

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 1 – Senedd**

Meeting date: Monday, 23 January  
2017

Meeting time: 14.30

For further information contact:

**Tanwen Summers**

Committee Clerk

0300 200 6565

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

**1 Introduction, apologies, substitutions and declarations of interest**  
(14.30)

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

(14.30 – 14.35)

(Pages 1 – 2)

CLA(5)–02–17 – Paper 1 – Statutory Instruments with clear reports

Negative Resolution Instruments

SL(5)047 – The National Health Service (Therapeutic Radiographer Independent  
Prescriber and Dietitian Supplementary Prescriber) (Miscellaneous Amendments)  
(Wales) Regulations 2016

SL(5)048 – The Seed Marketing (Wales) (Amendment) Regulations 2016



### **3 Paper(s) to note**

(14.40 – 14.45)

**Public Health (Wales) Bill: Correspondence with the Minister for Social Services and Public Health**

(Pages 3 – 8)

**CLA(5)–02–17 – Paper 2** – Correspondence from the Committee to the Minister for Social Services and Public Health, 13 December 2016

**CLA(5)–02–17 – Paper 3** – Correspondence from the Minister for Social Services and Public Health to the Committee, 12 January 2017

**Correspondence from the Llywydd (Presiding Officer): Update on Senedd@Newport**

(Pages 9 – 10)

**CLA(5)–02–17 – Paper 4** – Correspondence from the Llywydd to the Chair regarding Senedd@Newport, 13 January 2017

**Wales Bill: Correspondence from the First Minister to the UK Government regarding clause 60 of the Wales Bill**

(Pages 11 – 12)

**CLA(5)–02–17 – Paper 5** – Correspondence from the First Minister to the UK Government regarding clause 60 of the Wales Bill, 22 December 2016

### **4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(14.45)

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person; and

(ix) any matter relating to the internal business of the Committee, or of the Assembly is to be discussed.

## **5 Draft Correspondence for agreement**

(14.45 – 14.50)

**Response to the call for evidence from the House of Lords Constitution**

**Committee: Delegation of powers**

(Pages 13 – 15)

CLA(5)-02-17 – Paper 6

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill:**

**Correspondence to the Business Committee regarding the provisional affirmative procedure**

(Page 16)

CLA(5)-02-17 – Paper 7

## **6 Update on Wales Bill**

(14.50 – 15.00)

(Pages 17 – 20)

CLA(5)-02-17 – Paper 8

CLA(5)-02-17 – Paper 9

## **7 Constitutional and Legislative Affairs Committee: Forward work programme**

(15.00 – 15.15)

(Pages 21 – 23)

CLA(5)-02-17 – Paper 10

**8 Constitutional and Legislative Affairs Committee: Committee engagement opportunities**

(15.15 – 15.45)

(Pages 24 – 38)

CLA(5)-02-17 – Paper 11

CLA(5)-02-17 – Paper 11, Annex A

CLA(5)-02-17 – Paper 11, Annex B

**9 A stronger voice for Wales: engaging with Westminster and the devolved institutions: Inquiry update**

(15.45 – 16.00)

(Pages 39 – 40)

CLA(5)-02-17 – Paper 12

**Date of the next meeting**

Monday 30 January 2017

# Statutory Instruments with Clear Reports **Agenda Item 2**

23 January 2017

## SL(5)047 – The National Health Service (Therapeutic Radiographer Independent Prescriber and Dietitian Supplementary Prescriber) (Miscellaneous Amendments) (Wales) Regulations 2016

### Procedure: Negative

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These Regulations amend various pieces of NHS subordinate legislation by:

- extending the definition of ‘prescriber’ through the insertion of an additional category of independent prescriber: therapeutic radiographer independent prescriber, and
- by extending the definition of ‘supplementary prescriber’ to include dietitians.

These Regulations also amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 by extending the exemption from the requirement to charge for single use carrier bags, so that the exemption covers medicinal products or listed appliances sold in accordance with a prescription issued by a therapeutic radiographer independent prescriber.

**Parent Act:** National Health Service (Wales) Act 2006 and Climate Change Act 2008

**Date Made:** 14 December 2016

**Date Laid:** 19 December 2016

**Coming into force date:** 9 January 2017



# SL(5)048 – The Seed Marketing (Wales) (Amendment) Regulations 2016

## Procedure: Negative

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The main purpose of this amending instrument is to insert a provision into the Seed Marketing (Wales) Regulations 2012 (the 2012 Regulations) allowing the Welsh Ministers to enter into arrangements with persons outside government to carry out official measures under official supervision. Further amendments are included to correct minor omissions in the 2012 Regulations, clarify the classification of lucerne and insert the timeframe for retaining seed samples for the purpose of enforcement.

**Parent Act:** Plant Varieties and Seeds Act 1964

**Date Made:** 15 December 2016

**Date Laid:** 19 December 2016

**Coming into force date:** 11 January 2017



Rebecca Evans AM  
Minister for Social Services and Public Health

13 December 2016

Dear Rebecca

## Public Health (Wales) Bill

Thank you for attending the Committee's meeting on Monday 21 November 2016 to aid our scrutiny of the Public Health (Wales) Bill ("the Bill"). We would welcome further clarification on a number of issues, as set out below.

### *Legislative competence*

As you will be aware, should the Wales Bill receive Royal Assent all bills introduced to the Assembly would need to undergo competence tests under the "reserved powers" model. You provided assurances that the Bill would receive Royal Assent before the Wales Bill comes into force, should the Assembly pass the Bill at Stage 4. We were, however, particularly interested in identifying whether any provisions of the Bill would be outside the Assembly's legislative competence if the Wales Bill was in place now. We would welcome clarification on this point.



As part of our on-going work on the implications of the Wales Bill, we will be considering for all Bills (Government and non-Government) whether the scope of legislative competence as defined in the new settlement has impacted on the content of the Bill.

*Section 15 [Enforcement authorities]*

During Stage 1 scrutiny of the Public Health (Wales) Bill that was rejected by the Fourth Assembly, our predecessor Committee recommended that section 15 should be amended to clarify that public authorities will be the enforcement authorities under the Bill. As both the previous Minister in charge and you have stated that you intend that public authorities will be the enforcement authorities, we would welcome clarification that you intend to table an amendment to the Bill to this effect.

*Section 90 [Power to add or remove special procedures]*

We also questioned you about section 90 of the Bill which would allow the Welsh Ministers to amend, by regulations, the list of special procedures listed in Section 54. Subsection 90(5) states:

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Regulations under this section may make amendments to the Part that are consequential upon amendments to section 54 effected by the Regulations

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We note the response you provided to the Committee. However, we would welcome clarification as to what 'consequential' means in this context.

It would be helpful to receive a response to this letter by 16 January 2017.





I am copying this letter to Dai Lloyd AM, Chair of the Health, Social Care and Sport Committee and Jane Hutt AM, the Leader of the House, to inform her of our general approach to Stage 1 scrutiny in relation to future Government Bills.

Yours sincerely

*Huw Irranca-Davies*

**Chair**

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





Ein cyf/Our ref: MA-L/RE/5437/16

Huw Irranca-Davies AM  
Chair of the Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Ty Hywel,  
Cardiff Bay  
Cardiff  
CF99 1NA

12 January 2017

Dear Huw Irranca-Davies,

### **Public Health (Wales) Bill**

I would like to thank you and the Committee for the opportunity to discuss the Public Health (Wales) Bill on 21 November 2016, and for your follow-up letter of 13 December 2016.

I am pleased to provide the Committee with further information on the following issues, which were raised during the session:

- a) The Welsh Government's view about whether any provisions in the Bill would be outside the National Assembly's legislative competence if the Wales Bill was in place now;
- b) Section 15 of the Bill; and
- c) Section 90(5) of the Bill.

This information is presented below.

### **The Wales Bill**

As I indicated to the Committee during my oral evidence, the Wales Bill is not due to come into force until next year. At present, it is anticipated that the Bill's reserved powers model

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

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. **Pack Page 6**

will come into force in April 2018, but this is of course subject to both the Assembly consenting to the Wales Bill later this month and the UK Government not changing the anticipated coming into force date.

The Public Health (Wales) Bill is being advanced ahead of the move to that model, and I understand that an Assembly Bill that has completed the Stage 1 general principles plenary debate by April 2018 will proceed under the conferred powers model under the Government of Wales Act 2006.

The Wales Bill will not have an impact on our ability to enforce the provisions in the Public Health (Wales) Bill because the Public Health (Wales) Bill contains its own subordinate legislation enabling and enforcement provisions. The new reserved powers model in the Wales Bill will not remove or repeal enabling and enforcement powers contained within the Public Health (Wales) Bill.

Turning to the Committee's question as to whether any provisions in the Public Health (Wales) Bill would be outside the Assembly's legislative competence if the Wales Bill was in place now, I am content that none would be. The purpose of the Public Health (Wales) Bill is to improve and safeguard the health of the people of Wales. Health is currently a devolved matter under the Government of Wales Act 2006, and it remains as such under the Wales Bill.

I am content that if the Wales Bill were to be in place now, the Public Health (Wales) Bill would be within the Assembly's legislative competence.

### **Section 15 (Enforcement authorities)**

I note the recommendation of your predecessor Committee that section 15 of the Bill should be amended to clarify that public authorities will be the enforcement authorities. I also note that, in accepting the principle behind the recommendation, the previous Minister in charge outlined that while our intention is to designate local authorities as enforcement authorities for the smoke-free requirements in public premises and workplaces, the circumstance may arise in certain instances where it will be helpful to designate additional enforcement authorities. In considering any amendments to the Bill, therefore, I need to be satisfied that this course of action would not preclude other appropriate enforcement authorities from being designated, if required.

As I indicated to the Committee during my oral evidence, I instructed officials to undertake further work on this issue during Stage 1, with a view to potentially bringing forward amendments at Stage 2. In view of this recent work I am now content to confirm that it is my intention to bring forward amendments at Stage 2 which will meet the recommendation of your predecessor Committee.

### **Section 90 (Power to add or remove special procedures)**

Section 90(1) allows Welsh Ministers to make regulations to add or remove special procedures from the list of procedures which are captured by the licensing system. If a change is made to the list in future, provisions in Part 3 of the Bill may need to be modified to ensure the Bill works in terms of that new procedure. For example, if a new special procedure were to be added to the list, we would need to define it and that definition would best be placed in the interpretation section. Section 90(5) allows for this type of consequential amendment to be made to Part 3 of the Bill by way of regulations, subject to the affirmative procedure. It therefore provides a very narrow regulation-making power which helps to ensure the legal framework is future-proofed and able to respond to an industry which is continually evolving.

I hope that this information will be helpful to the Committee.

I am copying this response to Dai Lloyd AM, Chair of the Health, Social Care and Sport Committee and Jane Hutt AM, Leader of the House and Chief Whip.

Kind regards,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

**Rebecca Evans AC / AM**

Y Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol  
Minister for Social Services and Public Health



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

## Agenda Item 3.2

Committee Chairs  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Your ref:  
Our ref: EJ/GH

13 January 2017

Dear Committee Chair

In 2015, we located a series of outreach events in Wrexham and Swansea, with the aim of taking the work of the Assembly to the people of Wales. We chose Wrexham and Swansea because voter turnout in both areas was particularly low in the 2011 Assembly election.

As part of the Senedd@Wrexham and Senedd@Swansea initiatives, staff delivered a comprehensive programme of events, visits and workshops which directly engaged over 5000 people in the Assembly's work. We also forged new working relationships with key local organisations and the local media who, in turn, covered the week's events.

In order to maintain the momentum generated by our visits to Wrexham and Swansea, and building on the lessons we learned, I am eager to deliver another Senedd@ event during the week commencing 20 March 2017. To continue our journey around the communities of Wales, we have chosen Newport for the location of the next Senedd@ initiative.

One of the key findings of the evaluations of previous Senedd@ initiatives was the need to enable committees to consider their potential involvement early in the planning process. Therefore, I am inviting any suggestions your committee may have about how you may wish to get involved in Senedd@Newport.

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

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**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

During previous “Senedd@” initiatives, committees have held formal meetings in community locations and taken the opportunity to encourage people to participate in their work. Senedd@Newport will present a fantastic opportunity for your committee to raise its profile and engage with many local organisations and media.

Should you require any further information, please contact Geraint Huxtable on 0300 200 6277 or via email: [Geraint.Huxtable@Assembly.Wales](mailto:Geraint.Huxtable@Assembly.Wales).

Thank you in advance for your co-operation.

Yours sincerely

Elin Jones AM  
Llywydd



Rt Hon Alun Cairns MP  
Secretary of State for Wales  
Gwydyr House  
London  
SW1A 2NP

22<sup>nd</sup> December 2016

Dear Alun

### **Wales Bill: Clause 60 Consequential Provision**

I am replying to your letter of 13 December. We discussed the issues when we met on 15 December, and I have also now had the opportunity to read the Debate in the House of Lords on 14 December on clause 60 of the Bill.

It seems to me that there are four possible situations that might arise where Ministers of one government have powers to amend primary legislation made by, or of particular interest to, the “other” legislature.

First, UK Ministers may have taken powers in a Parliamentary Bill to make amendments by order to other enactments, which may include amending Assembly Acts or Acts of Parliament that fall within the legislative competence of the National Assembly. In those circumstances (and whether or not provision for affirmative order procedure has been made in the Bill), the Assembly’s consent will be required, as is made clear in paragraph 53 of Devolution Guidance Note 9. The Assembly’s Standing Order 30A sets out the procedural requirements for securing that consent; clearly, the early consultation you suggest before such orders are made will assist in that process. Given that it will not be only the Secretary of State for Wales who may secure such powers, it will be important that all Secretaries of State are aware of the requirement for Assembly consent in these circumstances.

Secondly, Devolution Guidance Note 17 (in conjunction with the Sewel convention) requires consent in circumstances where amendments are proposed to be made to the legislative competence of the National Assembly. So in the case of the Wales Bill the power could be used to amend the legislation (the 2006 and 2014 Acts) which establish the foundations of Welsh devolution. If such an amendment were sought to be achieved by a Parliamentary Bill, that Bill would require the Assembly’s consent under the second limb of the Sewel Convention; it therefore must follow that Assembly consent should be required for the same

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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.

amendment being secured by Ministerial order. Again your suggestion for early consultation would be appropriate in this context.

Thirdly, an Assembly Act (which of course will have to be within legislative competence if this situation is to arise) may give Welsh Ministers powers to make amendments to other legislation, including primary legislation. Any such Act can be expected to require compliance with an affirmative order procedure in the Assembly if amendment to primary legislation is envisaged.

Finally, the content of an Assembly Act may be such as to require amendment of earlier legislation, but the amendments required may be beyond the Assembly's competence. In that situation, the Secretary of State can make the necessary amendments by way of an order under section 150 of the 2006 Act, which requires affirmative order procedure if the order modifies earlier primary legislation.

I am copying this letter to the Presiding Officer, and you should feel free to share it as necessary with peers contributing to debates on the Wales Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**



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# Agenda Item 5.2

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

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# Agenda Item 8

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