

Agenda – Constitutional and Legislative Affairs

Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 26 June 2017

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest

2 Papers to note

Letter from the Finance Committee: Scrutiny of the draft Budget

(Pages 1 – 2)

CLA(5)–17–17 – Paper 1 – Letter from the Finance Committee: Scrutiny of the draft budget

Written Statement: Interpreting Welsh Law – considering an interpretation Act for Wales

(Pages 3 – 4)

CLA(5)–17–17 – Paper 2 – Written Statement: Interpreting Welsh Law – considering an interpretation Act for Wales

Letter from the First Minister: Commissioners Bill

(Pages 5 – 6)

CLA(5)–17–17 – Paper 3 – Letter from the First Minister: Commissioners Bill

CLA(5)–17–17 – Paper 4 – Letter to First Minister: Commissioners Bill, 12 April 2017



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Letter from the Llywydd to the Secretary of State for Wales: Brexit and the Great Repeal Bill

(Pages 7 – 16)

CLA(5)-17-17 – Paper 5 – Letter from the Llywydd to the Secretary of State for Wales: Brexit and the Great Repeal Bill

Letter from the Cabinet Secretary for Communities and Children: Abolition of the Right to Buy and Associated Rights (Wales) Bill

(Pages 17 – 20)

CLA(5)-17-17 – Paper 6 – Letter from the Cabinet Secretary for Communities and Children: Abolition of the Right to Buy and Associated Rights (Wales) Bill

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

4 Forward Work Programme

(Pages 21 – 30)

CLA(5)-17-17 – Paper 7 – Forward work programme

**5 Abolition of the Right to Buy and Associated Rights (Wales) Bill:
Draft Report**

(Pages 31 – 47)

CLA(5)-17-17 – Paper 8 – Draft Report

Date of the next meeting

3 July 2017

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cyllid

National Assembly for Wales
Finance Committee

Constitutional and Legislative Affairs Committee

15 June 2017

Dear Chair

Scrutiny of the draft Budget

I am writing following the Business Committee's consideration of their draft report on changes to Standing Orders in relation to scrutiny of the draft Budget, prior to the Standing Order changes and the Budget Process Protocol being considered in Plenary next week.

The changes to the Budget process are the culmination of a piece of work started by the Finance Committee in the Fourth Assembly; the devolution of fiscal powers in the Wales Act 2014 have meant that the Assembly's scrutiny now has to consider not just Welsh Government spending plans, but how these plans will be financed, through taxation and borrowing.

The main changes which are being proposed are that the budget scrutiny becomes a two stage process, whereby the higher level information which would be scrutinised by the Finance Committee is published prior to the detail needed by the policy committees, and more time is allowed for scrutiny. Specifically, it is hoped this additional time will allow the policy committees to undertake more detailed scrutiny of the spending in your portfolios, and you will no longer be required to report to the Finance Committee, you are able to report in your own right should you so wish.



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I have requested a discussion on these changes at the next Chairs' forum, to enable us to talk through the changes in more detail and we can consider how:

- the Committee scrutiny will work in practice,
- the Finance Committee can maintain an oversight role,
- we can work together to maximise public engagement,
- any training and development needs for committees can be met

Prior to consideration in Plenary the [proposed changes to Standing Orders have been tabled](#), as has the [revised protocol](#).

Should you have any queries on this please do not hesitate to let me know, and I look forward to discussing these changes further at the Chairs' Forum meeting on 12 July 2017.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Thomas'.

Simon Thomas AM

Chair of the Finance Committee



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Interpreting Welsh Law – considering an interpretation Act for Wales**

DATE **19 June 2017**

BY **Mick Antoniw AM, Counsel General for Wales**

On the 13 December 2016, I informed members of the Welsh Government’s intention to bring order to the statute book and develop codes of Welsh law. My aim is to bring order to the laws we have inherited and to establish a new approach to future law-making in Wales – an approach that puts the citizens, the ultimate users of legislation, first. This is particularly important in these times of limited access to legal advice, support and representation.

This is also a matter of considerable constitutional importance. Over 50 primary laws have been passed since the National Assembly’s competence was enhanced in 2007 and more than 4,000 Statutory Instruments have been made since 1999. The Welsh Parliament now has responsibility for law making across a wide range of subject areas. The development of a distinct Welsh legal jurisdiction is an inevitable consequence if we are to maintain a proper and efficient administration of justice in Wales and keep up with this process of change.

There are a number of elements to the work underway to improve access to our rapidly developing body of law. Beginning to consolidate laws we have inherited and improving how they are published are the most obvious. But there are also more technical and specialist initiatives that, while not high profile, are nevertheless important.

The government is today publishing a consultation paper on a proposal to develop a bill on statutory interpretation that is bespoke to Welsh legislation. To provide certainty and clarity, legislation must at times be detailed and intricate. However, such complexity can be reduced by setting out certain principles, rules and definitions once so that they don’t have to be repeated in each new law that is made. This is done by an “Interpretation Act” – a feature of legal jurisdictions across the common law world.

Interpretation Acts cover a range of procedural issues and define commonly used expressions in legislation which can assist in resolving uncertainties about the meaning of particular legislative provisions. They contain rules of statutory construction, such as

provisions about when laws come into force, the calculation of time periods, and the effects of repeal, which provide legal certainty. One of their main purposes is to help to keep legislation shorter and more consistent.

Welsh legislation currently comes under the ambit of the Interpretation Act 1978, an Act of the UK Parliament which is nearly 40 years old. This Act requires modernisation and, importantly, does not recognise that our laws are made in both English and Welsh – a deficiency that has been pointed out by the Law Commission and our Constitutional and Legislative Affairs Committee.

I believe that we should develop our own interpretation Act – as has been done in Scotland and Northern Ireland – which is bilingual and tailored to our jurisdiction. The consultation paper published today is concerned with how best to go about this.

The policy consultation is available here:

<https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales>

<https://ymgyngoriadau.llyw.cymru/ymgyngoriadau/dehongli-cyfreithiau-cymru-deddf-dehongli-i-gymru>

Huw Irranca-Davies AM
Chair
Constitutional & Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@Assembly.Wales

20 June 2017

Dear Huw

I note your letter dated 12 April 2017 with regard to the CLAC Committee's intention to produce a Bill on the appointment and accountability of commissioners.

You will appreciate the potential pressure that any legislation arising out of the UK Government's proposed repeal Bill will place on the National Assembly for Wales and the priority that this will need to take.

I would be grateful if you could keep us up to date with your proposals.

Yours sincerely



CARWYN JONES

The Rt Hon Carwyn Jones AM
First Minister of Wales

12 April 2017

Dear Carwyn

Commissioners Bill

In a debate on the Children's Commissioner for Wales's Annual Report 2015-16 on 15 November last year, I indicated that we had been considering undertaking some work on the appointment and accountability of commissioners.

Having considered the issues further, we have decided to introduce a Bill on this issue. In very broad terms, the purpose of the Bill will be to make specific constitutional watchdogs, which have responsibility for overseeing governmental propriety, accountable to the legislature rather than the executive.

We do not as yet have a firm timetable for introduction of the Bill, particularly because of the considerable implications for us of scrutinising legislation arising from the UK's decision to exit the European Union. However, it is our intention to consult on a draft Bill, probably later this year.

I will let you know when we intend to consult and ensure that you are kept up to date with our proposed timetable for introduction of the Bill.

I am writing in similar terms to the Llywydd.

Yours sincerely



Huw Irranca-Davies

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





The Rt Hon Alun Cairns MP
Secretary of State for Wales
1 Caspian Point
Caspian Way
Cardiff Bay
CF10 4DQ

Your ref:
Our ref: EJ/RT

21 June 2017

Dear Alun

Further to our conversation on Monday, I would like to offer you, formally, my congratulations on your reappointment as the Secretary of State for Wales.

As we discussed, there are important challenges and opportunities for Wales ahead and I hope that we will be able to continue our dialogue in the best interests of the people of Wales. I thought it would be useful to follow up on some of the issues discussed:

Brexit and the Great Repeal Bill

Responding to the challenges of Brexit is a high priority for me and the Assembly. I would like to stress the need for UK Government to engage with the Assembly as well as Welsh Government to ensure the interests of the people of Wales are reflected.

The Great Repeal Bill will have a huge impact on the National Assembly for Wales. The Assembly must therefore play a full part in overseeing negotiations and scrutinising effectively the Great Repeal Bill and the huge volume of further legislation that will follow.

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



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

I enclose the evidence I presented to the National Assembly's External Affairs Committee Inquiry into *The Great Repeal Bill White Paper: Implications for Wales*. You will be aware that the Committee report was published on Monday.

Brexit will result in fundamental changes to the way the UK is governed. As was my priority during the passage of the Wales Act 2017, I want to ensure there is no diminution of the Assembly's competence and freedom to legislate without UK Government consent. Where a UK approach is thought beneficial in devolved areas, this should be by common consent of all governments and parliaments, and aligned with the principle of subsidiarity.

In relation to the UK Government's role, I draw your attention to these matters of particular concern to me:

- Ensuring our legislative consent procedures are fit for purpose in relation to both primary and secondary legislation. In accordance with our Standing Orders, I expect that Assembly consent is sought to the exercise of UK Ministerial powers in devolved areas;
- Seeking a robust inter-parliamentary legislative consent convention to ensure that Parliament is aware of whether the Assembly has consented or not (to cover subordinate legislation too);
- Ensuring that we, not Westminster, determine the appropriate delegation of powers to Welsh Ministers and scrutiny procedures applied to SIs where the power is delegated in UK Bills to Welsh Minister;
- Ensuring the effective programming of Brexit-related legislation, and efficient use of Assembly time and resources, will necessitate close working and the sharing of timely information between the Assembly, Welsh Government, and UK Government. I welcome the commitment you gave to working with the Assembly to enable this work to progress smoothly.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

I look forward to meeting with you to discuss these matters.

Yours sincerely

Elin Jones AM
Llywydd

Enc

cc

Rt Hon Carwyn Jones AM, First Minister of Wales
Huw Irranca-Davies AM, Chair, Constitutional and Legislative Affairs Committee
David Rees AM, Chair, External Affairs and Additional Legislation Committee

Responding to the Great Repeal Bill and its implications for the National Assembly for Wales

Core principles of constitutional change

01. Throughout the recent passage of the Wales Act, my priority was to ensure that three key constitutional principles were respected. These are:

- that there should be no diminution of the Assembly’s competence and freedom to legislate without UK Government consent;
- that the Assembly should have the sovereignty to decide on its own procedures and to consent to any changes in its powers; and
- that the important organising principle of subsidiarity should be at the heart of the UK constitution.

02. These same principles apply in the context of the Great Repeal Bill and inform my submission to the Committee.

A voice for the people of Wales

03. As the democratically elected body that represents the interests of Wales and its people, the National Assembly has a crucial role in ensuring the voice of the people of Wales is heard in the legislative preparation for leaving the EU.

04. The National Assembly is responsible for a wide range of devolved policy areas, such as agriculture, environmental protection and transport, which are affected directly by EU law. The implications for devolved policy areas that affect fundamentally the lives of people in Wales mean that the Assembly must play a full part in overseeing the UK–EU Brexit negotiations. I would like to see us ensure this through;

- Ensuring all governments are held to account by the parliaments of the UK for their inter–governmental working; facilitating coordination of scrutiny between legislatures where possible. Depending on the proposals and options that emerge in the Great



Repeal Bill, this could also include an element of joint scrutiny of the legislative proposals;

- holding the Welsh Government to account and examining closely its own preparations for the UK's withdrawal from the EU.

Specific implications of the White Paper for the Assembly

05. The Assembly must scrutinise effectively the Great Repeal Bill and the huge volume of further legislation that will follow.

06. The UK Government's White Paper suggests that there may be a need for common UK policy frameworks in devolved areas like environment and agriculture. The UK Government also commits to "intensive discussions with the devolved administrations to identify where common frameworks covering the UK are necessary". This commitment to work with devolved administrations is welcome, but any proposal to share powers in areas of devolved competency should be agreed by the legislatures of the UK, not just the devolved governments.

07. Where a UK approach is thought beneficial in devolved policy areas, this must be by common consent of all UK parliaments. However, this should not result in new constraints on the Assembly's legislative competence beyond that agreed necessary (as indeed we are constrained now through EU law).

Scrutiny and oversight of the Great Repeal Bill

08. The White Paper states that Welsh Government Ministers will be given powers "in line" with the powers of UK Ministers to adjust the body of EU-derived law, which the Bill intends to transfer into UK law, so as to make it workable on the day the UK exits the EU.

09. As a matter of principle, it should be the National Assembly that decides whether or not to give the Welsh Ministers powers to make delegated legislation, on devolved matters, and what the nature of those powers should be. A large volume of legislation will be needed to make the body of EU-derived law, which the Bill intends to transfer into UK law, workable



after the UK leaves the EU. This will need to be achieved within tight timescales. Given this, I recognise the case for Welsh Government Ministers to be given delegated powers in this regard. But this should only be permitted if the Assembly has been properly consulted and is satisfied that the scope of those powers is appropriate.

10. Moreover, the National Assembly has responsibility for the effective scrutiny of the use that the Welsh Government makes of its powers. Therefore, it is also essential that the Assembly should be satisfied that the processes and procedures to which resulting Welsh Minister subordinate legislation are subject are appropriate.
11. To enable the Assembly to complete this work effectively, the Great Repeal Bill should ensure the Assembly has the freedom to determine its own scrutiny procedures. It would be wholly inappropriate for the Bill to set out procedures for the scrutiny of Welsh Government Ministers' secondary legislation, or to constrain the Assembly's ability to make decisions about its own internal scrutiny procedures in any way.
12. This approach is in line with both the core constitutional principles of sovereignty and subsidiarity, outlined above, as well as being essential to ensuring the effective and timely scrutiny of the legislation. The Assembly will, of course, need to consider how it balances its responsibility for effective scrutiny with the need for all the legislative changes to be made before the UK withdraws from the EU.

Legislative Consent Memoranda (LCMs)

13. It is crucial that the Assembly ensures that our own legislative consent procedures are fit for purpose in the context of Brexit, ensuring that the Assembly's consent is sought—and respected—for all legislation in devolved areas. This should include both primary and secondary legislation that is brought forward by UK Ministers, regardless of whether that secondary legislation uses "Henry VIII powers".
14. This will require the development of a robust inter-parliamentary legislative consent convention to ensure that the UK Parliament is aware



of whether the Assembly has consented or not, and respects the Assembly's decisions across all legislation, including subordinate legislation. In my view, the existing Legislative Consent convention (Sewel convention), and its manifestations in UK Government Devolution Guidance Notes, are not sufficient safeguards. It is essentially a government to government, rather than a parliament to parliament convention. I do not regard this as appropriate in this context.

15. This is a separate matter from the fact that, as we know from the recent Supreme Court judgment on the triggering of notice under Article 50 of the Treaty on European Union, the Sewel Convention is not enforceable through the courts, even in the statutory form which part of it now has as a result of section 2 of the Wales Act 2017. That is also a matter I wish to see resolved, as part of changes to the UK constitution as a result of Brexit.
16. It may also point to the need for the Assembly to adjust its own internal procedures so as to ensure that more time is devoted to the scrutiny of relevant UK Parliament Bills. I would welcome the Committee's thoughts on this point.

Implications for the Assembly and scrutiny of the Brexit legislation emanating from the Great Repeal Bill

17. If brought forward by a new UK Government, the Great Repeal Bill will have significant implications for the work of the National Assembly, both in terms of the volume of secondary legislation that will need to be considered and the timeframe within which it will need to be passed.
18. These are serious challenges but also provide an opportunity to demonstrate the Assembly's maturity and effectiveness as a legislature.
19. The Assembly will need to ensure that Members have the time, resources and support they need to undertake this important legislative work within the capacity constraints of the National Assembly.
20. The Assembly has already responded to the outcome of the EU referendum by creating the additional committee capacity required and



bolstering Commission staff support in key areas. The Assembly is in the process of scoping further the implications of the Great Repeal Bill for the institution and will continue this work over the coming months. This work is being taken forward by the Assembly Commission, the Business Committee and the Chairs of Committees who are looking at the Assembly's capacity from their different perspectives. The Commission is considering staff resource, the Business Committee our procedures and committee capacity, and the Committee Chairs in the Chairs' Forum are considering how they manage their committee work programmes.

21. The view of the committees and Members, and in particular the views of your committee and the Constitutional and Legislative Affairs Committee, will be very important in shaping these preparations and ensuring that the institution is in the best possible position to respond.
22. Ensuring the effective programming of Brexit-related and other legislation, and efficient use of Assembly time and resources, will also necessitate close working and the sharing of timely information between the Assembly and Welsh Government, and between the UK Government and all legislatures in the UK.

The implications for the UK constitution

23. The Great Repeal Bill (and Brexit more generally) will result in fundamental changes to the way the UK is governed.
24. The significant changes that are likely to unfold will present common challenges and opportunities for all legislatures within the UK. To that end I will continue to work closely with counterparts across the UK to share information, best practice and institutional knowledge on the responses to these challenges.
25. Given the volume of primary legislation likely to pass through the Houses of Parliament which will be of interest and relevance to Wales and related to areas of devolved competence, it will be important to ensure that good inter-parliamentary relationships are developed at all levels. I therefore note the evidence presented to you by the Cabinet Secretary for Finance



and Local Government that “withdrawal from the EU represents a fundamental constitutional change for Wales and the UK as a whole, one that will require new inter-governmental arrangements, based on full respect for devolution, to enable the development of UK-wide frameworks based on common consent by all four governments”. I would highlight, in addition to this, the importance of inter-parliamentary oversight of these arrangements.

Conclusion

26. In summary, the Great Repeal Bill and the preparations for the UK’s withdrawal from the EU bring complex challenges for the public policy areas for which the Assembly has responsibility and for the organisation of the Assembly itself.
27. Across the Assembly, your Committee and others are already undertaking important work in setting out the institution’s expectations of the Welsh Government and addressing the questions that need to be answered.
28. The National Assembly must be ready to play a full part in overseeing the Brexit negotiations, scrutinising the Great Repeal Bill and the huge volume of further legislation that will follow, and ensuring that the voice of the people of Wales is heard. This will stretch the already limited capacity of our legislature. The Welsh Government and the Assembly Commission will need to be innovative and radical in how we approach and support our legislative and scrutiny duties over the next few years.
29. As that process unfolds, I am determined to demonstrate and secure the National Assembly’s role as a strong, effective legislature for Wales.



Carl Sargeant AC/AM
Ysgrifennydd y Cabinet dros Gymunedau a Phlant
Cabinet Secretary for Communities and Children

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L-CS-0410-17

John Griffiths AM
Chair, Equalities, Local Government and Communities Committee
National Assembly for Wales

21st June 2017

Dear John

ABOLITION OF THE RIGHT TO BUY AND ASSOCIATED RIGHTS (WALES) BILL

In the Statement of Policy Intent, sent to the Committee on 13 March 2017, I undertook to provide a draft of the anticipated consequential amendments that will need to be made to the Housing Act 1985 (the 1985 Act).

I am pleased to enclose a draft Schedule of consequential amendments to the 1985 Act. The Bill provides for the amendments to be made by secondary legislation to allow flexibility for the timing of such amendments, in light of the interaction between the implementation of the Bill and of the Renting Homes (Wales) Act 2016.

A comprehensive programme of work is in place to implement Renting Homes and if the Bill to end the Right to Buy is passed by the National Assembly we anticipate abolition will come into effect at a point very close to the time Renting Homes is due to be implemented. Now the timetable for the Right to Buy Bill is known, consideration is being given to the appropriate date for Renting Homes to come into effect to ensure coherence between the two. It is anticipated this would be after abolition of the Right to Buy.

If Renting Homes comes into force before abolition, amendments will need to be made to the 1985 Act to continue the Right to Buy under Renting Homes, and then subsequent amendments made to give effect to abolition. The simpler option is if abolition occurs before Renting Homes, in which case only one set of amendments will need to be made to the 1985 Act to give effect to abolition. This will help minimise the scope for a potentially confusing situation for tenants.

As the current implementation dates of both abolition and Renting Homes are looking to fall very close together, the amendments are to be made by secondary legislation to allow flexibility to make the correct ones. The amendments will be made under section 9 of the Bill and will be subject to the affirmative procedure.

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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.

It would not have been appropriate to include amendments on the face of this Bill, given the potential uncertainty of the precise nature of the legislation at the time that abolition is to take effect and therefore the exact amendments required.

For illustrative purposes and to aid the Committee with scrutiny, we have prepared the draft amendments we anticipate will need to be made should the Bill receive Royal Assent before Renting Homes fully comes into force.

I am sending a copy of this letter and the draft amendments to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely



Carl Sargeant AC/AM
Ysgrifennydd y Cabinet dros Gymunedau a Phlant
Cabinet Secretary for Communities and Children

DRAFT CONSEQUENTIAL AMENDMENTS TO THE HOUSING ACT 1985

- 1 (1) The Housing Act 1985 (c. 68) is amended as follows.
- (2) In section 115 (meaning of long tenancy), in subsection (1)(c), omit "as it has effect".
- 5 (3) In section 118 (the right to buy), in subsection (1), after "secure tenant" insert "of a dwelling-house in England".
- (4) In section 119 (qualifying period for right to buy) –
- (a) in subsection (A1), for "In the application of this Part to England, the" substitute "The";
- (b) omit subsection (1);
- 10 (a) in subsection (2), omit "or (1)".
- (5) In section 121AA (information to help tenants decide whether to exercise right to buy), in subsection (1), after "dwelling-houses" insert "in England".
- (6) In section 121B (provision of information) –
- (a) in subsection (2)(b), after "secure tenants" insert "of dwelling-houses in England";
- 15 (b) in subsection (5), after "secure tenants" insert "of dwelling-houses in England".
- (7) In section 122 (tenant's notice claiming to exercise the right to buy), in subsection (1), for "Unless section 122B applies a" substitute "A".
- (8) Omit section 122A (applications to suspend the right to buy etc. in parts of Wales: effect on claims to exercise the right).
- 20 (9) Omit section 122B (suspension of the right to buy in parts of Wales).
- (10) In section 124 (landlord's notice admitting or denying right to buy) –
- (a) in subsection (1), omit "or (3)";
- (b) omit subsection (3).
- 25 (11) In section 153A (tenant's notice of delay), in subsection (1)(a), omit "or (3)".
- (12) In section 171A (cases in which the right to buy is preserved), in subsection (1), after "dwelling-house" insert "in England".
- (13) In section 171B (extent of preserved right: qualifying persons and dwelling-houses) –
- (a) in subsection (1), after "the preserved right to buy" insert "a relevant dwelling-house in England";
- 30 (b) in subsection (6), after "another dwelling-house" insert "in England".
- (14) In section 171D (subsequent dealings: disposal of landlord's interest in qualifying dwelling-house) –
- (a) in subsection (2), for "appropriate authority" substitute "Secretary of State";
- 35 (b) omit subsection (2A).
- (15) In Schedule 5 (exceptions to the right to buy), in paragraph 11, in sub-paragraph (5A), omit paragraph (b) and the "and" preceding it.

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