

Question 5: Please outline why it is necessary to include the provision in paragraph 7 of Schedule 1A, which provides the Welsh Ministers with delegated powers to amend any enactment to reflect the effect of, or make provision consequential upon, the Schedule.

Please see Table 3 of the Explanatory Memorandum and paragraph 59 of the Explanatory Notes.

Question 6: Please can you indicate whether there are any provisions in the Bill that would enable the Welsh Ministers to change the procedure attached to an existing power delegated to the Welsh Ministers?

The only circumstances in the Bill under which the Welsh Ministers may change the procedure attached to an existing power, is set out in new section 37G. This is however a restatement of existing section 40 of the 2019 Act (and section 40 is omitted by virtue of paragraph 14 of Schedule 3 to the Bill).

There is no general power to change the procedure attached to existing powers.

Question 7: During the evidence session, your official referred to the Bill's creation of a new obligation on the King's Printer of Acts of Parliament to publish Welsh legislation in an up-to-date form. Your official also noted that other "certain gaps" in relation to the King's Printer will be filled by the Bill. Please provide an outline of these gaps and how the Bill seeks to address them.

In relation to Acts of Senedd Cymru, the Bill provides:

- an express obligation upon the King's Printer for Wales to publish the certified copy of the official print of the Act (see section 37M). The obligation to do so is only implied in section 115 of the Government of Wales Act 2006.
- a requirement to publish associated documents (section 37M) and a power to print these (section 37Y). This is not currently provided for in legislation, but in practice the King's Printer publishes the Explanatory Notes to Acts of Senedd Cymru. For consolidation Acts, the King's Printer also publishes tables of origins and destinations, and copies of the drafters' notes. In future this could also include impact assessment or other materials.
- a requirement to publish a table of the effect of the Act upon other enactments (if applicable) (section 37U).
- the requirement to publish means publishing online, something that is not currently expressly provided for.

In relation to Welsh statutory instruments,

- new sections 37N(2)(c), 37P(2)(b) and 37Q(2)(c) make provision regarding the subject headings found on statutory instruments.
- new section 37P(3) make clear that subsidiary numbers may be used in relation to instruments (see also paragraph 93 of the Explanatory Notes).
- new sections 37N(2)(b) and 37Q(2)(d) and (e) fully reflect the way that commencement information is both provided and included on instruments (see also paragraph 95 of the Explanatory Notes).
- there is a new requirement to publish associated documents (section 37Q(3)) and a power to print these (section 37Y).
- new section 37R is designed to reflect how an instrument subject to (what is referred to today as) the 'made affirmative' procedure is re-published. In making provision on this we have included an obligation on the King's Printer to include a statement that an instrument has ceased to have effect where the Senedd has not confirmed it under section 37D. The current practice is that in those circumstances such instruments are not republished with that information, which could cause a reader not to appreciate the subordinate legislation has ceased to have effect.
- there is a current requirement upon the Secretary of State to arrange for the King's Printer to publish tables of the effects on other enactments of statutory instruments that are published in something called the "annual edition". The Bill requires tables of effects to be published, but this is now online and they must be published in a much more timely manner than current legislative provision.
- as with Acts, requirements to publish means publishing online, something that is not currently expressly provided for.

These matters are either not dealt with, or not as comprehensively dealt with, in the Statutory Instruments Act 1946 or the associated 1947 Regulations.

The duties and powers of the King's Printer to print and sell Acts, instruments, draft instruments and certain documents (section 37Y) takes account of existing legislative provision, albeit this is not expressed as clearly, and also reflects the current arrangements in practice.

In preparing new section 37Z2 account has been taken of the Statutory Instruments (Production and Sale) Act 1996, but again has been designed to ensure there is express provision regarding delegation of functions.

The requirement upon the King's Printer to maintain and publish a record of Welsh legislation (section 37W) is new.

For completeness, it is worth noting two additional matters:

- the 1946 Act and associated 1947 Regulations make provision regarding statutory instruments made under “any Act” and by virtue of section 11A of the 1946 Act this includes Acts of Senedd Cymru and Measures. But the definition of “responsible authority” in regulation 1 of the 1947 Regulations does not encompass persons other than the Minister who makes an instrument or the Minister responsible for the preparation of an Order in Council. So in relation to Wales this includes the Welsh Ministers but does not expressly include any devolved Welsh authority that makes such an instrument. A statutory instrument may be made by the Welsh Ministers or another devolved Welsh authority, and as such the definition of Welsh statutory instrument now expressly provides for this (see section 37A). The Bill then goes on to ensure that the requirements within Part 2B fully reflect the relevant responsibilities of all parties. This will also avoid future Bills having to expressly apply the 1946 Act to devolved Welsh authorities if the Senedd is giving them powers to make subordinate legislation by way of statutory instrument (as is currently required).
- new section 37O fills a separate gap in the current legislative arrangements and reflects existing operational practices between the Welsh Government and the National Library of Wales.

Question 8: The EM, at paragraphs 70 to 72, outlines consultation relevant to the Bill’s repeal of the Domestic Fire Safety (Wales) Measure 2011. Specifically, it refers to a consultation on the inclusion of sprinkler systems in care homes for children; however – as the EM also states – the Measure was intended to apply to “all new and converted residences”. Please provide:

- **an outline of any further consultation that has been undertaken in respect of this proposed repeal;**

The requirements for installing fire suppression systems are set out in and, importantly, enforced through, the Building Regulations. This was not the case when the Measure was introduced. The most recent consultation regarding sprinklers in care homes was the last step in ensuring the Building Regulations reflect all aspects the Measure could have covered.

The Government did not consider it necessary therefore to undertake a separate consultation to establish whether any aspect of the Measure needed to remain, and it is now included in the Bill for repeal.

- **your assessment of the impacts of moving sprinkler system requirements from primary legislation to secondary legislation;**

The requirements for fire suppression systems are already in the Building Regulations, this Bill is not changing that position. When the Government included the requirements in those Regulations in 2013, this was seen as an important step forward. The Building Regulations help ensure that new buildings, conversions, renovation and extensions are safe, healthy and high-performing. They also provide arrangements for compliance and enforcement. They are supported by a suite of Approved Documents. Those involved in the construction and renovation of buildings are therefore looking in one place for the requirements that will apply. They do not need to go and find another piece of legislation to cover one discrete aspect. It is the same principle we are using for codification more generally.

Given that the sprinkler system requirements are already addressed by the Building Regulations, and it is the Regulations that are operative in practice, I do not consider there

are any adverse impacts from now repealing the Measure. The repeal is removing primary legislation that is no longer of practical utility or benefit.

- **confirmation as to whether current Building Regulations provide the same level of requirements for sprinklers systems as was included within the Measure.**

Given the limited extent to which the Measure was commenced, and the recent amendment in relation to care homes for children, the Building Regulations now cover the same matters that, in practice, the Measure covered. As such no gaps will be created in practice by the repeal of the Measure.

Question 9: The EM, at paragraphs 60 and 61, states that the Bill no longer includes repeal of sections 53 to 56 of the Countryside and Rights of Way Act 2000, following their commencement in England, despite it remaining the Welsh Government's policy not to commence these provisions. Please provide:

- **further information in relation to the Welsh Government's decision not to include these provisions within the Bill;**
- **an explanation as to whether, in place of repealing the sections, it could not have added "in England" to the end of the relevant provisions, which would appear to be in accordance with the other repeals in the Bill;**

The Government's position has been set out on sections 53 to 56 of the 2000 Act and it remains the case that we do not consider these sections should be commenced in relation to Wales.

However, the test we have used for including a repeal in the Bill is that the matter is suitable for inclusion because the provisions are no longer of practical utility or benefit. Something could fall into this category if it is:

- (a) obsolete, spent or superseded;
- (b) unlikely to be commenced, having remained un-commenced for a period of time over which the original context has changed; or
- (c) otherwise unnecessary (for example, where the end is met by some other means).

So although sections 53 to 56 of the 2000 Act provisions have not been commenced, the opportunity to commence and bring in a cut-off date remains. There is therefore a policy choice about whether or not they are commenced. We consulted on the draft Bill on that basis.

The UK Government's decision means the provisions now appear to have some practical utility in relation to England. Further, for the time being at least, that they could not be repealed by a Repeals Bill operating in relation to England.

I reiterate the Welsh Government's position is that these sections should not be commenced in relation to Wales. But in the terms of the test we set ourselves for including matters in the Bill, there is no longer a strong argument that the provisions are obsolete, unlikely to be commenced as the original context is unchanged, or otherwise unnecessary.

Given our intention to maintain an ongoing programme of repeal Bills, and the nature of the consultation already undertaken on this matter, we felt it was important to stay within the parameters that we have set for ourselves. It is worth highlighting that these are the

parameters that have governed the numerous repeals bills (prepared by the Law Commission) that have been taken through the UK Parliament in the past.

Adding “in England” is one method (used elsewhere in the Bill, as you say) to, in effect, “repeal” provisions in relation to Wales; it is used when the provisions in question need to be left in place in relation to England and therefore cannot be repealed by means of simply omitting them from the Act that contains them, or by repealing the entire Act. The reasons why we have not done this here are as set out above.

- **an outline of the possible implications of any future decisions made by the UK Government to commence other provisions that the Bill proposes to repeal.**

In relation to the repeal through the Bill of provisions that have not been commenced, the UK Government does not hold equivalent powers.

Question 10: Please outline whether there are any implications of the references to Scotland in provisions in the Industry Act 1979 and Industry Act 1980 which are proposed for repeal.

There are no implications relating to the references to Scotland in the provisions in the Industry Act 1979 and Industry Act 1980 that are proposed for repeal. Any lingering references in those provisions to the Scottish Development Agency or the Scottish Development Agency Act 1975 have been redundant for some time, or have already been effectively repealed, by virtue of Schedule 5 to the Enterprise and New Towns (Scotland) Act 1990.

Question 11: Please indicate whether the Welsh Government has plans for a future programme of law repeals, and if so, when a Bill including such provisions is expected to be introduced.

We are already on record as saying that decluttering the statute book through repealing provisions that are no longer of practical utility or benefit, helps to bring clarity about the law is relevant to Wales. It helps avoid unnecessary time being spent and people being misled by obsolete laws. This is why the Government has previously set out that it would anticipate future accessibility of law programmes including such Bills.

The process is managed within the Office of the Legislative Counsel who, following this current Bill, will collect and maintain lists of suggested matters for inclusion in future Bills. The timing of the next Bill will be a matter for the next Government.

I mentioned in my evidence that we need to consider how certain types of Bills are considered, and I would be keen to see a repeals Bill procedure developed. There are a number of examples from around the Commonwealth we could consider, and certainly I think there could be an efficient and effective method put in place for such Bills to be dealt with.

Question 12: Please indicate whether consideration been given to any requirement to modify the long title of the 2019 Act as a result of the Bill.

At present we do not propose modifying the long title of the 2019 Act.

Question 13: When in a position to do so, please provide an update on the Welsh Government’s discussions with the UK Government in respect of the Minister of the Crown consents necessary to ensure that the Bill is within the Senedd’s legislative competence.

At the time of writing I am not in a position to provide an update, but will do so when further information is available.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS

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

Julie James MS
Counsel General and Minister for Delivery

15 November 2024

Dear Julie,

Legislation (Procedure, Publication and Repeals) (Wales) Bill

Thank you for appearing before the Committee on 5 November 2024 to inform its consideration of the Legislation (Procedure, Publication and Repeals) (Wales) Bill.

The Committee is grateful for your commitment to issue a written response in respect of your views on the marshalled list for legislation, and in relation to the borrowing powers of the Welsh Development Agency.

As I stated at the end of the meeting, I would also be grateful if your response could include further information in respect of other matters, which are set out in the Annex.

Please could you respond by Thursday 5 December 2024.

Yours sincerely,



Mike Hedges
Chair

Annex

1. With regard to your responsibility for overseeing the timetable for, and delivery of, the Legislative Programme, please outline why the decision was made to attach a higher priority for the introduction of this Bill over the potential introduction of a Senedd Bill including provisions which currently appear within UK Government legislation, such as within the Renters' Rights Bill.
2. The Explanatory Memorandum (EM) does not reference the Bill's impact on human rights. Please indicate:
 - whether the Welsh Government has undertaken an assessment of the human rights implications of the Bill's provisions; and
 - in particular, whether the Welsh Government believes that section 2 of the Bill will have any impact on human rights.
3. The EM, at paragraph 82, states that there is "no immediate intention" to use the powers in new section 37F(2)(c) and Schedule 1A, paragraph 6(3)(c), of the *Legislation (Wales) Act 2019* (the 2019 Act), as inserted by section 1 of the Bill. The EM goes on to state that it is however "prudent to ensure there is an appropriate mechanism available to enable specific enactments to be listed if the Senedd or the Welsh Ministers consider particular instruments need not be laid before the Senedd." Please provide:
 - further justification for the inclusion of these powers, in the apparent absence of an intention to use them; and
 - an explanation of why it was decided to confer these powers on the Welsh Ministers, rather than leave it for the Senedd to decide in each enactment.
4. Please outline in more detail how new section 37Z(2) of the 2019 Act, which requires the Welsh Ministers to prepare and publish a determination about the numbering and classification of Welsh subordinate instruments, will operate in practice.
5. Please outline why it is necessary to include the provision in paragraph 7 of Schedule 1A, which provides the Welsh Ministers with delegated powers to amend any enactment to reflect the effect of, or make provision consequential upon, the Schedule.
6. Please can you indicate whether there are any provisions in the Bill that would enable the Welsh Ministers to change the procedure attached to an existing power delegated to the Welsh Ministers?
7. During the evidence session, your official referred to the Bill's creation of a new obligation on the King's Printer of Acts of Parliament to publish Welsh legislation in an up-to-date form. Your official also noted that other "certain gaps" in relation to the King's Printer will be filled by the Bill. Please provide an outline of these gaps and how the Bill seeks to address them.

8. The EM, at paragraphs 70 to 72, outlines consultation relevant to the Bill's repeal of the Domestic Fire Safety (Wales) Measure 2011. Specifically, it refers to a consultation on the inclusion of sprinkler systems in care homes for children; however – as the EM also states – the Measure was intended to apply to “all new and converted residences”. Please provide:

- an outline of any further consultation that has been undertaken in respect of this proposed repeal;
- your assessment of the impacts of moving sprinkler system requirements from primary legislation to secondary legislation; and
- confirmation as to whether current Building Regulations provide the same level of requirements for sprinklers systems as was included within the Measure.

9. The EM, at paragraphs 60 and 61, states that the Bill no longer includes repeal of sections 53 to 56 of the *Countryside and Rights of Way Act 2000*, following their commencement in England, despite it remaining the Welsh Government's policy not to commence these provisions. Please provide:

- further information in relation to the Welsh Government's decision not to include these provisions within the Bill;
- an explanation as to whether, in place of repealing the sections, it could not have added “in England” to the end of the relevant provisions, which would appear to be in accordance with the other repeals in the Bill; and
- an outline of the possible implications of any future decisions made by the UK Government to commence other provisions that the Bill proposes to repeal.

10. Please outline whether there are any implications of the references to Scotland in provisions in the *Industry Act 1979* and *Industry Act 1980* which are proposed for repeal.

11. Please indicate whether the Welsh Government has plans for a future programme of law repeals, and if so, when a Bill including such provisions is expected to be introduced.

12. Please indicate whether consideration been given to any requirement to modify the long title of the 2019 Act as a result of the Bill.

13. When in a position to do so, please provide an update on the Welsh Government's discussions with the UK Government in respect of the Minister of the Crown consents necessary to ensure that the Bill is within the Senedd's legislative competence.

Agenda Item 7

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

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