

Agenda – Constitutional and Legislative Affairs

Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 27 February
2017

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

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

**2 Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence session with the Minister for Lifelong Learning and the
Welsh Language**

(14.30 – 15.30)

(Pages 1 – 22)

Alun Davies, Minister for Lifelong Learning and the Welsh Language (Member in charge of the Bill)

Tania Nicholson, Head of Additional Learning Needs Legislative Programme, Welsh Government

Mair Roberts, Lawyer, Welsh Government

Catherine Lloyd, Lawyer, Welsh Government

CLA(5)–06–17 – Research Service Briefing

CLA(5)–06–17 – Legal Advice Note

CLA(5)–06–17 – Paper 1 – Correspondence from the Minister to the Chair of the Children and Young People Committee, 14 February 2017

[Additional Learning Needs and Education Tribunal \(Wales\) Bill, as introduced](#) (PDF, 446KB)

[Explanatory Memorandum](#) (PDF, 2.8MB)

[Statement of policy intent for subordinate legislation to be made under the Bill](#) (PDF, 440KB)

[Draft Additional Learning Needs Code – February 2017](#) (PDF, 3MB)



Cynulliad
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National
Assembly for
Wales

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

(15.30 – 15.35)

(Pages 23 – 25)

CLA(5)–06–17 – Paper 2 – Statutory Instruments with clear reports

Affirmative Resolution Instrument

SL(5)062 – The Partnership Arrangements (Wales) (Amendment) Regulations 2017

Negative Resolution Instruments

SL(5)063 – The Non–Domestic Rating (Demand Notices) (Wales) Regulations 2017

**SL(5)064 – The Social Care Wales (Proceedings before Panels) (Amendment)
Regulations 2017**

**SL(5)066 – The Fire and Rescue Services (Emergencies) (Wales) (Amendment)
Order 2017**

4 Papers to note

(15.35 – 15.40)

UK Government's Wales Bill: Correspondence from the Secretary of State for Wales

(Pages 26 – 28)

**CLA(5)–06–17 – Paper 3 – Correspondence from the Secretary of State for Wales:
Section 69 – Consequential Provision, 12 February 2017**

**CLA(5)–06–17 – Paper 3a – Correspondence from the Committee to the Secretary
of State for Wales: Section 69 – Consequential Provision, 27 January 2017**

A stronger voice for Wales: Response from the Chair of the Health, Social Care and Sport Committee

(Pages 29 – 30)

CLA(5)–06–17 – Paper 4 – Response from the Chair of the Health, Social Care and Sport Committee, 30 January 2017

A stronger voice for Wales: Response from the Chair of the Children, Young People and Education Committee

(Pages 31 – 32)

CLA(5)–06–17 – Paper 5 – Response from the Chair of the Children, Young People and Education Committee, 16 February 2017

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

(15.40)

6 Additional Learning Needs and Education Tribunal (Wales) Bill: Consideration of evidence

(15.40 – 15.55)

7 A stronger voice for Wales: Concluding strand I and approach to strand II of the inquiry

(15.55 – 16.05)

(Pages 33 – 43)

CLA(5)–06–17 – Paper 6 – Concluding strand I and approach to strand II of the inquiry

8 Landfill Disposals Tax (Wales) Bill: Draft report

(16.05 – 16.20)

(Pages 44 – 75)

CLA(5)–06–17 – Paper 7 – Draft report

CLA(5)-06-17 - Paper 8 - Correspondence from the Chair of the Finance Committee, 8 February 2017 (Private)

Date of the next meeting

6 March 2017

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Ein cyf/Our ref: MA-L/ARD/0088/17

Lynne Neagle
Chair
Children, Young People and Education Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

SeneddCYPE@assembly.wales

14 February 2017

Dear Lynne,

During the Committee's evidence session on the Additional Learning Needs and Education Tribunal (Wales) Bill, which I attended on 12 January, I undertook to provide the Committee with a copy of the latest working draft of the Additional Learning Needs Code to inform your scrutiny of the Bill. Bilingual versions are enclosed.

I am also providing our Statement of Policy Intent regarding the subordinate legislation provided for in the Bill. Again, bilingual documents are enclosed.

Following the consultation on the draft Bill in 2015, we have worked extensively on the draft Code. A code content development group of experts and practitioners, which included key delivery partners and third sector representatives, put significant effort into this latest draft. Much of the revised content has been provided directly by those that will be required to operate the new system.

The current draft, however, is very much a work in progress and my officials will continue to work with partners to develop the content. The current provisions will be supplemented and supported in areas both by greater detail and by supporting material, such as further examples of good practice. Particular areas of the Code that will inevitably evolve are those relating to sections of the Bill containing a regulation making power, as highlighted throughout the draft in *italic text*.

It is also the case that changes might be required as a result of amendments made to the Bill as it progresses through the Assembly. My officials will continue to monitor this.

Bae Caerdydd • Cardiff Bay
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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Alun.Davies@llyw.cymru
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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.

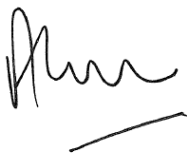
On this basis, whilst I recognise how important the Code is to understanding the practical operation of the new system, I would like to stress that I am making available this working draft solely for illustrative purposes to support your scrutiny of the Bill. This draft of the Code is not in itself subject to scrutiny.

A version of the Code will be subject to a full public consultation (pursuant to section 5 of the Bill), assuming the Bill receives Royal Assent. That draft would capture any necessary changes arising from amendments to the Bill during its passage, feedback we receive during the intervening period and our ongoing development work with practitioners. Following consultation and any consequent changes, a draft of the Code would be laid before the Assembly as per the arrangements for making the Code contained within section 5 of the Bill.

I hope you find these documents helpful and look forward to my next appearance before the Committee.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee, given that Committee's likely interest in both the draft Code and Statement of Policy Intent and my forthcoming appearance before the Committee to discuss the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alun', with a horizontal line underneath.

Alun Davies AC/AM

Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language

Statutory Instruments with Clear Reports **Agenda Item 3**

27 February 2017

SL(5)062 – Partnership Arrangements (Wales) (Amendment) Regulations 2017

Procedure: Affirmative

Section 166 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) enables the Welsh Ministers to make regulations requiring the making of partnership arrangements by combinations of local authorities and Local Health Boards.

The Partnership Arrangements (Wales) Regulations 2015 (“the principal Regulations”) have been made under the powers in section 166 and came into force on 6 April 2016. The principal Regulations require the making of partnership arrangements by specified local authorities and Local Health Boards under the direction of Regional Partnership Boards. The principal Regulations also specify the local authority and Local Health Board functions that are to be carried out by the partnership arrangements.

The 2017 Regulations amend the principal Regulations to add the functions under section 14A of the 2014 Act to the list of Local Health Board functions which are specified to be carried out by the partnership arrangements.

The Regulations also amend regulation 19 of the principal Regulations (establishment and maintenance of pooled funds) by omitting regulation 19(1)(c) and adding a new regulation 19(1A) which requires partnership bodies to consider whether it is appropriate to establish and maintain a pooled fund if they decide to do things jointly in response to an assessment under section 14 of the 2014 Act (known as a population assessment).

They also amend Schedule 2 to the principal Regulations (which specifies the family support functions of integrated family support teams) to insert reference to functions under Part 6 of the 2014 Act, in so far as they relate to the meeting of needs for care and support of children who are looked after by a local authority and the provision of advice and support for young people leaving care.

Parent Act: Social Services and Well-being (Wales) Act 2014



Date Laid: 8 February 2017

Coming into force date: Not stated

SL(5)063 – The Non-Domestic Rating (Demand Notices) (Wales) Regulations 2017

Procedure: Negative

These Regulations provide for the contents of non-domestic rates demand notices which are served by billing authorities in Wales, and for the information that must accompany a demand notice served by them. These Regulations apply in relation to demand notices issued in respect of financial years beginning on or after 1 April 2017.

Parent Act: Local Government Finance Act 1988

Date Made: 8 February 2017

Date Laid: 10 February 2017

Coming into force date: 13 March 2017

SL(5)064 – The Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2017

Procedure: Negative

These Regulations amend the Social Care Wales (Proceedings before Panels) Regulations 2016 (“the 2016 Regulations”).

Regulations 10, 23 and 34 of the 2016 Regulations are amended to enable Social Care Wales to apply through the Civil Procedure Rules to the High Court or County Court for a witness summons. The amendment is made in relation to a registration appeals panel, a fitness to practise panel and an interim orders panel.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made: 7 February 2017

Date Laid: 14 February 2017

Coming into force date: 3 April 2017



SL(5)066 – The Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017

Procedure: Negative

The core functions of fire and rescue authorities are set out in sections 6 to 8 of the [Fire and Rescue Services Act 2004](#) (“the Act”). These are the functions in connection with fire safety, fire-fighting and road traffic accidents. Section 9 of the Act allows the Welsh Ministers to specify by order other core functions relating to emergencies for which fire and rescue authorities in Wales must make provision. Emergencies are defined in section 58 of the Act.

The [Fire and Rescue Services \(Emergencies\) \(Wales\) Order 2007](#) (S.I. 2007/3193 (W. 280)) (“the 2007 Order”) specified functions in relation to fire and rescue authorities in Wales in connection with emergencies involving chemical, biological or radio-active contaminants; emergencies involving structural collapse; and emergencies involving trains, trams or aircrafts.

This [Order](#) amends the 2007 Order. Article 2(2) of this Order specifies functions in relation to fire and rescue authorities in Wales in connection with emergencies involving flooding and inland water. Article 2(3) extends article 4(a) of the 2007 Order, which specifies the things that fire and rescue authorities must do in making provision for emergencies detailed in the 2007 Order. In future, as part of making provision for those emergencies, fire and rescue authorities will be required to secure the provision of equipment.

Parent Act: [Fire and Rescue Services Act 2004](#)

Date Made: 15 February 2017

Date Laid: 20 February 2017

Coming into force date: 1 April 2017



Agenda Item 4.1



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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Huw Irranca-Davies AM
Chair of Constitution and Legislative Affairs Committee
National Assembly for Wales
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Ref: 9SOS 17

12th February 2017

Wales Act 2017: Section 69 – Consequential Provision

Thank you for your letter of 27 January regarding your concerns about section 69 of the Wales Act 2017 which allows UK Ministers to amend Assembly legislation as a consequence of provisions in the Act.

The circumstances in which the power would be used were clearly explained during the parliamentary stages of the Wales Bill. My letters to the First Minister and Presiding Officer provide further assurance.

I believe the provision is a sensible and pragmatic way to ensure consistency across the statute book resulting from implementing the Wales Act. I do not agree your assertion that the approach adopted is constitutionally unsound.

I intend to keep the Welsh Government and Presiding Officer fully informed as devolution guidance is drafted to reflect the new reserved powers model and other related provisions in the Act.

I am copying this letter to the First Minister and the Presiding Officer

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Alun Cairns
Secretary of State for Wales

27 January 2017

Dear Alun

Wales Bill: Clause 69 – Consequential provision

Thank you for copying to me your letters of 13 December 2016 to the Presiding Officer and the First Minister.

One of the roles I am keen for this Committee to promote is an understanding of the Welsh constitution arising as consequence of the various UK Acts of Parliament relating to Welsh devolution.

On this basis, there is one point raised in your letter that we would like to clarify.

Clause 69 of the Wales Bill (formerly clause 53 and then clause 60) permits the UK Ministers to amend legislation made by the National Assembly, albeit in certain circumstances, without the National Assembly's consent. In chapter 11 of our report on the Bill, we expressed concern at this provision.

Your letters to the Presiding Officer and the First Minister state that:

“The power to amend Assembly legislation is mirrored by similar powers in a number of Acts of the Assembly that enable Welsh Ministers to modify parliamentary legislation in consequence of Assembly Act provisions without recourse to Parliament.”

But comparing the powers of the Welsh Ministers to modify UK Parliament legislation with the powers of UK Ministers to modify Assembly legislation is unhelpful. The contexts of the two powers are very different.



The Welsh Ministers can only amend UK Parliament legislation because both the National Assembly and the UK Parliament has specifically given consent; the National Assembly having given consent in the relevant enabling Assembly Act and the UK Parliament having given consent by passing the *Government of Wales Act 2006* (and subsequent devolution acts) in the first place.

In contrast, UK Ministers are being given power to modify Assembly legislation without the National Assembly being given the opportunity of specifically consenting to that power. While the National Assembly agreed to the Wales Bill Legislative Consent Memorandum, this is a general consent to the Wales Bill as a whole. Legislatures usually get a chance to agree to legislation section by section, but that opportunity was not available to the National Assembly with regard to clause 69 of the Wales Bill.

The changes that can be made under clause 69 may be considered insignificant by some, but they must have a legal purpose and will change the law. We remain of the view that the approach adopted in clause 69 is constitutionally unsound and is against the principle set out in clause 2.

Related to clause 2 and the above issues, we believe there is scope for the updated Devolution Guidance Note 9 to provide clarification, in particular around any consent procedure that is expected to apply when UK Ministers are proposing to modify Assembly legislation, whether it is via the clause 69 power or otherwise. We would be grateful if we could be kept informed of progress on updating Devolution Guidance Note 9.

I am copying this letter to the Llywydd and the First Minister.

Yours sincerely

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Huw Irranca-Davies AM

Chair of the Constitutional and Legislative
Affairs Committee

30 January 2017

Inquiry into inter-institutional learning

Dear Huw

Thank you for your letter informing the Committee of your inquiry looking at inter-institutional relations between Wales and the UK.

In light of your letter, the Committee discussed this issue at its meeting of 25 January. It is our view that strong inter-parliamentary working and liaison between Parliamentary Committees is essential for effective scrutiny and can enable the free exchange of ideas and improved policy learning. In respect of the remit of our Committee, this is particularly the case for example in respect of cross-border health and social care issues.

We also consider there is scope for improvement in the way UK Government Departments co-operate with Assembly Committees in respect of the scrutiny of policy issues where there is an overlap between devolved and non-devolved areas. It appears that such co-operation is often at the discretion of individual Ministers or civil servants rather than an accepted understanding that such co-operation is essential and has the potential to benefit all those involved.

We understand, for example, that there were challenges experienced by our predecessor Committee in engaging the relevant Home Office Minister and officials in its inquiry into new psychoactive substances in respect of some non-devolved policy areas of direct relevance to the inquiry. Whilst the issue was eventually resolved, and oral and written evidence was received, this was only following repeated efforts by Committee staff and correspondence from the then Committee Chair.



We welcome the Constitutional and Legislative Affairs Committee's inquiry into this important issue and look forward to hearing your conclusions in due course.

Yours sincerely,

A handwritten signature in black ink that reads "David Lloyd". The signature is written in a cursive style with a large initial 'D'.

Dr Dai Lloyd AM
Chair, Health, Social Care and Sport Committee



Huw Irranca–Davies AM
Chair of the Constitutional and Legislative Affairs
Committee

16 February 2017

Dear Huw,

A Stronger Voice for Wales: engaging with Wales and the devolved institutions

Thank you for your letter dated 17 January 2017. Members of the Children, Young People and Education Committee were keen to respond to your call for information on inter–institutional working. My comments for the Constitutional and Legislative Affairs Committee (CLA) are directly in relation to Strand II: Inter–institutional relations on policy matters.

The Committee is keen to pursue good working relationships with counterpart committees of the UK Parliament and devolved administrations on issues of common interest and concern. In particular, we believe it is very important to link up work on child health, poverty and abuse to other parts of the UK by examining their own interventions. There is a great deal of scope for the Committee to build relationships with counterpart committees in Holyrood, Stormont and Westminster. I have discussed this with Committee staff and I am keen for them to examine potential joint lines of inquiry with other administrations.

To give you a sense of background, the Fourth Assembly’s Children and Young People Committee undertook active work outside of Wales. Notably in advance of the introduction of the Qualifications Wales Bill, the Committee met with Quality and Qualifications Ireland and the Scottish Qualifications Authority. This played a



key role in shaping the Committee's approach to scrutiny and ultimately the shape the new qualifications body took.

It is also of note, the Committee visited the Organisation for Economic Co-operation and Development (OECD) at their headquarters in Paris. The Committee met those responsible for the Programme for International Student Assessment (PISA), and the OECD's review of Wales' education system. These visits played a critical role in shaping our approach to scrutiny and in turn influencing the Welsh Government's policies.

Going back to the second and third Assembly, the Education and Lifelong Learning Committee undertook some policy fact-finding work to the devolved administrations. These were seen as critical to informing inquiry work and future planning.

Many of the policy issues the Committee will consider will have strong similarities with other parts of the UK, Europe and beyond. As such, I firmly believe that our Committee's work would benefit from developing better inter-institutional relationships. We would welcome any advice or support from your Committee to help us achieve this.

Yours Sincerely,



Lynne Neagle AC / AM
Cadeirydd / Chair



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Agenda Item 8

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

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