

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 25 September 2017

Meeting time: 10.00

For further information contact:

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## 1 Introduction, apologies, substitutions and declarations of interest

10.00

## 2 Stronger Voice for Wales: Evidence session 12

10.00

(Pages 1 – 9)

Rt.Hon Alun Cairns MP, Secretary of State for Wales;

Michael Dynan–Oakley, Principal Private Secretary;

Geth Williams, Head of Constitution;

Sophie Traherne, Special Adviser

CLA(5)–21–17 – Research service briefing

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

11.00

(Pages 10 – 12)

CLA(5)–21–17 – Paper 1 – Statutory instruments with clear reports

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

11.05

Composite Negative Resolution Instruments

### 4.1 SL(5)119 – The Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017

(Pages 13 – 31)



CLA(5)-21-17 – Paper 2 – Regulations

CLA(5)-21-17 – Paper 3 – Explanatory Memorandum

CLA(5)-21-17 – Paper 4 – Report

## **5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU**

11.10

Negative Resolution Instruments

### **5.1 SL(5)120 – The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017**

(Pages 32 – 33)

CLA(5)-21-17 – Paper 5 – Report

## **6 Papers to note**

11.15

### **6.1 Papers to note – Exiting the EU**

(Pages 34 – 61)

CLA(5)-21-17 – Paper 6 – Letter from Lord Jay of Ewelme – Brexit: devolution – new House of Lords EU Committee report

CLA(5)-21-17 – Paper 7– Legislative Consent Memorandum: European Union (Withdrawal) Bill

CLA(5)-21-17 – Paper 8– Joint letter to the Prime Minister: proposed Amendments to the EU (Withdrawal) Bill from the Welsh and Scottish First Ministers

CLA(5)-21-17 – Paper 9– Letter from the First Minister to the Chair: Welsh and Scottish Government joint set of proposed amendments to the European Union (Withdrawal) Bill

CLA(5)-21-17 – Paper 10– Letter from Michael Russell AMSP Minister for UK Negotiations on Scotland’s Place in Europe, to Bruce Crawford MSP Convener Finance and Constitution Committee Scottish Parliament

## **6.2 Papers to note – Welsh Government Legislation**

(Pages 62 – 90)

**CLA(5)–21–17 – Paper 11** – Letter from the Minister for Lifelong Learning and Welsh Language – Additional Learning Needs Bill

**CLA(5)–21–17 – Paper 12** – Letter from the Minister for Lifelong Learning and Welsh Language – Additional Learning Needs Bill

**CLA(5)–21–17 – Paper 13** – Letter from the Cabinet Secretary for Communities and Children– Abolition of the Right to Buy Bill

**CLA(5)–21–17 – Paper 14** – Letter from the First Minister – Legislation Handbook on Assembly Bills

**CLA(5)–21–17 – Paper 15** – Letter from the Counsel General – Law Commission Report on the Form and Accessibility of the Law in Wales

## **6.3 Papers to note – Wales Act 2017**

(Pages 91 – 94)

**CLA(5)–21–17 – Paper 16** – Letter from the Llywydd – Implementation of the Wales Act 2017 and Llywydd’s response to Secretary of State for Wales

**CLA(5)–21–17 – Paper 17** – Letter from the Secretary of State – Implementation of the Wales Act 2017

## **6.4 Papers to note – Stronger Voice for Wales Inquiry**

(Pages 95 – 98)

**CLA(5)–21–17 – Paper 18** – Letter from the British Academy – Stronger Voice for Wales

**CLA(5)–21–17 – Paper 19** – The Learned Society of Wales – Stronger Voice for Wales

## **6.5 Papers to note – Other**

(Pages 99 – 101)

**CLA(5)–21–17 – Paper 20**– Letter from the Llywydd – Assembly reform: disqualification, defamation, contempt of court and Assembly privilege

CLA(5)-21-17 – Paper 21 – Welsh Government written statement: Commission on Justice in Wales

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

11.20

**7.1 Paper to Note – Letter from the Llywydd**

(Pages 102 – 113)

CLA(5)-21-17 – Paper 22 – Letter from the Llywydd – EU Withdrawal Bill:  
Expert Implementation Panel for Wales

**7.2 Stronger Voice for Wales: Consideration of Evidence**

**7.3 Approach to Scrutiny of the European Union (Withdrawal) Bill**

## **Break until 14.30**

Public Session

**8 Stronger Voice for Wales: Evidence session 13**

14.30

(Pages 114 – 121)

Philip Rycroft CB, Permanent Secretary: Department for Exiting the European Union

CLA(5)-21-17 – Research service briefing

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

15.30

**9.1 Stronger Voice for Wales – Consideration of evidence**

**9.2 Interpretation Act for Wales**

(Pages 122 – 124)

CLA(5)-21-17 – Paper 23 – Paper from Legal Services

### **9.3 Forward Work Programme**

(Pages 125 – 127)

**CLA(5)-21-17 -Paper 24 – Forward work programme**

**Date of the next meeting**

2 October 2017

Document is Restricted

## Agenda Item 3 Regulations with Clear Reports

25 September 2017

### SL(5)118 – The Flood and Coastal Erosion Committee for Wales Regulations 2017

**Procedure: Negative**

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The Regulations govern the newly established Flood and Coastal Erosion Committee, an independent advisory body to the Welsh Ministers and Welsh risk management authorities on matters relating to flood and coastal erosion risk management.

**Parent Act:** Flood and Water Management Act 2010

**Date Made:** 7 August 2017

**Date Laid:** 10 August 2017

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

### SL(5)121 – The Education (Student Information) (Wales) Regulations 2017

**Procedure: Negative**

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These Regulations prescribe the persons and the categories of persons to whom a person in Wales may provide student information. The Regulations also prescribe the type of student information that may be shared and the circumstances in which that information may be shared.

**Parent Act:** Apprenticeships, Skills, Children and Learning Act 2009

**Date Made:** 7 September 2017

**Date Laid:** 11 September 2017

**Coming into force date:** 6 October 2017



## SL(5)122 – The Education (Destination Information) (Prescribed Activities) (Wales) Regulations 2017

### Procedure: Negative

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These Regulations will allow the Welsh Government to share with further education institutions in Wales the data it already collects on individual learners' destinations from a variety of sources with institutions at learner level, before publishing it in aggregated form. As well as enabling institutions to check their data prior to publication, it will help to increase confidence in published performance information and help institutions improve learner outcomes, make informed decisions about what provision to offer, and give appropriate careers advice by enhancing their understanding of the outcomes achieved by their learners.

**Parent Act:** Further and Higher Education Act 1992

**Date Made:** 7 September 2017

**Date Laid:** 11 September 2017

**Coming into force date:** 6 October 2017

## SL(5)123 – The Health Education and Improvement Wales Regulations 2017

### Procedure: Negative

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These Regulations make provision concerning the membership and procedures of Health Education and Improvement Wales (“HEIW”). HEIW is a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 by the Health Education and Improvement Wales (Establishment and Constitution) Order 2017.

**Parent Act:** National Health Service (Wales) Act 2006

**Date Made:** 11 September 2017

**Date Laid:** 13 September 2017

**Coming into force date:** 5 October 2017





# SL(5)124 – The Health Education and Improvement Wales (Establishment and Constitution) Order 2017

## **Procedure: Negative**

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This Order is made under section 22 of the National Health Service (Wales) Act 2006. It establishes a new Special Health Authority, Health Education and Improvement Wales, and makes provision about its functions and constitution.

**Parent Act:** National Health Service (Wales) Act 2006

**Date Made:** 11 September 2017

**Date Laid:** 13 September 2017

**Coming into force date:** 5 October 2017



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## STATUTORY INSTRUMENTS

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**2017 No.**

### **EDUCATION**

#### **The Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017**

<i>Made</i> - - - -	<i>XX August 2017</i>
<i>Laid before Parliament</i>	<i>XX August 2017</i>
<i>Laid before the National Assembly for Wales</i>	<i>XX August 2017</i>
<i>Coming into force</i> - -	<i>5th September 2017</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a) and sections 5 and 6 of the Sale of Student Loans Act 2008(b).

The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(c), and by sections 5 and 6 of the Sale of Student Loans Act 2008.

#### **Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017 and come into force on 5th September 2017.

(2) Subject to paragraphs (3) to (5), these Regulations extend to England and Wales only.

(3) These Regulations extend to all of the United Kingdom in so far as they impose or amend any obligation or confer or amend any power conferred on—

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(a) 1998 c. 30. Section 22 was amended by: section 146(2) of, and Schedule 11 to, the Learning Skills Act 2000 (c. 21); paragraph 236 of Part 2 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1); section 147(3) of the Finance Act 2003 (c. 14); sections 42(1) and 43(2) and (3) of, and Schedule 7 to, the Higher Education Act 2004 (c. 8); section 257(2) of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22); section 76(1) and (2)(a) of the Education Act 2011 (c. 21); and S.I. 2013/1881. Section 43(1) of the Teaching and Higher Education Act 1998 defines “prescribed” and “regulations”.

(b) 2008 c. 10.

(c) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), (3)(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) are exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The functions of the Secretary of State under section 42 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions under section 42 which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

- (a) Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under—
    - (i) Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009(a); or
    - (ii) Chapter 3 or 4 of Part 2 of the 2016 Postgraduate Regulations; or
  - (b) any other person in relation to the retention or production of information or records.
- (4) Regulation 41(2)(b) extends to England and Wales and Northern Ireland.
- (5) Regulation 41(2)(c) extends to all of the United Kingdom.

**Amendment of the Education (Student Loans) (Repayment) Regulations 2009**

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 40.

**Amendment of regulation 3**

3.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) after the definition of “the 2011 Welsh Regulations”, insert—
  - “the 2016 Postgraduate Regulations” means the Education (Postgraduate Master’s Degree Loans) Regulations 2016(b);
  - “the 2017 Postgraduate Wales Regulations” means the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017(c);”;
- (b) in the definition of “the Authority”, in paragraphs (a) and (b)—
  - (i) after “student loan”, insert “or a postgraduate master’s degree loan”;
  - (ii) omit from “pursuant” to “Act”;
- (c) for the definition of “borrower”, substitute—
  - ““borrower” means—
  - (a) a student loan borrower; or
  - (b) a postgraduate master’s degree loan borrower;”;
- (d) in the definition of “loan purchaser”, after “student loans”, insert “or postgraduate master’s degree loans”;
- (e) after the definition of “post-2012 student loan”, insert—
  - ““postgraduate master’s degree loan” means the total outstanding—
  - (a) principal owed by a person to the Authority pursuant to—
    - (i) Part 1 of the 2016 Postgraduate Regulations, or
    - (ii) Part 4 of the 2017 Postgraduate Wales Regulations, and
  - (b) interest, penalties and charges owed by a person to the Authority pursuant to these Regulations in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations,

excluding any interest, penalties or charges payable under Part 3 or 4, and also has the meaning given to it in regulation 7;

“postgraduate master’s degree loan borrower” means a person—

  - (a) to whom the Authority has lent money in respect of a postgraduate master’s degree loan; and

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(a) S.I. 2009/470, amended by S.I. 2010/661, 2011/784, 2012/836, 2012/1309, 2013/388, 2013/591, 2013/607 and 2013/1881.  
 (b) S.I. 2016/606, amended by S.I. 2016/668.  
 (c) S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169).

- (b) who has not received a notice from the Authority or the loan purchaser (as the case may be) that the loan has been repaid in full or cancelled;”;
  - (f) in the definition of “repayment”, at the end, insert “or a postgraduate master’s degree loan”;
  - (g) in the definition of “repayment threshold”(a), after paragraph (b), insert—
    - “(c) in relation to a postgraduate master’s degree loan, has the meaning given to it in regulation 29(8);”;
  - (h) for the definition of “student loan”, substitute—
    - ““student loan” means the total outstanding principal, interest, penalties and charges owed by a person—
      - (a) to the Secretary of State, pursuant to—
        - (i) these Regulations, other than any interest, penalties and charges owed in connection with the 2016 Postgraduate Regulations, and
        - (ii) any other Regulations made under section 22 of the 1998 Act, other than the 2016 Postgraduate Regulations,
      - (b) to the Welsh Ministers, pursuant to—
        - (i) these Regulations, other than any interest, penalties and charges owed in connection with the 2017 Postgraduate Wales Regulations, and
        - (ii) any other Regulations made under section 22 of the 1998 Act, other than the 2017 Postgraduate Wales Regulations,
- excluding any interest, penalties or charges payable under Part 3 or 4, and also has the meanings given to it in regulations 6 and 7;”;
- (i) after the definition of “student loan”, insert—
    - ““student loan borrower” means a person—
      - (a) to whom the Authority has lent money in respect of a student loan, and
      - (b) who has not received a notice from the Authority or the loan purchaser (as the case may be) that the loan has been repaid in full or cancelled,
- and also has the meaning given to it in regulation 6;”.

(3) In paragraph (2)(b), after “the 1998 Act” the first time it appears, insert “, other than the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations”.

#### **Amendment of regulation 4**

**4.** In regulation 4 (application: general), after “student loans”, insert “and postgraduate master’s degree loans”.

#### **Amendment of regulation 5**

**5.**—(1) Regulation 5 (Wales) is amended as follows.

(2) In paragraph (1), after “student loans”, insert “and postgraduate master’s degree loans”.

(3) In paragraph (2)—

- (a) for “description of student”, substitute “postgraduate master’s degree”;
- (b) for “Parts 3 and 4 and any provision” to the end, substitute “no provision of these Regulations made by virtue of section 22(5) of the 1998 Act will apply”.

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(a) The definition of “repayment threshold” was inserted by S.I. 2011/784 and was subsequently substituted by S.I. 2012/1309.  
 (b) Paragraph (2) was inserted by S.I. 2012/1309 and was subsequently amended by S.I. 2013/607.

### **Amendment of regulation 6**

6. In regulation 6(3) (Scotland), for “borrower”, substitute “student loan borrower”.

### **Amendment of regulation 7**

7. In regulation 7(1) (application to transferred loans in England and Wales)—
- (a) in the definition of “the Authority”, at the end, omit “and”;
  - (b) after the definition of “the Authority”, insert—
    - ““postgraduate master’s degree loan” means, subject to any provisions of transfer arrangements, the total outstanding—
    - (a) principal owed by a person to a loan purchaser pursuant to—
      - (i) the 2016 Postgraduate Regulations; or
      - (ii) the 2017 Postgraduate Wales Regulations; and
    - (b) interest, penalties and charges owed by a person to a loan purchaser pursuant to these Regulations in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations; and”;
  - (c) for the definition of “student loan”, substitute—
    - ““student loan” means, subject to any provisions of transfer arrangements, the total outstanding principal, interest, penalties and charges owed by a person to a loan purchaser pursuant to—
    - (a) these Regulations, other than any interest, penalties and charges owed in connection with the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations; and
    - (b) any other Regulations made under section 22 of the 1998 Act, other than the 2016 Postgraduate Regulations or the 2017 Postgraduate Wales Regulations.”.

### **Amendment of regulation 9**

8. In regulation 9 (interpretation), in the definition of “Student Support Regulations”—
- (a) renumber paragraphs (c) and (d) as paragraphs (a) and (b) respectively;
  - (b) in paragraphs (a) and (b), after “any Regulations made”, insert “in respect of student loans”.

### **Amendment of regulation 15**

- 9.—(1) Regulation 15 (timing of repayments: general) is amended as follows.
- (2) In paragraph (1), after “a student loan”, insert “or a postgraduate master’s degree loan”.
  - (3) In paragraph (2)(a)—
    - (a) for “(2A), (2B) and (2C)”, substitute “(2A) and (2B)”;
    - (b) for “borrower”, both times it appears, substitute “student loan borrower”;
    - (c) after “the 1998 Act”, insert “in respect of a student loan”.
  - (4) After paragraph (2), insert—
    - “(2ZA) Subject to paragraph (2C) a postgraduate master’s degree loan borrower is not required to repay any part of the postgraduate master’s degree loan before the start of the following tax year commencing on 6 April after a postgraduate master’s degree loan borrower ceases to be eligible for a loan under Part 1 of the 2016 Postgraduate Regulations

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(a) Paragraph (2) was amended by S.I. 2012/1309.

or Part 4 of the 2017 Postgraduate Wales Regulations, whether by reason of having completed that course or otherwise.”.

(5) In paragraphs (2A) and (2B)(a), omit “Subject to paragraph (2C)”.

(6) For paragraph (2C)(b), substitute—

“(2C) A postgraduate master’s degree loan borrower is not required to repay any part of the postgraduate master’s degree loan under paragraph (2ZA) before—

- (a) 6 April 2019, in the case of a loan made under Part 1 of the 2016 Postgraduate Regulations; or
- (b) 6 April 2019, in the case of a loan made under Part 4 of the 2017 Postgraduate Wales Regulations.”.

(7) In paragraph (7), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 18**

**10.**—(1) Regulation 18 (direct debit repayment) is amended as follows.

(2) In paragraph (1)—

- (a) in the words before paragraph (a), for “will apply”, substitute “applies”;
- (b) in paragraph (a), after “outstanding balance”, insert “of a student loan or a postgraduate master’s degree loan (“the relevant loan”)”;
- (c) in paragraph (b), for “the student loan”, substitute “the relevant loan”;
- (d) in paragraph (c), for “the loan”, substitute “the relevant loan”.

(3) In paragraphs (2) and (5), after “deductions”, insert “in respect of the relevant loan”.

(4) In paragraph (3), after “outstanding balance”, insert “of the relevant loan”.

### **Amendment of regulation 19**

**11.**—(1) Regulation 19 (cancellation) is amended as follows.

(2) For paragraph (1), substitute—

“(1) This regulation applies where a borrower is not in breach of any obligation to repay any of the following—

- (a) a loan mentioned in paragraph (4);
- (b) where the borrower is a student loan borrower—
  - (i) a student loan under the overseas provisions;
  - (ii) a student loan under regulation 18;
  - (iii) a postgraduate master’s degree loan;
- (c) where the borrower is a postgraduate master’s degree loan borrower—
  - (i) a postgraduate master’s degree loan under the overseas provisions;
  - (ii) a postgraduate master’s degree loan under regulation 18;
  - (iii) a student loan.”.

(3) In paragraph (2)(c), after “a post-2012 student loan”, insert “or a postgraduate master’s degree loan”.

(4) In paragraph (3)(d)—

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(a) Paragraphs (2A) and (2B) were inserted by S.I. 2012/1309.

(b) Paragraph (2C) was inserted by S.I. 2012/1309.

(c) Paragraph (2) was amended by S.I. 2012/1309.

(d) Paragraph (3) was amended by S.I. 2012/1309 and 2013/607.

- (a) after “the borrower’s liability to repay the student loan”, insert “or the postgraduate master’s degree loan”;
- (b) at the end of sub-paragraph (e), omit “or”;
- (c) at the end of sub-paragraph (f), insert “or”;
- (d) after sub-paragraph (f), insert—
  - “(g) in the case of a postgraduate master’s degree loan, the 30th anniversary of the date on which the borrower became liable to repay the postgraduate master’s degree loan.”.

(5) In paragraphs (5) and (6), after “student loan”, each time it appears, insert “or the postgraduate master’s degree loan”.

**Amendment of regulation 20**

**12.**—(1) Regulation 20 (refunds) is amended as follows.

(2) In paragraph (1)(a) and (b)(a), after “the student loan”, insert “or the postgraduate master’s degree loan”.

(3) After paragraph (1A)(c), insert—

- “(d) for a postgraduate master’s degree loan, as if it were the principal of a postgraduate master’s degree loan, outstanding from the date of receipt of the repayment to the earlier of—
  - (i) the end of a period of 60 days after the Authority issues a notice, or
  - (ii) the date on which the Authority makes the refund to the borrower,
 after which period no interest will accrue.”.

(4) In paragraph (1B), for “and (c)(i)”, substitute “, (c)(i) and (d)(i)”.

(5) In paragraph (2)(a) and (b), after “the student loan”, insert “or the postgraduate master’s degree loan”.

(6) In paragraph (4), for “(6), (6A) and (9)”, substitute “regulation 20A”.

(7) Omit paragraphs (6) to (9).

**New regulation 20A**

**13.** After regulation 20, insert—

**“Excess payments: more than one loan**

**20A.**—(1) This regulation applies where—

- (a) a borrower has—
  - (i) a postgraduate master’s degree loan and a post-2012 student loan;
  - (ii) a postgraduate master’s degree loan and a student loan which is not a post-2012 student loan; or
  - (iii) a post-2012 student loan and a student loan which is not a post-2012 student loan; and
- (b) the Authority receives a repayment either directly from the borrower under regulation 15(1) or from HMRC under Part 3 or 4—
  - (i) which results in one of the loans being repaid in full; or
  - (ii) when one of the loans has already been repaid in full.

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(a) Paragraph (1) was amended by S.I. 2012/1309.

(2) Where the amount of the excess payment exceeds £10, the Authority must give notice to the borrower that—

- (a) the Authority intends to treat the excess payment as a direct payment under regulation 15(1) for the second loan, unless the borrower notifies the Authority, within 60 days of the date of the Authority's notice, that the excess payment should be refunded to the borrower; and
- (b) interest will accrue on a refund from the date of receipt of the repayment until the earlier of—
  - (i) a period of 60 days after the Authority issues the notice; or
  - (ii) the date on which the Authority makes the refund to the borrower.

(3) The Authority must treat any excess payment as a direct payment to the Authority under regulation 15(1) for the second loan, unless the borrower gives notice to the Authority in accordance with paragraph (2)(a).

(4) Where the borrower gives notice to the Authority in accordance with paragraph (2)(a) that the excess payment should be refunded, the Authority must refund the excess payment and any accrued interest to the borrower.

(5) A refund under paragraph (4) carries interest calculated as if it were the principal of the fully repaid loan, outstanding from the date of receipt of the repayment to the earlier of—

- (a) the end of a period of 60 days after the Authority issues a notice, or
- (b) the date on which the Authority makes the refund to the borrower,

after which period no interest will accrue.

(6) In this regulation—

- (i) “fully repaid loan” means a loan that has been repaid in full in the circumstances described in paragraph (1);
- (ii) “second loan” means the loan that remains unpaid in those circumstances;
- (iii) “excess payment” means the amount of the repayment described in paragraph (1)(b) which is not required to repay the fully repaid loan.”.

### **Amendment of regulation 21A**

14. After regulation 21A(2)(a) (interest rate on post-2012 student loans) insert—

“(2ZA) The interest rate in relation to a student loan during the period described in regulation 16(3) is the standard rate of interest.”.

### **New regulation 21B**

15. After regulation 21A, insert—

#### **“Interest rate on postgraduate master’s degree loans**

**21B.**—(1) The interest rate in relation to a postgraduate master’s degree loan is RPI plus 3%.

(2) Interest accrues as of the date that the first payment of the loan is paid out under—

- (a) regulation 13 of the 2016 Postgraduate Regulations; or
- (b) regulation 13 of the 2017 Postgraduate Wales Regulations.

(3) Interest is calculated on the principal outstanding daily and is added to the principal monthly.

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(a) Regulation 21A was inserted by S.I. 2012/1309 and subsequently amended by S.I. 2013/607 and 2013/1881.



(4) The Authority must publish, at least once a year, by whatever means and in whatever media the Authority thinks fit, the interest rate for the forthcoming academic year or part of that year.

(5) In this regulation, “RPI” means the percentage increase between the retail prices all items index published by the National Office for Statistics for the two Marches immediately before the commencement of the academic year.”.

### **Amendment of regulation 23**

**16.** In regulation 23(2)(b) (information notices)—

- (a) omit “and”;
- (b) at the end, insert “or both”.

### **Amendment of regulation 25**

**17.** In regulation 25(3) (costs and expenses), after “the student loan”, insert “or the postgraduate master’s degree loan”.

### **Amendment of regulation 27**

**18.** In regulation 27 (foreclosure), after “the student loan”, insert “or the postgraduate master’s degree loan”.

### **Amendment of regulation 28**

**19.** In the heading of regulation 28 (repayments of student loans by persons required to submit a tax return), after “student loans”, insert “and postgraduate master’s degree loans”.

### **Amendment of regulation 29**

**20.—**(1) Regulation 29 (time for and amount of repayments) is amended as follows.

(2) In paragraph (1), after “student loan”, insert “or a postgraduate master’s degree loan”.

(3) For paragraph (3), substitute—

“(3) The repayment must be an amount equal to—

- (a) in the case of a student loan, 9% of the borrower’s total income for that year,
- (b) in the case of a postgraduate master’s degree loan, 6% of the borrower’s total income for that year,

calculated in accordance with paragraph (4).”.

(4) After paragraph (3), insert—

“(3A) The repayment under paragraph (3) is additional to, and concurrent with, any repayment due by—

- (a) the student loan borrower in respect of a postgraduate master’s degree loan; or
- (b) the postgraduate master’s degree loan borrower in respect of a student loan.”.

(5) In paragraph (7)(a), for “the repayment threshold is”, substitute “the repayment threshold in relation to a student loan is”.

(6) In paragraph (8)(b)—

- (i) for “for a borrower with”, substitute “in relation to”;
- (ii) after “student loan”, insert “or postgraduate master’s degree loan”.

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(a) Paragraph (7) was inserted by S.I. 2011/784 and subsequently amended by S.I. 2012/1309, 2013/607 and 2014/651.

(b) Paragraph (8) was inserted by S.I. 2012/1309.

### **Amendment of regulation 33**

**21.** In regulation 33(3)(b) and (d)(ii) (other returns and information), after “student loan” each time it appears, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 41**

**22.** In regulation 41 (interpretation)—

(a) before the definition of “combined amount”, insert—

““approved method” means—

(a) in relation to the delivery of a return in accordance with this Part, the internet services or Electronic Data Interchange services provided through PAYE Online(a) or PAYE Online for Agents(b);

(b) in relation to the making of a payment in accordance with this Part, the services known as Direct Debit, BACS Direct Credit (including telephone and internet banking), CHAPS, debit and credit card over the internet (known as “BillPay”), Government Banking Service (formerly known as “Paymaster”), Bank Giro and payments made through the Post Office;”;

(b) in the definition of “combined amount”, after “student loan”, insert “or postgraduate master’s degree loan;”.

### **Amendment of regulation 42**

**23.** In the heading of regulation 42 (repayment of student loans by employees), after “student loans”, insert “or postgraduate master’s degree loans”.

### **Amendment of regulation 43**

**24.** In regulation 43(2)(c) (commencement of employment with a non-Real Time Information employer), after “any student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 43A**

**25.** In regulation 43A(d) (commencement of employment with a Real Time information employer), after “any student loan”, insert “or any postgraduate master’s degree loan”.

### **Amendment of regulation 44**

**26.—**(1) Regulation 44 (amount of repayments) is amended as follows.

(2) For paragraph (1), substitute—

“(1) The repayment deducted must be—

(a) in relation to a student loan, 9%, and

(b) in relation to a postgraduate master’s degree loan, 6%,

of any earnings paid to, or provided to or for the benefit of, the borrower in respect of the employment, which exceed the threshold specified in paragraph (2).”.

(3) After paragraph (2), insert—

“(2A) The repayment calculated under paragraph (1) is additional to, and concurrent with, any repayment due—

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(a) PAYE Online can be accessed at <https://www.gov.uk/payee-online>.

(b) PAYE Online for Agents can be accessed at <https://www.gov.uk/guidance/payeeis-for-agents-online-service>.

(c) Paragraph (2) was amended by S.I. 2013/607.

(d) Regulation 43A was inserted by S.I. 2012/836 and subsequently amended by S.I. 2013/607.

- (a) by the student loan borrower in respect of a postgraduate master's degree loan; or
- (b) by the postgraduate master's degree loan borrower in respect of a student loan.”.

#### **Amendment of regulation 50**

**27.**—(1) Regulation 50 (deductions of repayments) is amended as follows.

(2) In paragraphs (1)(c) and (d), (2)(c) and (d)(a) and (8), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 55**

**28.**—(1) Regulation 55 (notice and certificate when repayments deducted not paid) is amended as follows.

(2) In paragraphs (1)(b), (2), (4), (5) and (6), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 56**

**29.**—(1) Regulation 56 (notice of specified amount and certificate when repayments not deducted) is amended as follows.

(2) In paragraph (1), after “student loan”, insert “or postgraduate master's degree loan”.

(3) In paragraph (2)—

(a) after “whether of student loan repayments”, insert “, postgraduate master's degree loan repayments”;

(b) for “in respect of student loan”, substitute “in respect of any such”.

(4) In paragraphs (4) and (5), after “student loan”, insert “or postgraduate master's degree loan”.

(5) In paragraph (6)(a)—

(a) after “student loan repayments”, the first time it appears, insert “or postgraduate master's degree loan repayments”;

(b) for “student loan repayments”, the second time it appears, substitute “any such repayment”.

(6) In paragraph (11), after “student loan repayments”, insert “or postgraduate master's degree loan repayments”.

#### **Amendment of regulation 57**

**30.** In regulation 57(2) (recovery of payments deducted through the income tax system), after “student loan repayments”, insert “, postgraduate master's degree loan repayments”.

#### **Amendment of regulation 59**

**31.** In regulation 59(9) (returns by employers), after “student loan”, insert “or postgraduate master's degree loan”.

#### **Amendment of regulation 60**

**32.** In regulation 60(4) (inspection of employers' records)—

(a) in sub-paragraph (a), after “student loan”, insert “or postgraduate master's degree loan”;

(b) in sub-paragraph (b), omit “student loan”.

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(a) Paragraphs (1)(d) and (2)(d) were amended by S.I. 2012/836.

(b) Paragraph (1) was amended by S.I. 2012/836.

### **Amendment of regulation 61**

33. In regulation 61(2)(b) (powers to obtain information), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 67**

34. In regulation 67 (cessation of employment), in paragraphs (b) and (ba)(a), after “student loan”, insert “or any postgraduate master’s degree loan”.

### **Amendment of regulation 68**

35. In regulation 68(3) (penalties), after “student loan”, insert “or postgraduate master’s degree loan”.

### **Amendment of regulation 73**

- 36.—(1) Regulation 73 (notice of liability to make repayments) is amended as follows.
- (2) In paragraph (1), after “student loan”, insert “or any postgraduate master’s degree loan”.
  - (3) In paragraph (2), after “student loan”, insert “or a postgraduate master’s degree loan”.

### **Amendment of regulation 75**

- 37.—(1) Regulation 75 (repayment by income-related instalments) is amended as follows.
- (2) For paragraph (4), substitute—
    - “(4) The relevant amount is—
    - (a) in relation to a student loan, 9%, and
    - (b) in relation to a postgraduate master’s degree loan, 6%,of the gross income which the Authority considers the borrower is likely to receive in the next 12 month period following the date of the determination referred to in paragraph (2).”.
  - (3) After paragraph (4), insert—
    - “(4A) In calculating the relevant amount, the Authority must disregard—
    - (a) income up to the applicable threshold, calculated in accordance with regulation 76; and
    - (b) income in respect of which it is satisfied that repayments are likely to be made under Part 3 or 4.(4B) The relevant amount in paragraph (4) is additional to and concurrent with any repayment due by—
    - (a) the student loan borrower in respect of a postgraduate master’s degree loan; or
    - (b) the postgraduate master’s degree loan borrower in respect of a student loan.”.

### **Amendment of regulation 76**

- 38.—(1) Regulation 76 (calculation of fixed instalment and applicable threshold) is amended as follows.
- (2) In paragraph (1), in the table(b), in the right-hand column—
    - (a) in the heading “Fixed instalment for post-2012 student loans”, insert at the end “and postgraduate master’s degree loans”;

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(a) Paragraph (ba) was inserted by S.I. 2012/836 and paragraph (c) was amended by S.I. 2012/836.  
(b) The table in paragraph (1) was substituted by S.I. 2012/1309.

- (b) in the heading “Applicable threshold for post-2012 student loans”, insert at the end “and postgraduate master’s degree loans”.
- (3) Omit paragraph (5)(a).
- (4) In paragraph (6), at the beginning, insert “Where a price level index cannot be calculated under paragraph (3)”.

**Amendment of regulation 77**

**39.** In regulation 77(1)(b) (application to cease repayment by instalments), after “student loan”, insert “or a postgraduate master’s degree loan”.

**Amendment of regulation 80**

- 40.**—(1) Regulation 80 (effect of borrower insolvency on student loans) is amended as follows.
- (2) In the heading, at the end, insert “and postgraduate master’s degree loans”.
- (3) In paragraphs (2)(b) and (3), after “student loan” each time it occurs, insert “or postgraduate master’s degree loan”.

**Amendment of the 2016 Postgraduate Regulations**

- 41.**—(1) The 2016 Postgraduate Regulations are amended as follows.
- (2) In regulation 1 (citation, commencement, extent and application)—
  - (a) in paragraph (2), for “paragraphs (3) and”, substitute “paragraph”;
  - (b) omit paragraph (3);
  - (c) in paragraph (4)—
    - (i) omit from “on HMRC” to “Part 2 or”;
    - (ii) omit “other”.
- (3) Omit Part 2 and Schedule 3.

Date

Minister of State  
Department for Education

8 August 2017

*Kirsty Williams*  
Cabinet Secretary for Education  
One of the Welsh Ministers

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(a) Paragraph (5) was amended by S.I. 2012/1309.  
(b) Paragraph (2) was amended by S.I. 2010/661.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”) make provision for the repayment of student loans in England and Wales. Part 2 of the Education (Postgraduate Master’s Degree Loans) Regulations 2016 (“the 2016 Regulations”) makes provision for the repayment of postgraduate master’s degree loans in England.

These Regulations amend the 2009 Regulations and revoke Part 2 of the 2016 Regulations so that all repayment provisions, in respect of both student loans and postgraduate master’s degree loans in England and Wales, are consolidated in the 2009 Regulations.

These Regulations also make the following amendments to the 2009 Regulations.

Regulation 13 inserts new regulation 20A into the 2009 Regulations to provide that an excess payment of £10 or less will not require the Authority to contact the borrower and the excess payment is to be treated as a direct payment.

The applicable repayment threshold for a borrower who resides overseas varies according to where in the world the borrower is and the level of the price level index for that country, as determined by the World Bank’s Development Indicators. Regulation 38 amends regulation 76 of the 2009 Regulations so that the Authority has a measure of discretion in determining the applicable threshold for borrowers who reside overseas but only in cases where the Authority is unable to calculate the price level index for the borrower’s country of residence.

An impact assessment has not been prepared in respect of this instrument as it has minimal impact on business, charities or voluntary bodies. The impact on the public sector is minimal.

## **Explanatory Memorandum to the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017**

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017.

Kirsty Williams AM  
Cabinet Secretary for Education  
11 August 2017

## **1. Description**

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments cover a range of issues but are principally concerned with ensuring the repayment of the postgraduate Master's loan by Welsh borrowers.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations"). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty's Revenue and Customs ("HMRC"). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.

## **3. Legislative background**

The relevant legal powers to make these Regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

The functions of the Secretary of State under Section 22 of the Teaching and Higher Education Act 1998 as regards to Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) are exercisable concurrently with the Secretary of State. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions. The functions so transferred subsequently became functions of the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This instrument will follow the negative resolution procedure.



#### **4. Purpose & intended effect of the legislation**

The amendments to the 2009 Regulations relate to functions exercisable in respect of Wales in part by the Welsh Ministers and in part by the Secretary of State. A summary of the changes is as follows:

Postgraduate Master's Loan repayments - the amendments in these Regulations will provide a mechanism for the repayment of postgraduate loans made under the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017, as amended. The provisions in relation to Welsh borrowers taking out a postgraduate Master's loan are as follows:

- Repayments will begin at £21,000 and are income contingent;
- Interest charged at RPI +3%;
- Repayment at 6% of salary above threshold from April 2019;
- Repayments to be made concurrently with any undergraduate debt repayments;
- Any outstanding postgraduate debt to be written off thirty years from the date at which interest begins accruing.

Removal of April 2016 as a trigger for repayment – a borrower with a post-2012 loan is not required to repay any part of that loan before 6 April 2016. The Regulations will remove this date as it is now passed. The amendments will also introduce a date of 6 April 2019 as the first date on which a borrower is required to repay a postgraduate master's degree loan.

Minimum refund amount – where the Student Loans Company ("SLC"), acting on behalf of the Welsh Ministers, receive either a voluntary payment or a repayment from HMRC which results in the borrower's pre-2012 loan being repaid in full whilst there remains an outstanding balance on the post-2012 loan, then the SLC must notify the borrower that any overpayment will be treated as a voluntary payment subject to a minimal exception. If the overpayment is £5 or less then the SLC can simply apply that sum against the balance of the post-2012 loan automatically without contacting the borrower. The Regulations will amend this minimal figure from £5 to £10. The amendments will also extend these provisions to allow overpayments on one loan to be treated as a voluntary payment on another loan where a student has any two of a pre-2012 loan, a post-2012 loan and a postgraduate master's degree loan.

Treatment of certain over-repayments –the 2009 Regulations require employee borrowers to declare whether or not any student loan liability that they have relates solely to a post-2012 student loan. If they fail to do so, the income threshold for making repayments will be set at the level for pre-2012 loans rather than that for post-2012 loans. The 2009 Regulations treat repayments made by a borrower on income between the thresholds as direct payments that are not refundable. The amendment will allow these borrowers to request a refund of such repayments.

Overseas borrowers' income threshold – where the SLC decide that an overseas borrower can repay by income-related instalments, the amount payable equates to 6% or 9% (depending on the type of loan) of the borrower's income above the applicable income threshold. The threshold is calculated and based on the most recent World Bank price level data for the borrower's country of residence. The amendment will allow the SLC to determine the applicable threshold in cases where the SLC is unable to calculate the price level index for the borrower's country of residence.

Interest rate on deferred loans – the 2009 Regulations allow teachers to defer repayments on certain loans. The amendment will set the interest rate that will apply to a loan during the deferral period.

## **5. Consultation**

All relevant stakeholders were consulted on the postgraduate Master's loan scheme, including the key repayment terms, during the consultation exercise completed in May 2016.

## **6. Regulatory Impact Assessment**

A RIA was not undertaken in relation to these Regulations as there is no impact on business, charities, or voluntary bodies. There is no impact on statutory duties (sections 77-79 Government of Wales Act 2006 or statutory partners (sections 72-75 GOWA 2006).

# SL(5)119 – The Repayment of Student Loans and Postgraduate Master’s Degree Loans (Amendment) Regulations 2017

## Background and Purpose

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These composite **Regulations** further amend the **Education (Student Loans) (Repayment) Regulations 2009** (SI 2009/470) (‘the 2009 Regulations’) and relate to functions exercisable in respect of Wales in part by the Welsh Ministers and in part by the Secretary of State. The 2009 Regulations make provision for the repayment of student loans in England and Wales.

The amendments to the 2009 Regulations cover a range of specific issues, (some technical), as set out in para 4 of the Explanatory Memorandum, but are primarily concerned with ensuring the repayment of the Postgraduate Master’s loan by Welsh borrowers. The (highlight) provisions in relation to Welsh borrowers taking out a Postgraduate Master’s loan are:

- Repayments will begin at £21,000 and are income contingent;
- Interest charged at RPI +3%;
- Repayment at 6% of salary above threshold from April 2019;
- Repayment to be made concurrently with any undergraduate debt repayments;
- Any outstanding postgraduate debt to be written off thirty years from the date at which interest begins accruing.

## Procedure

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Negative

## Technical Scrutiny

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

- That it is not made or to be made in both English and Welsh (21.2(ix))

The Explanatory Memorandum states, at paragraph 2, that as these “This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.”

## Merits Scrutiny

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

## Implications arising from exiting the European Union

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On the specific issue of the repayment of the Postgraduate Master’s loan by Welsh borrowers/eligible students. These Regulations tie in with the **Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017** (SI 2017/523) (“the 2017 Regulations”) that provide for the making of loans to



students who are ordinarily resident in Wales for Postgraduate master's degree courses which begin on or after 1 August 2017.

To apply for a Postgraduate master's degree loan, students must be eligible students. The 2017 Regulations list all categories of eligible students; one category includes "EU nationals". It is unclear what financial support will be available to students who are EU nationals after the UK exits the EU.

## Government Response

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No Government response concerning the technical point raised in this report, is required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**16 August 2017**



# Agenda Item 5.1

## Regulations 120 The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017

### Background and Purpose

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These **Regulations** amend the **Materials and Articles in Contact with Food (Wales) Regulations 2012** (“the principal Regulations”).

The amendments—

- (a) provide for the continuing enforcement of EU Regulation 10/2011 on plastic materials and articles intended to come into contact with food;
- (b) apply certain provisions of the Food Safety Act 1990, with modifications, to the principal Regulations;
- (c) make minor amendments about competent authorities and enforcement authorities.

### Procedure

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Negative

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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These Regulations form part of “EU-derived domestic legislation” under clause 2 of the European Union (Withdrawal) Bill (“the Bill”) as introduced, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales after exit day.

The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from withdrawal, subject to certain limitations (for example, the Welsh Ministers will not be able to use this power to do something that is inconsistent with modifications to “retained direct EU legislation” made by UK Ministers under the Bill).

The Regulations provide for the enforcement of EU Regulation 10/2011; EU Regulation 10/2011 currently has direct effect in EU member states, including Wales. On exit, EU Regulation 10/2011 will be frozen and will be retained as / converted into domestic law called “retained direct EU legislation”.

The Bill will not give the Welsh Ministers (or the National Assembly for Wales) power to modify any retained direct EU legislation, including EU Regulation 10/2011 which is concerned with the devolved area of food. Power to modify all retained direct EU legislation is given to UK Ministers; this includes the power to modify retained direct EU legislation in devolved areas without the need for the consent of the National Assembly for Wales or the Welsh Ministers.



Therefore, if UK Ministers use their powers to modify EU Regulation 10/2011 as retained direct EU legislation, the power of the Welsh Ministers to modify these Regulations will be limited so that the Welsh Ministers cannot do anything that is inconsistent with the modification made by UK Ministers.

## Government Response

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No government response is required.

**Legal Advisers**  
**Constitutional and Legislative Affairs Committee**  
**17 August 2017**



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

19 July 2017

Dear Huw

**Brexit: devolution - new House of Lords EU Committee report**

On behalf of the Committee Chairman, Lord Boswell of Aynho, who is currently unwell, I am pleased to enclose a copy of the new report by the House of Lords EU Committee, published today, on *Brexit: devolution*.

The report concludes that the UK Government needs to work with the devolved governments to achieve an outcome that protects the interests of all parts of the UK. No durable solution will be possible without the consent of all the nations of the UK. Our report sets out in detail the particular circumstances in Scotland, Wales and Northern Ireland, the impact upon devolved competences, legislating for Brexit and legislative consent, and engagement with the devolved institutions.

We have been particularly grateful in the course of our work to meet colleagues from our equivalent Committees in the devolved legislatures, both before and after the referendum, and I am pleased to note that our officials are in regular contacts. In order to build on these mechanisms for collaboration, we propose in our report "more regular joint meetings with members of cognate Committees with responsibility for Brexit-related issues in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and in the House of Commons, for the duration of the Brexit negotiations. These joint meetings could provide an opportunity to hear informally from UK and devolved Government Ministers, and to discuss issues of mutual interest and concern."

In order to facilitate this, and having consulted with the Senior Deputy Speaker of the House of Lords, Lord McFall of Alcluith, who chairs the House's Informal Brexit Liaison Group, we would like to propose quarterly informal meetings of representatives of Committees involved in scrutinising Brexit in the devolved legislatures, the House of Commons and the House of Lords for the duration of the Brexit negotiations. These meetings would provide a means to share information on issues of common interest, hear from experts and stakeholders on the Implications of Brexit, and, most important, provide an opportunity to hear from the UK and devolved Governments on the progress of negotiations and their discussions through the JMC (EN) and other fora.

We would like to keep the arrangements for such meetings as flexible as possible. However, we envisage inviting attendees from Committees in our legislatures scrutinising EU matters,

constitutional issues and delegated/ secondary legislation, with four or five participants in total from each legislature. We would also envisage a rotating venue for these meetings, although we are happy to host the meeting in the House of Lords whenever this is helpful.

We would like to begin our dialogue at an early point in the autumn, in order to maximise our ability to influence and scrutinise the Brexit negotiations. Accordingly, we would like to invite you to the first meeting in the House of Lords, in the week of **Monday 9 October**. I have invited our officials to liaise to finalise the date of the meeting.

I do hope you are willing to participate in this dialogue, which I am sure will be mutually beneficial in our respective efforts to scrutinise the Brexit process and hold our Governments to account. If you have any questions or comments about the proposal, please do not hesitate to contact me or my officials.

I have written in similar terms to the Committees with responsibility for EU Affairs, constitutional issues, and delegated/ secondary legislation in each of the devolved legislatures, and to relevant Committees in the House of Commons.

Yours Sincerely



Lord Jay of Ewelme

On behalf of Lord Boswell of Aynho



## LEGISLATIVE CONSENT MEMORANDUM

### EUROPEAN UNION (WITHDRAWAL) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The European Union (Withdrawal) Bill (the “Bill”) was introduced in the House of Commons on 13 July 2017. The Bill can be found at: [Bill documents — European Union \(Withdrawal\) Bill 2017-19 — UK Parliament](#)
3. This Memorandum relates to the Bill as introduced on 13 July 2017.

#### Policy Objective(s)

4. The UK Government’s stated policy objective for the Bill is to ensure that the UK withdraws from the EU with maximum certainty, continuity and control. It aims to end the supremacy of European Union (“EU”) law in UK law and to convert EU law as it stands at the moment of exit into domestic law. The Bill also creates temporary powers for Ministers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has withdrawn, so that the domestic legal system continues to function correctly outside the EU. The Bill also enables domestic law to reflect the content of a withdrawal agreement under Article 50 of the Treaty on European Union once the UK leaves the EU.

#### Summary of the Bill

5. The Bill is sponsored by the Department for Exiting the European Union.
6. The Explanatory Notes set out the UK Government’s view that the Bill performs four main functions. It:
  - repeals the European Communities Act 1972
  - converts EU law as it stands at the moment of withdrawal into domestic law before the UK leaves the EU;
  - creates powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU and to implement a withdrawal agreement; and
  - maintains the current scope of devolved decision making powers in areas currently governed by EU law.

7. The clauses of particular relevance to devolved matters are:

- Clauses 2 – 6 (which preserve and retain EU law in domestic law, including in areas within devolved competence)
- Clauses 7 – 9 (which provide powers for UK Ministers to correct retained EU law and implement international obligations and the withdrawal agreement with the EU, including in devolved areas)
- Clause 10 and Schedule 2 (which provide powers for Welsh Ministers to correct retained EU law and implement international obligations and the withdrawal agreement with the EU);
- Clause 11 and Schedule 3 (which constrain the competence of the National Assembly for Wales and the Welsh Ministers); and
- Schedule 7 (which sets out legislative procedures to be followed for various secondary legislation provisions in the Bill, including powers of Welsh Ministers and UK Ministers acting in devolved areas).

#### **Provisions in the Bill for which consent is required**

8. The full list of clauses which are within or modify the legislative competence of the National Assembly for Wales (“the Assembly”) are set out in the table at Annex A. The Government notes that the Scottish Government takes a similar view of the provisions requiring legislative consent from the Parliament.

#### Provisions which modify the legislative competence of the Assembly

9. These are:

- Clause 1 (repeal of the European Communities Act 1972). This provision modifies the Assembly’s competence by removing the requirement for the Assembly to legislate compatibly with EU law.
- Clause 11 amends section 108A of the Government of Wales Act 2006 to define the Assembly’s competence by reference to EU law retained in domestic law by the Bill’s provisions. The provision modifies the Assembly’s competence because it would prevent the Assembly from modifying retained EU law in a way which would not have been within competence immediately before exit day.
- Clause 17 and Schedule 8 and 9 confer broad powers on a Minister of the Crown to make consequential provision. Those powers could be exercised in such a way as to modify the legislative competence of the Assembly.

Provisions which are legislating for a purpose within the Assembly's legislative competence

*Clauses 2 – 6*

10. These provisions (subject to certain exceptions) convert the body of existing EU law into domestic law and preserve the laws made in the UK to implement EU obligations. The relevant provisions are summarised below:

- Clause 2 and Schedule 1 provides that EU-derived domestic legislation continues to have effect in domestic law after the UK leaves the EU. For example, secondary legislation made under section 2(2) of the European Communities Act 1972.
- Clause 3 makes separate provision for the incorporation of direct EU legislation (i.e. EU Regulations).
- Clause 4 ensures that any remaining direct EU rights and obligations continue to be recognised and available in domestic law after exit, such as directly effective Treaty rights.
- Clause 5 and Schedule 1 sets out exceptions to the saving and incorporation of EU law. These include the ending of the principle of supremacy of EU law and a provision which confirms that the Charter of Fundamental Rights will no longer have effect in domestic law from the date of EU exit.
- Clause 6 explains how retained EU law is to be interpreted from the date of EU exit. It confirms that the jurisdiction of the Court of Justice of the European Union (“CJEU”) will be brought to an end and makes provision for the treatment of CJEU decisions by the domestic courts when interpreting retained EU law after EU exit.

11. It is the Welsh Government's view that consent is required for these provisions. The Assembly has competence to enact EU-derived rules into domestic law at the point of EU exit and to define how that law is to be interpreted, insofar that those rules relate to one or more subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006. For example, the “environmental protection” subject under paragraph 6 of that Schedule in circumstances where the EU-derived rules to be enacted provide for the protection of the environment.

*Clauses 7- 10 and 16*

12. These provisions confer powers on Ministers of the Crown and the Welsh Ministers to amend retained EU law, and comprise as follows:

- Clause 7 allows a Minister of the Crown to make provision by regulations to prevent, remedy or mitigate any failure of retained EU

law to operate effectively or any other deficiency in retained EU law arising from EU withdrawal.

- Clause 8 confers a power on a Minister of the Crown to make regulations to enable continued compliance with the UK's international obligations.
- Clause 9 confers a power on a Minister of the Crown to implement a withdrawal agreement concluded between the UK and the EU.
- Clause 10 and Schedule 2 confer corresponding powers on the Welsh Ministers, but are restricted in a number of ways. For example, they only extend to correcting EU law that has been given effect via domestic legislation and cannot be used to modify direct EU legislation such as EU Regulations.
- Clause 16 and Schedule 7 make provision for the scrutiny of regulations made under the Bill.

13. It is the Welsh Government's view that consent is required for all of these provisions. Although certain powers are conferred on the Welsh Ministers to make regulations which can amend legislation within the Assembly's competence (clause 10 and Schedule 2), a Minister of the Crown can still exercise the powers in clauses 7-9 to modify legislation which is within the Assembly's competence.

14. It is within the Assembly's competence to confer regulation making powers upon the Welsh Ministers to address deficiencies arising from EU exit in circumstances where the law being modified relates to one or more subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Clause 12 and Schedule 4 – Financial provision*

15. These provisions confer powers on a Minister of the Crown and devolved authorities to make secondary legislation to enable public authorities to charge fees or other charges.

16. It is the Welsh Government's view that consent is required for this provision. It is within the Assembly's competence to make provision for the charging of fees by public authorities, insofar that those authorities/their functions relate to one or more subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006.

*Clause 13 and Schedule 5 – Publication and rules of evidence.*

17. This clause makes provision for the publication of retained direct EU legislation by the Queen's Printer within the National Archives. Schedule 5 contains further provision about the rules of evidence that are to apply to EU instruments.

18. It is the Welsh Government's view that consent is required for this provision. It is within the Assembly's competence to make provision for the publication of retained EU law and how that law is to be interpreted insofar that the content of that law relates to one or more subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006.

#### Scrutiny of Welsh Ministers' subordinate legislation powers

19. By giving effect to Schedule 2, clause 10 provides Welsh Ministers with powers corresponding to those provided to Ministers of the Crown in clauses 7 -9 as set out above. The procedures for parliamentary scrutiny of these correcting powers are set out at Parts 1 and 2 of Schedule 7.

20. For each power, the Schedule lists a series of provisions, the inclusion of which within a statutory instrument ("SI") will make that SI subject to the affirmative resolution procedure in Parliament. The Schedule then provides that an SI of the Welsh Ministers which includes any of these provisions is subject to the affirmative resolution procedure in the Assembly. Where an SI containing these provisions is made by a Minister of the Crown and the Welsh Ministers acting jointly, the affirmative resolution procedures apply in respect of both Parliament and the Assembly. Any SI not containing any of the listed provisions is subject to the negative resolution procedure.

21. The provisions which will engage the requirement for affirmative resolution for each power are listed at Annex B.

#### **Reasons for making these provisions for Wales in the European Union (Withdrawal) Bill**

22. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for citizens and businesses as we leave the EU. We accept in principle the need for provisions which convert EU law into domestic law, and provisions which create powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. The Welsh Government also agrees that ideally such legislation should be made by Parliament, for the UK as a whole, as this would offer the greatest degree of consistency and certainty for citizens and businesses.

#### **Welsh Government position on the Bill as introduced**

23. The Welsh Government will not be able to recommend to the Assembly that it gives consent to the Bill as currently drafted.

24. The Welsh Government's position is set out in the [Written Statement](#) I published when the Bill was introduced in the House of Commons on 13

July, and in the [joint statement](#) I made with the First Minister of Scotland, on the same day.

25. The Welsh Government's principal objections relate to clauses 7-9 (which give Ministers of the Crown unacceptably wide regulation-making powers, including the ability to amend devolved law and the devolution settlement without consent), clause 10 (which gives effect to Schedule 2 and unreasonably restricts Welsh Ministers' correcting powers to domestic EU law) and clause 11 which introduces a new constraint on legislative competence.

#### *Powers for UK and Welsh Ministers to amend devolved law*

26. The Bill gives powers to Ministers of the Crown in clause 7 (to deal with deficiencies arising from withdrawal), in clause 8 (to enable continued compliance with the UK's international obligations, and clause 9 (to implement the withdrawal agreement). These powers would allow a Minister of the Crown to unilaterally amend legislation that is within the legislative competence of the Assembly, to include legislation where the Welsh Ministers exercise functions. The scrutiny obligation would then be discharged by Parliament rather than the Assembly. Those powers could also be used to amend the Government of Wales Act 2006, without any requirement for the Assembly's approval.
27. By giving effect to Schedule 2, clause 10 provides Welsh Ministers with powers corresponding to those provided to Ministers of the Crown in clauses 7-9. But the corresponding powers for devolved administrations' Ministers' extend only to correcting orders in respect of legislation which has been made by domestic institutions. Direct EU legislation (such as EU Regulations) can only be amended by a Minister of the Crown, and would fall to be scrutinised by Parliament even if the subject was one that was devolved to the Assembly.

#### *New constraints on the legislative competence of the Assembly*

28. Clause 11 introduces a new provision that will mean it will be outside the Assembly's competence to modify retained EU law in a way which would not have been compatible with EU law immediately before exit. This replaces the provision in section 108A of the Government of Wales Act 2006 which requires the Assembly to legislate compatibly with EU law.
29. It is common ground that, unless new legislative provision is made by Parliament, legislative competence for devolved matters which are currently subject to EU restrictions or obligations would remain with the devolved legislatures post-exit, with those legislatures able to exercise their competence without the limitations currently imposed in consequence of the UK's membership of the EU.
30. The Welsh Government's policy statement, [Brexit and Devolution](#), published in June, made clear our willingness to negotiate UK frameworks

in certain areas previously covered by EU law. This could be, for example, to support effective functioning of the UK market and prevent barriers emerging which would unreasonably constrain businesses, or to facilitate the management of common environmental resources.

31. The process of agreeing where frameworks are required, and what they should contain, must be one based on agreement, not imposition. But the Bill proposes instead a new set of legal constraints on the competences of the devolved institutions in respect of these matters, which we consider wholly unacceptable in principle. Moreover, in introducing a new constraint on competence defined in respect of 'retained EU law', the Bill would add complexity and uncertainty to the devolution settlement post EU exit.
32. The UK Government has suggested that the restriction imposed by clause 11 is transitional in nature, intended to allow time and space for discussion and consultation with devolved authorities on where frameworks are needed. However, in contrast to the various sunset provisions included in the Ministerial powers, there are no time limits on the operation of clause 11.
33. The Welsh Government's position is that the clause should be deleted from the Bill. We propose the alternative approach which respects devolution, as outlined above, and stand ready to work closely with the UK Government and the other devolved administrations to achieve this, in the interests of the UK as a whole.
34. The imposition of this new restriction on competence on the Assembly represents an unnecessary and unacceptable centralisation of powers at the UK level, to which the Welsh Government cannot agree.
35. The Welsh Government is working with the Scottish Government to propose amendments to the Bill which will address our concerns. These will be made public to inform debate on the Bill in the Assembly, at Westminster and more widely. I hope in due course to be able to lay a supplementary memorandum, to reflect amendments agreed by Parliament which are essential if the Welsh Government is to be able to recommend legislative consent is given.

### **Financial implications**

36. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from withdrawing from the EU, both in its overall economic effect and in areas of funding currently deriving from the EU, as set out in *Securing Wales' Future*.

### **Conclusion**

37. This memorandum sets out the Welsh Government's view of the requirement for the legislative consent of the Assembly in respect of the EU (Withdrawal) Bill, and confirms that we will not be in a position to recommend consent unless the Bill is amended to address our concerns.

**Rt Hon Carwyn Jones AM**  
**First Minister of Wales**  
**September 2017**



## Annex A Clauses requiring legislative consent of the Assembly

Clause/ Schedule	Effect
1	repeals the European Communities Act 1972 on exit day
2	provides that existing domestic legislation which implements EU law obligations remains on the domestic statute book after the UK leaves the EU
3	converts 'direct EU legislation' into domestic legislation at the point of exit from the EU, so that where appropriate, EU legislation continues to have effect post-exit
4	ensures that any remaining EU rights and obligations which do not fall within clauses 2 and 3 continue to be recognised and available in domestic law after exit
5	sets out certain exceptions to the saving and incorporation of EU law provided for by clauses 2-4, including that the Charter of Fundamental Rights will not form part of domestic law on or after exit day
6	sets out how retained EU law will be read and interpreted on and after exit day
7	gives Ministers of the Crown the power to make regulations which amend deficiencies in retained EU law so that it continues to operate effectively after exit
8	gives Ministers of the Crown the power to make provision in regulations for continued compliance with the UK's international obligations
9	gives Ministers of the Crown powers to make regulations to implement a withdrawal agreement
10 & Schedule 2	provides powers to the devolved administrations (including Welsh Ministers) corresponding to those given to Ministers of the Crown, as set out in Schedule 2
11 & Schedule 3	replaces the existing requirement that the Assembly may only legislate in a way which is compatible with EU law, with a new provision that will mean it will be outside the Assembly's competence to modify retained EU law in a way which would not have been compatible with EU law immediately before exit. Exceptions to this test may be prescribed by Order in Council, which must be approved by both Houses and by the Assembly
12 & Schedule 4	gives effect to Schedule 4 which provides powers in connection with fees and charges, and provides that devolved authorities may incur expenditure in preparation for the making of statutory instruments under the Bill
13 & Schedule 5	makes provision for the publication of retained EU legislation by the Queen's Printer
16 & Schedule 7	gives effect to Schedule 7 on how the powers to make regulations in the Bill are exercisable
17	Power to make consequential provision

## **Annex B Delegated powers: provisions requiring affirmative resolution procedures**

Schedule 7 lists a series of provisions, the inclusion of which within a statutory instrument will make that SI subject to the affirmative resolution procedure in the relevant legislature(s).

For regulations dealing with deficiencies arising from withdrawal, the provisions are those which:

- (a) establish a public authority in the United Kingdom,
- (b) provide for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2,
- (c) provide for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
- (d) impose, or otherwise relate to, a fee in respect of a function exercisable by a public authority in the United Kingdom,
- (e) create, or widen the scope of, a criminal offence, or
- (f) create or amend a power to legislate.

For regulations to enable continued compliance with the UK's international obligations, the provisions are those which:

- (a) establish a public authority in the United Kingdom,
- (b) provide for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2,
- (c) provide for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
- (d) impose, or otherwise relate to, a fee or charge in respect of a function exercisable by a public authority in the United Kingdom,
- (e) create, or widen the scope of, a criminal offence, or
- (f) create or amend a power to legislate.

For regulations to implement the withdrawal agreement, the provisions are those which:

- (a) establish a public authority in the United Kingdom,
- (b) provide for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under section 7, 8 or 9 or Schedule 2,
- (c) provide for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
- (d) impose, or otherwise relate to, a fee in respect of a function exercisable by a public authority in the United Kingdom,
- (e) create, or widen the scope of, a criminal offence,

- (f) create or amend a power to legislate, or
- (g) amend this Act.

Any SI not containing any of the listed provisions is subject to the negative resolution procedure.



Rt Hon Theresa May MP  
Prime Minister  
10 Downing Street  
London

19<sup>th</sup> September 2017

Dear Theresa,

The Scottish and Welsh Governments recognise our responsibility to prepare our laws for the upheaval of EU withdrawal. The governments of these islands have much work to do to ensure that stability and continuity can be achieved on exit day, and all governments will have to work together if that is to be done most effectively. So we stand ready to work in a cooperative and coordinated way with others to prepare for Brexit. But the approach of the UK Government to devolution in the EU (Withdrawal) Bill is preventing this essential cooperation and coordination.

We have been clear since the Bill was first introduced that our governments could not recommend it as currently drafted to our legislatures for their consent. We have now set out our reasons for that, in detail, in legislative consent memorandums laid before each of the Scottish Parliament and the National Assembly for Wales. And, as we have indicated, we have begun to consider the scope for preparing alternative devolved legislation to provide for continuity of law on withdrawal from the EU. That is not, however, our preferred option. We want a European Union (Withdrawal) Bill that can be made to work with, not against, devolution. The current Bill will need to be substantially amended for us to be able to recommend to our respective legislatures that they give their consent to it.

Our Governments have therefore prepared a set of amendments which, if made, would make the Bill one which we could consider recommending to the Scottish Parliament and the National Assembly for Wales. We have made these amendments widely available, and in particular to chairs/conveners of the relevant committees in the National Assembly for Wales and the Scottish Parliament. We hope that they will be received in the way they are intended: as a constructive contribution by the devolved administrations, which would enable progress to be made among the governments in a way which respects the hard-won devolution settlements of the UK.

**NICOLA STURGEON**

**CARWYN JONES**

## **European Union (Withdrawal) Bill**

### **UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006**

#### **Clause 7**

- 1** In clause 7, page 6, line 13, after <it,> insert—
- <() modify the Scotland Act 1998 or the Government of Wales Act 2006,>

#### **Clause 8**

- 2** In clause 8, page 6, line 38, at end insert <, or
- ( ) modify the Scotland Act 1998 or the Government of Wales Act 2006.>

#### **Clause 9**

- 3** In clause 9, page 7, line 8, at end insert—
- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section that modifies the Scotland Act 1998.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section that modifies the Government of Wales Act 2006.>

### **UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE**

#### **Clause 7**

- 4** In clause 7, page 6, line 25, at end insert—
- <() The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 9 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 10 of Schedule 2.>

#### **Clause 8**

- 5** In clause 8, page 6, line 40, at end insert—

- <( ) The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

### **Clause 9**

**6** In clause 9, page 7, line 9, at end insert—

- <( ) The consent of the Scottish Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Scottish Ministers within the meaning given in paragraph 18 of Schedule 2.
- ( ) The consent of the Welsh Ministers is required before any provision is made in regulations under this section so far as the provision would be within the devolved competence of the Welsh Ministers within the meaning given in paragraph 19 of Schedule 2.>

## LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF “RETAINED EU LAW” RESTRICTION / UK FRAMEWORKS PROVISION

### **Clause 11**

**7** In clause 11, page 7, line 16, leave out subsections (1) and (2) and insert—

- <(1) In section 29(2)(d) of the Scotland Act 1998 (no competence for Scottish Parliament to legislate incompatibly with EU law), omit “or with EU law”.
- (2) In section 108A(2)(e) of the Government of Wales Act 2006 (no competence for National Assembly for Wales to legislate incompatibly with EU law), omit “or with EU law”.>

### **Schedule 3**

**8** In schedule 3, page 25, line 37, leave out paragraphs 1 and 2 and insert—

*<Scotland Act 1998*

- 1 In section 57(2) of the Scotland Act 1998 (no power for members of the Scottish Government to make subordinate legislation, or otherwise act, incompatibly with EU law or Convention rights), omit “or with EU law”.

*Government of Wales Act 2006*

- 2 In the Government of Wales Act 2006, omit section 80 (EU law).>

SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL  
OF RESTRICTIONS AND CONSENT REQUIREMENT

**Schedule 2**

- 9** In schedule 2, page 16, line 30, at end insert—
- <() Sub-paragraph (4)(b) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 10** In schedule 2, page 17, line 9, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 11** In schedule 2, page 17, line 13, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 12** In schedule 2, page 17, line 20, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

- 5A** No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—
- (a) are to come into effect before exit day, or
- (b) remove (whether wholly or partly) reciprocal arrangements of the kind mentioned in section 7(2)(c) or (e),
- unless the regulations are, to that extent, made after consulting with a Minister of the Crown.>
- 13** In schedule 2, page 22, line 10, at end insert—
- <() Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 14** In schedule 2, page 22, line 32, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>
- 15** In schedule 2, page 23, line 11, at end insert—
- <() This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

- 16A (1)** No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations—

- (a) are to come into force before exit day,
- (b) are for the purpose of preventing or remedying any breach of the WTO Agreement, or
- (c) make provision about any quota arrangements or are incompatible with any such arrangements,

unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

- (2) In sub-paragraph (1)—
  - “the WTO Agreement” has the meaning given in paragraph 16(2),
  - “quota arrangements” has the meaning given in paragraph 16(3).>

**16** In schedule 2, page 24, line 33, at end insert—

- <( ) Sub-paragraph (4)(d) does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**17** In schedule 2, page 25, line 11, at end insert—

- <( ) This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**18** In schedule 2, page 25, line 15, at end insert—

- <( ) This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.>

**19** In schedule 2, page 25, line 28, at end insert—

- <( ) This paragraph does not apply to regulations made under this Part by the Scottish Ministers or the Welsh Ministers.

*Requirement for consultation in certain circumstances*

25A (1) No regulations may be made under this Part by the Scottish Ministers or the Welsh Ministers acting alone so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements unless the regulations are, to that extent, made after consulting with a Minister of the Crown.

- (2) In sub-paragraph (1), “quota arrangements” has the meaning given in paragraph 25(2).>

CONSEQUENTIAL AMENDMENTS

**Schedule 2**

**20** In schedule 2, page 19, line 47, leave out <and retained EU law>

**21** In schedule 2, page 20, line 23, leave out <and retained EU law>

**22** In schedule 2, page 23, line 21, leave out <and retained EU law>

**23** In schedule 2, page 23, line 25, leave out <and section 57(4) and (5) of that Act>



- 24 In schedule 2, page 23, line 31, leave out <and retained EU law>
- 25 In schedule 2, page 23, line 35, leave out <80(8)> and insert <80>

### **Schedule 3**

- 26 In schedule 3, page 28, line 2, leave out from <, and> to end of line 3
- 27 In schedule 3, page 28, line 38, leave out from <for> to end of line 39 and insert <omit “or with EU law”>
- 28 In schedule 3, page 29, line 5, leave out paragraph 21
- 29 In schedule 3, page 29, line 28, leave out from <(4)(d)> to end of line 29 and insert <(4), omit paragraph (d).>
- 30 In schedule 3, page 30, line 4, leave out <before “EU” insert “Retained”> and insert <for “EU law, human” substitute “Human”>
- 31 In schedule 3, page 30, line 5, leave out paragraph 31

### **Schedule 8**

- 32 In schedule 8, page 50, line 19, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>
- 33 In schedule 8, page 51, line 1, leave out <section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or>
- 34 In schedule 8, page 55, leave out lines 8 to 13 and insert—  
    <(a) in paragraph (a), omit sub-paragraph (ii), and  
    (b) in paragraph (b), omit “or with EU law”.>
- 35 In schedule 8, page 59, leave out lines 10 to 16
- 36 In schedule 8, page 59, leave out lines 23 to 29
- 37 In schedule 8, page 59, line 47, leave out from beginning to end of line 8 on page 60
- 38 In schedule 8, page 60, leave out lines 13 to 23

## **ANNEX: THE PROPOSED AMENDMENTS**

### **A. UK GOVERNMENT FIXING ETC. POWERS: MODIFICATION OF THE SCOTLAND ACT 1998 OR THE GOVERNMENT OF WALES ACT 2006**

The established methods for modifying the 1998 and 2006 Acts which provide for the devolution settlements for Scotland and Wales are by new Parliamentary legislation, for which the devolved legislatures' consent is required in accordance with the Sewel Convention, or by orders under those Acts, which again require the consent of the relevant legislature. But as currently drafted, UK Ministers' powers to make statutory instruments in clauses 7 to 9 of the Bill can be used to make amendments to the statutes containing the principles of the devolution settlements for Scotland and Wales, without any requirement for consent.

**Proposed amendments 1 and 2** would prevent the power to correct deficiencies in retained EU law and the power to ensure compliance with international obligations being used to amend the Scotland Act 1998 and the Government of Wales Act 2006. Where however amendments to these Acts becomes necessary (perhaps urgently) in order to implement the withdrawal agreement, **proposed amendment 3** would continue to allow such amendments to the 1998 and 2006 Acts to be made, but with consent from the relevant devolved administration.

### **B. UK GOVERNMENT FIXING ETC. POWERS: REQUIREMENT FOR CONSENT OF SCOTTISH MINISTERS OR WELSH MINISTERS IF MAKING PROVISION WITHIN DEVOLVED COMPETENCE**

As currently drafted, UK Ministers' powers to make statutory instruments under clauses 7 to 9 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

**Proposed amendments 4 to 6** would mean that UK Ministers would be required to secure the consent of the Welsh Ministers or the Scottish Ministers, before making provision which would be within those Ministers' devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

### **C. LEGISLATIVE AND EXECUTIVE COMPETENCE: REMOVAL OF "RETAINED EU LAW" RESTRICTION / UK FRAMEWORKS PROVISION**

As currently drafted, clause 11 of the Bill amends both devolution acts by inserting a new restriction on the competence of the devolved legislatures which would prevent the Scottish Parliament and the National Assembly for Wales from passing

legislation which modifies retained EU law, even in areas of devolved responsibility. And provision in Part 1 of Schedule 3 to the Bill has the effect that Scottish or Welsh Ministers would have no powers to make, confirm or approve any subordinate legislation so far as it modifies retained EU law.

The Welsh Government and Scottish Government consider that these provisions fundamentally cut across the principles of the devolution settlements, and they are strongly opposed to them.

**Proposed amendments 7 and 8** would remove these new restrictions in clause 11 and Schedule 3.

#### **D. SCOTTISH MINISTERS AND WELSH MINISTERS FIXING ETC. POWERS: REMOVAL OF RESTRICTIONS AND CONSENT REQUIREMENT**

As currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers in the Bill which are not placed on UK Ministers. We are aware that there are significant concerns in Parliament about the very broad scope of the Henry VIII powers proposed in the Bill, and would be supportive of amendments which sought to define these more narrowly. However, we also believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

**Proposed amendments 9, 13 and 16** remove the restrictions preventing the powers being used to confer a power to legislate, bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 10, 11, 14, 17 and 18** remove the restrictions placed on the Scottish and Welsh Ministers' ability to amend directly applicable EU law incorporated into UK law, again bringing the powers into line with those being given to UK Ministers.

**Proposed amendments 12, 15 and 19** replace requirements imposed on Scottish and Welsh Ministers to seek UK Ministers' consent in certain circumstances with a requirement to consult UK Ministers before making certain types of provision.

#### **CONSEQUENTIAL AMENDMENTS**

**Proposed amendments 20 to 38** are consequential on the principal amendments described above.



Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
[SeneddCLA@Assembly.Wales](mailto:SeneddCLA@Assembly.Wales)

19 September 2017

Dear Huw

I am writing to let you know that the Welsh and Scottish Governments have today jointly published a set of proposed amendments to the European Union (Withdrawal) Bill.

The First Minister of Scotland and I have also written to the Prime Minister, setting out our rationale for the amendments we have developed. The amendments if taken up would enable us to consider recommending to the Assembly that it gives legislative consent to the Bill, and I would welcome your continued support as we press the case for the deficiencies in this Bill to be addressed.

Yours sincerely

**CARWYN JONES**

Bae Caerdydd • Cardiff Bay  
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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.

T: 0300 244 4000  
E: scottish.ministers@gov.scot

Bruce Crawford MSP  
Convener  
Finance and Constitution Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

19 September 2017

Dear Bruce,

In my letter to you of 1 September and my statement to Parliament of 12 September, I set out why the Scottish Government would not be able to recommend that Parliament give its consent to the European Union (Withdrawal) Bill, as it is currently drafted. A particular problem with the Bill is its failure to reflect the principles of devolution. The Scottish Government has been working with the Welsh Government to prepare a set of amendments to the Bill which would, if made, turn the Bill into one that properly respects devolution and ensures that the Scottish Parliament and the National Assembly for Wales do not have their competence restricted by EU withdrawal.

These amendments are attached, along with a note that summarises their purpose and effect. The same amendments have been sent by Professor Mark Drakeford AM, the Cabinet Secretary for Finance and Local Government in the Welsh Government, to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee.

The restrictions in clause 11 of the Bill apply to many areas of Scottish devolved responsibility vital to the success of our country, such as agriculture, the environment, fisheries, forestry, research, or justice co-operation. The restrictions have the effect that the Scottish Parliament would have no say over what is done with these important policy areas after EU withdrawal.

There is considerable interest in the over 100 areas that I indicated were affected by these restrictions. I have therefore annexed to this letter a working summary of these areas, in order to inform your consideration of these matters. I should be clear that the list represents an initial assessment by the UK Government of where EU competences intersect with devolution and which therefore would be affected by the restrictions in the Bill.

The UK Government prepared the list in order to inform discussion between the Scottish and UK Governments about where it may be necessary to agree common frameworks.

The Scottish Government is clear that any policy areas within devolved competence, carried out at EU level, should return to the Scottish Parliament in the event the UK leaves the EU. Given the way the European Union (Withdrawal) Bill is drafted, the extent of the list presented to the Scottish Government illustrates the scale of potential UK Government control over devolved policy areas.

As I made clear in my statement, the Scottish Government recognises that there may be the need for frameworks in the future and we are in discussion with the UK Government and the other devolved administrations to agree how such consideration might be taken forward. We will, however, only be able to agree frameworks based on respect for devolution, including the existing well established arrangements for co-operation, and not on the basis of the Bill as it stands.



**MICHAEL RUSSELL**

## **Powers returning from the EU that intersect with the devolution settlement in Scotland**

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Criminal offences minimum standards measures - Combating Child Sexual Exploitation Directive
16. Control of major accident hazards
17. Cross border mediation
18. Data sharing - (EU fingerprint database (EuroDac))
19. Data sharing - European Criminal Records Information System (ECRIS)
20. Data sharing - False and Authentic Documents Online (FADO)
21. Data sharing - passenger name records
22. Data sharing - Prüm framework
23. Data sharing - Schengen Information System (SIS II)
24. Efficiency in energy use
25. Elements of Reciprocal Healthcare
26. Elements of the Network and Information Security (NIS) Directive
27. Elements of Tobacco Regulation
28. Energy Performance of Buildings Directive
29. Environmental Impact Assessment (EIA) Directive
30. Environmental law concerning energy planning consents
31. Environmental law concerning offshore oil & gas installations within territorial waters
32. Environmental quality - Air Quality
33. Environmental quality - Chemicals
34. Environmental quality - Flood Risk Management
35. Environmental quality - International timber trade (EUTR and FLEGT)
36. Environmental quality - Marine environment
37. Environmental quality - Natural Environment and Biodiversity
38. Environmental quality - Ozone depleting substances and F-gases
39. Environmental quality - Pesticides
40. Environmental quality - Spatial Data Infrastructure Standards

41. Environmental quality - Waste Packaging & Product Regulations
42. Environmental quality - Waste Producer Responsibility Regulations
43. Environmental quality - Water Quality
44. Environmental quality - Water Resources
45. Environmental quality - Biodiversity - access and benefit sharing of genetic resources
46. Equal Treatment Legislation
47. EU agencies - EU-LISA
48. EU agencies - Eurojust
49. EU agencies - Europol
50. EU Social Security Coordination
51. Fisheries Management & Support
52. Food and Feed Law
53. Food Compositional Standards
54. Food Geographical Indications (Protected Food Names)
55. Food Labelling
56. Forestry (domestic)
57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)
58. Genetically modified micro-organisms contained use
59. Good laboratory practice
60. Harbours
61. Hazardous Substances Planning
62. Heat metering and billing information
63. High Efficiency Cogeneration
64. Implementation of EU Emissions Trading System
65. Ionising radiation
66. Land use
67. Late payment (commercial transactions)
68. Legal aid in cross-border cases
69. Migrant Access to benefits
70. Minimum standards -housing & care: regulation of the use of animals
71. Minimum standards legislation - child sexual exploitation
72. Minimum standards legislation - cybercrime
73. Minimum standards legislation - football disorder
74. Minimum standards legislation - human trafficking
75. Mutual recognition of professional qualifications
76. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
77. Nutrition health claims, composition and labelling
78. Onshore hydrocarbons licensing
79. Organs
80. Plant Health, Seeds and Propagating Material
81. Practical cooperation in law enforcement - Asset Recovery Offices
82. Practical cooperation in law enforcement - European Investigation Order
83. Practical cooperation in law enforcement - Joint Action on Organised Crime



84. Practical cooperation in law enforcement - Joint investigation teams
85. Practical cooperation in law enforcement - mutual legal assistance
86. Practical cooperation in law enforcement - mutual recognition of asset freezing orders
87. Practical cooperation in law enforcement - mutual recognition of confiscation orders
88. Practical cooperation in law enforcement - Schengen Article 40
89. Practical cooperation in law enforcement - Swedish initiative
90. Practical cooperation in law enforcement - European judicial network
91. Practical cooperation in law enforcement - implementation of European Arrest Warrant
92. Procedural rights (criminal cases) - minimum standards measures
93. Provision of legal services
94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
95. Public sector procurement
96. Public health (serious cross-border threats to health)
97. Radioactive Source Notifications – Trans-frontier shipments
98. Radioactive waste treatment and disposal
99. Rail franchising rules
100. Rail markets and operator licensing
101. Recognition of insolvency proceedings in EU Member States
102. Renewable Energy Directive
103. Rules on applicable law in civil & commercial cross border claims
104. Sentencing - taking convictions into account
105. State Aid
106. Statistics
107. Strategic Environmental Assessment (SEA) Directive
108. Tissues and cells
109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)
110. Victims rights measures (criminal cases)
111. Voting rights and candidacy rules for EU citizens in local government elections

# Agenda Item 6.2

Huw Irranca-Davies AM  
Gweinidog y Gymraeg a Dysgu Gydol Oes  
Minister for Lifelong Learning and Welsh Language



Llywodraeth Cymru  
Welsh Government

Our ref: MA-L/ARD/0420/17

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

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

17 July 2017

Dear Huw,

## **ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL**

I wrote to you on 7 June to thank the Constitutional and Legislative Affairs Committee for its Stage 1 report on the Additional Learning Needs and Education Tribunal (Wales) Bill ('the Bill'). In that letter, and during the debate on the General Principles of the Bill on 6 June, I signalled my intention to write to you with a detailed response to each of the Committee's 12 recommendations. This response is provided below; it is based on careful and detailed consideration and reflects my current position on the key issues to be resolved in the Bill. It will, of course, be subject to further discussions to be held throughout the remainder of this term, work to be carried out over the summer recess, and the detailed scrutiny of the Bill at Stage 2.

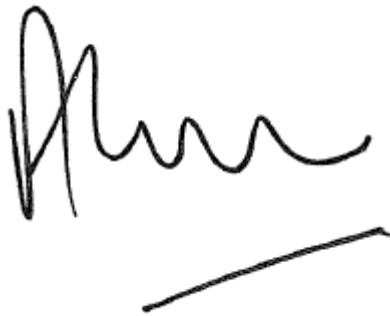
The response to each recommendation sets out whether I accept, or accept in principle (subject to further consideration and discussion) that recommendation. Where I do not accept a recommendation, I have set out my rationale for coming to that decision. I have also indicated, where relevant, that accepting a recommendation will require a further amendment to the Bill.

As you will see, I am accepting (fully or partially) or accepting in principle 8 of the Committee's 12 recommendations. Indeed, a number of the key issues raised in your report align with the Government amendments I have already tabled. My intention is to address other recommendations via amendments tabled in a subsequent tranche or tranches before the tabling window for Stage 2 Government amendments closes on 25 September.

I hope that this information helps to inform your further scrutiny of the Bill and demonstrates my commitment to listen and to work collaboratively to deliver an effective piece of legislation that will genuinely improve the lives of children and young people. I look forward to continuing to work with Members as the Bill progresses through its further stages.

I will also be writing to the Chair of the Finance Committee and the Children, Young People and Education Committee with regards to their Stage 1 reports. I am copying each of the letters to all three Committee Chairs.

Yours ever,

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

**Alun Davies AC/AM**

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

## Welsh Government's response to the Constitutional and Legislative Affairs Committee's Stage 1 report on the Additional Learning Needs and Education Tribunal (Wales) Bill

### Recommendation 1

*The committee recommends that the Minister justifies why the regulation-making powers under sections 12(7)(c), 50(3), 60(1) and 68(4) are needed in the Bill.*

I **accept** this recommendation. I welcome the opportunity it provides to explain why I believe these regulation-making powers are required or otherwise.

**Section 12(7)(c)** enables regulations to set out other forms of provision that may need to be secured by a local authority to meet the reasonable needs of learners for additional learning provision, should such evidence emerge once the new system is in place. The removal of this power to make regulations risks making the system potentially less responsive to the emergence of such evidence. However, on balance and on reflection, I have decided that the argument for retaining this power is less compelling. The current system for supporting learners has provided no particular evidence that provision other than that already specified in section 12(7) would be necessary in order to meet a child or young persons reasonable needs for additional learning provision. My intention is therefore to table an amendment that removes the power at section 12(7)(c).

**Section 50(3)** provides a power to add or remove exemptions to the general prohibition on placing a young person at an independent special post-16 institution which is not on the list to be maintained by the Welsh Ministers. This power has been included in the Bill in order to cover unforeseen and exceptional circumstances which might emerge once the new system is rolled out. Although the rationale for retaining this provision is similar to that in relation to section 12(7)(c), I think the risks around removing it may be more likely to be realised and have a more adverse impact on young people. There could be cases where, for example, it becomes clear that the educational interests of young people with very specialist needs are best served through placements which are very short term or perhaps very occasional but where the specialist institutions in question may not consider it worthwhile applying to be added to the list maintained by the Welsh Ministers because of the short term or infrequent nature of such placements.

If this is proved to be true, it might be possible, through regulations, and on the basis of the cases that occur, to enable an exemption or exemptions to the general duty to be created. If we do not have that power, very vulnerable young people might be disadvantaged. Section 50 of the Bill contains provisions which are new and have no direct equivalent under existing law. Consequently, we cannot know at this point what anomalous situations might arise. A degree of flexibility to make minor adjustments to the legislative system so that it can respond appropriately to these potential scenarios seems, to me, to be entirely proportionate. Therefore, I think the power at section 50(3) should be retained.

**Section 60(1)** enables regulations to be made to allow local authorities to supply goods and services to others in relation to additional learning needs matters on terms and conditions which may be provided for in the regulations. There is similar

provision in current law allowing the supply of goods and services to school governing bodies to assist them in making special educational provision (section 318 of the Education Act 1996) and there are regulations dealing with terms as to payment (*Education (Payment for Special Educational Needs Supplies) Regulations 1999* SI 1999/710). These regulations allow the supplying local authority to recover the full cost, but no more, where it supplies goods or services to a school it does not maintain in another local authority area.

In my view, the power in section 60 is necessary. For the new system to work, local authorities are likely to need to supply goods and services to others on occasion, for example so that additional learning provision can be provided to a person from the local authority's area who is detained in relevant youth accommodation. A local authority's general functions may allow it to supply goods and services in connection with additional learning needs matters in some circumstances, but those other powers would not necessarily cover all the circumstances that could be covered by this power. Section 60 would allow the Welsh Ministers to give a clear power to local authorities, as well as giving scope to limit the basis upon which the goods and services may be supplied.

I envisage making regulations to give a specific power to local authorities and include provision to prevent a profit being made.

**Section 68(4)** provides that Part 1 of the Arbitration Act 1996 does not apply to proceedings of the Education Tribunal but regulations can make corresponding provision. The power is a restatement of an existing provision set out in the Education Act 1996 in relation to the procedures of the Special Educational Needs Tribunal Wales. We are continuing to consider the issue the Committee raises in its report.

## **Recommendation 2**

*The committee recommends that the Minister reconsiders whether the requirements which may be contained in the code pursuant to section 4(4) of the Bill should instead be contained either on the face of the Bill or in regulations.*

I **do not accept** this recommendation. I have considered the proposition contained in this recommendation carefully, but remain of the view that the current balance between what is included on the face of the Bill, what will be set out in regulations and what will be included in the Code, is appropriate. I would therefore resist an amendment of this sort.

The Code is intended to provide those responsible for delivering the new system with clear guidance and requirements. It will be a practical and accessible 'handbook' for practitioners and professionals and the primary means by which they navigate their way through the new system. Stakeholders have told us that to be properly effective, the Code must have 'teeth'. We are doing this by giving it the power to impose mandatory requirements. Without this power, the Code will be restricted to providing guidance and referencing the mandatory requirements set out elsewhere. Its status and standing will, therefore, be lessened, which would contradict the clear steer we have received from practitioners.

It would not, in my view, be appropriate to set out on the face of the Bill the level of technical detail about operational matters that will be the subject of many of the intended mandatory requirements. Given the operational nature of the requirements, and the refinement they may require over time, placing them anywhere other than in subordinate legislation would be impractical and undesirable. I also think it undesirable to place these requirements in regulations rather than in the Code. Having them in the Code is more practical and accessible for practitioners – they can see the exact wording of the requirement alongside related guidance and examples which can help explain the requirement. The Code will make it clear which of its provisions are mandatory under section 4(4) of the Bill. I would add, in the light of comments below in relation to recommendation 3, that the procedure for making the Code will be every bit as robust as any regulations we might make.

### **Recommendation 3**

*The committee recommends that the Minister should table an amendment to the Bill, applying a super-affirmative procedure to the making of a code under section 5.*

I **accept** this recommendation in that I have already tabled an amendment to make the Code (and any revised Codes) subject to affirmative resolution procedure.

Separately, I am writing to the Children, Young People and Education Committee outlining a proposal for ensuring that the Committee plays a full role in the consultation phase of the Code's development and consideration.

### **Recommendation 4**

*The committee recommends that the Minister should table an amendment to the Bill applying the affirmative procedure in the first instance to regulations made under sections 13(2) and 14(2), followed by the negative procedure on subsequent occasions.*

I **accept** this recommendation. My intention is to bring forward amendments to apply the affirmative procedure to the first exercise of these powers.

### **Recommendation 5**

*The committee recommends that the Minister should table an amendment to section 30 to place a timescale for making an appeal on the face of the Bill. Any subsequent change to the timescale should be achieved by regulations subject to the affirmative procedure.*

I **do not accept** this recommendation. Whilst I recognise the reasons for putting on the face of the Bill the timescale within which a request to a local authority can be made to reconsider a school governing body decision that a pupil no longer has additional learning needs, there are risks associated with its appropriate alignment with other timescales to be set out subsequently in the Code. I think the best way to approach these different timescales is to develop and finalise them alongside one another so that the integrity of the process as a whole is maintained.

### **Recommendation 6**

*The committee recommends that the Minister should table an amendment to the Bill, applying the affirmative procedure to the making of regulations under section 36(2).*

I **accept in principle** this recommendation subject to further consideration of the link to regulations made under section 562J(4) of the Education Act 1996 and exercising these powers consistently with the objective that the law is accessible.

### **Recommendation 7**

*The committee recommends that the Minister should table an amendment to the Bill, removing the power for the making of regulations under section 45(2)(d). At the very least, the existing power in the Bill should be subject to the affirmative procedure.*

I **accept** this recommendation. I have already tabled amendments to remove the power for making regulations under section 45(2)(d).

### **Recommendation 8**

*The committee recommends that the Minister should table an amendment to section 58(5) to place the prescribed period (and any exceptions that apply) in which a person must comply with a request for information on the face of the Bill. Any subsequent change to the prescribed period should be achieved by regulations subject to the affirmative procedure.*

I **do not accept** this recommendation. Regulations made under the power set out in section 58(5) of the Bill will likely set out a range of periods within which different bodies must comply with different sorts of requests for help and information; a single date on the face of the Bill would be inappropriate as a consequence. Also, in setting the period(s), we need to take account of wider timescales for complying with duties in the Bill or the Code, which will be provided for in the Code.

The Code is to be consulted upon widely before it can be made. Therefore, any period set out in the Bill at this stage, may not necessarily be appropriate and may have to be changed at the outset.

I also note that under the current Special Educational Needs system, there is a power to set such periods in regulations (specifically in section 322(4) of the Education Act 1996 and the regulations are the Education (*Special Educational Needs*) (*Wales*) Regulations 2002 SI 2002/152).

### **Recommendation 9**

*The committee recommends that the Minister should table an amendment to section 69 to place a timescale for complying with an order of the Education Tribunal for Wales on the face of the Bill. Any subsequent change to the timescale should be achieved by regulations subject to the affirmative procedure.*

I **do not accept** this recommendation. Prescribing on the face of the Bill a set period in which an Order of the Education Tribunal for Wales must be complied with would

not be appropriate. Orders will require local authorities or governing bodies of further education institutions to do a range of different things, depending on the nature of the appeal that has been considered. Different categories of Order will require different timescales for compliance and may link to timescales for other matters which will be set out in the Code and will therefore be the subject of separate consultation. Having a single period on the face of the Bill would provide no flexibility to deal with this.

Timescales for compliance with Orders issued by the current SEN Tribunal for Wales under the existing system are set out in regulations. Therefore, there is nothing new or contentious about the approach here.

### **Recommendation 10**

*The committee recommends that the Minister should table an amendment to the Bill, removing the power for the making of regulations under section 82. At the very least, the existing power in the Bill should be subject to the affirmative procedure.*

I **accept** the second part of this recommendation but not the first. The regulation making power gives flexibility to make further provision about a person being “in the area of” a local authority in Wales, which might be desirable should any difficulties or uncertainty arise as to what it means in particular situations. Although the power might not be used in the near future, I am not persuaded that it is appropriate to remove it. However, I accept the recommendation to move to the affirmative procedure and my intention is to bring forward an amendment to this effect.

### **Recommendation 11**

*The committee recommends that the Explanatory Notes to the Bill should be amended to provide an adequate explanation of Schedule 1.*

I **accept** this recommendation. The Explanatory Notes will be revised ahead of Stage 3 as per normal practice, and will contain an adequate explanation of the Bill and its Schedules.

### **Recommendation 12**

*The committee recommends that the Minister should table an amendment to the Bill, applying the affirmative procedure to the making of regulations under section 86(8).*

I **accept** this recommendation. My intention is to bring forward such an amendment.



Alun Davies AC/AM  
Gweinidog y Gymraeg a Dysgu Gydol Oes  
Minister for Lifelong Learning and Welsh Language



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA(L)ARD/0549/17

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7 September 2017

Further to my letter of 17 July 2017, in response to the Children, Young People and Education Committee's recommendation in its stage 1 report about the Additional Learning Needs and Education Tribunal (Wales) Bill, I committed to keeping you informed about the implementation of the additional learning needs (ALN) transformation programme. This will be by way of quarterly updates, of which this letter is the first.

The programme is made up of five strands:

### **Legislation and statutory guidance**

The first strand of the programme is legislation and statutory guidance, which comprises the Bill, explanatory memorandum, regulations and the ALN Code, which will include mandatory requirements. The revised regulatory impact assessment (RIA) will be published on 11 September.

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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.

I can also update the committee about my consideration of recommendation 17 of the committee's stage 1 report, which said: "The Minister should provide further explanation as to why special schools have been removed from the list of schools for which the duty to designate an ALNCo would apply."

I asked my officials to write to special schools to seek their views about a statutory requirement for them to have an ALN co-ordinator. Of the 39 schools we wrote to asking for a response before the summer holidays, 15 replied; 10 said they would not favour a statutory duty to appoint an ALNCo.

Eight of the 10 who opposed a duty expressed a clear view that every teacher within a special school takes on the role of an ALNCo, with specific duties fulfilled by head teachers and other senior leadership team colleagues. This is consistent with the Welsh Government's view, as reflected in the provisions in the Bill and explained in my response to the committee's recommendation. Two of the five head teachers who supported a statutory duty raised specific issues about training, funding, collaborative working, general staff development and development opportunities for teachers with specialist knowledge of ALN. Similar issues were highlighted by four of the 10 head teachers opposed to a statutory ALNCo.

There is a concern among some special schools that if they do not have a designated ALNCo, they could miss out on some of the funding, training and joint working initiatives that will accompany the introduction of this role in mainstream schools. While these are important issues, we believe they can be addressed as part of the wider transformation programme and we consider the Bill's requirement on education settings to designate an ALNCo should not be extended to include special schools. We will maintain our dialogue with special schools as we take the programme forward.

### **Implementation/transition support**

In March 2016, the Welsh Government set up the ALN Strategic Implementation Group (ALN SIG) as part of arrangements for the ongoing development of implementation planning to support local authorities, schools, early years settings, further education institutions, health boards and other partners to prepare for the wider ALN transformation programme, including the statutory changes provided for in the Bill. The group meets bi-monthly to consider practical solutions and provide advice and recommendations to the Welsh Government to support implementation.

Expert groups have been established by the ALN SIG to give detailed consideration of a number of technical issues in relation to the approach to implementing the new ALN system, including:

- Individual development plans
- ALNCos
- Early years ALN provision
- Post-16 ALN provision
- Transition between settings, providers and into adulthood
- Health
- Training
- Looked-after children

All the expert groups met for a two-day workshop in March 2017 and have since been working towards an agreed set of actions.

In November 2016, I announced the launch of the £2.1m ALN innovation fund, which will run until 31 March 2018. This is a grant to support regional partnership projects supporting learners with ALN. The funding targets the development of creative, collaborative delivery models and practices to improve systems, arrangements and relationships. The funding is also being used to support further education institutions and health boards. Projects established in year one are being developed and outputs will be reviewed by the relevant expert group.

In February 2017, I launched a consultation about how the Bill should be implemented if it receives Royal Assent. It closed on 9 June and the responses are currently being considered by my officials. A summary of responses will be published this term and I intend to make a statement about our proposed approach to implementation. The Welsh Government will publish a transition guide for delivery partners setting out detailed guidelines to support implementation.

I wrote to you in July about the creation of five ALN transformation leads who will support delivery partners to prepare for the implementation of the new system. The recruitment process is now underway and the successful candidates should be in post before the end of the year. These posts will play a crucial role in implementation planning and the roll-out of training and awareness-raising about the Bill as part of our core skills development (see below).

Work has started on the approach to monitoring and evaluation of the implementation of the Bill, at key stages of the implementation process readiness for the new system in preparation for implementation; compliance with the provisions in the Bill once the new system commences; and monitoring the impact of the Bill over the longer term. Arad Research and the University of South Wales have been contracted to undertake a baseline assessment of the existing special educational needs (SEN) system, which will inform a future evaluation of the impact of the legislative changes in due course. My officials have also been liaising with Estyn to coordinate an approach to monitoring readiness for implementation; Estyn will be focusing some of its thematic inspection activity this year on the readiness of education settings for the new ALN system. The ALN transformation leads will support delivery partners to undertake readiness self-assessments to identify areas to focus on in preparing for transition to the new ALN system.

## **Workforce development**

This strand is a programme of skills development for practitioners who are involved in supporting learners with ALN and is focused at three levels – core skills development; advanced skills development and specialist skills development. The approach to implementing this aspect of the programme is being developed in conjunction with the training expert group and the ALNCo expert group.

Core skills development will provide training and development resources and opportunities for all practitioners to improve their skills, knowledge and confidence to support learners with a wide range of low complexity, high incidence additional learning needs within settings and access to ongoing professional development.

Core skills development has already begun with the Learning with Autism programme, developed by the National Autistic Spectrum Disorder (ASD) team and funded by the Welsh Government. This offers schools free resources to raise awareness of autism and training for teachers and support staff. The programme, which is available on the ASDinfoWales website is available to primary schools and has been completed by more than 4,000 staff and 10,000 pupils. The programme is being extended to secondary schools, early years, further education and work-based learning providers.

Advanced skills development will support the role of ALNCoS, who will replace current Special Educational Needs Coordinators (SENCoS).

In respect of recommendation 14 of the committee's stage 1 report – "The Minister should reconsider his approach with regard to qualifications for ALNCoS, and make it clear that going forward, a Master's qualification should be desirable and not required" – and recommendation 15 – "The Minister should consider whether it would be desirable for other qualifications and skillsets, of a similar level to Master's, to be considered as appropriate for an ALNCo" – my officials are working with professionals to identify skills and training requirements for the profession.

Specialist skills development includes those staff working in local authority-provided specialist support services, for example, educational psychologists and teachers of visually or hearing impaired. My officials have been working with the WLGA and Data Unit to collect data from local authorities about their existing workforce (including qualifications, demographics, linguistic skills, etc) together with current and projected vacancies. Once the results are available they will be used to consider our support for post-graduate specialist training.

### **Awareness-raising**

In February and March this year a series of regional events were held, attended by more than 800 practitioners and parents. I attended one of the events in Newport and was very pleased with the attendance and positive feedback from the session.

Our extensive work with stakeholders is ongoing and we are planning a programme of activities to explain and promote the new system and the rights it will confer to children, their parents and young people.

### **Supporting policy**

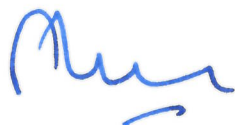
This strand of the programme is focused on producing policy and guidance to ensure good practice is supported and embedded in the current SEN system and the future ALN system.

This year, to support practitioners we have published: guidance about post-16 funding for learners with learning difficulties at specialist colleges; advice to local authorities and education professionals about the role of the SENCo; guidance for teaching practitioners to support learners with specific learning difficulties and guidance for governing bodies of schools and local authorities about supporting learners with healthcare needs.

To support the planning and delivery of early, timely and effective interventions to support children and young people with ADHD, ASD, hearing impairments, visual impairments and multi-sensory impairments, contracts have been awarded to Bazian, SQW and the University of Birmingham to undertake rapid evidence assessments to inform accessible guides on interventions which are known to be effective in supporting young people with specific forms of SEN.

I will provide a further update about the transformation programme work at the end of November.

I am copying this letter to the chairs of the Finance and Constitutional and Legislative Affairs committees.



**Alun Davies AC/AM**

Gweinidog y Gymraeg a Dysgu Gydol Oes

Minister for Lifelong Learning and Welsh Language



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/0496/17

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

12<sup>th</sup> September 2017

Dear Huw

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

I would like to thank you and your colleagues on the Constitutional and Legislative Affairs Committee, for your consideration of the Abolition of the Right to Buy and Associated Rights (Wales) Bill during Stage 1 scrutiny.

I have considered carefully the recommendations contained in the Committee's report and my response to each one is set out below:

**Recommendation 1. We recommend that the Cabinet Secretary should fully explain during the Stage 1 debate his reasons for introducing a Bill that amends existing UK legislation rather than one that is consolidated and free-standing.**

As I explained during the debate on 18 July, the Bill abolishes the right to buy, which was established in England and Wales by legislation dating back to 1985. In order to do this, it has to amend existing England and Wales legislation so far as it applies to Wales.

To combine these necessary amendments with freestanding, independent provision, in the Bill, would require very extensive re-statement of the law relating to the right to buy for a temporary period only – in a Bill whose whole purpose is to abolish the right rather than to make provision about it. However, the Welsh Government remains committed to promoting the accessibility and coherence of bilingual Welsh law.

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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.

**Pack Page 74**

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.

**Recommendation 2. We recommend that the Cabinet Secretary should table an amendment to the Bill to place an absolute duty on the Welsh Ministers to provide every qualifying landlord based in Wales with a copy of the information document set out in section 8.**

I have re-considered this recommendation following the General Principles debate. However, I remain of the view that there is no need for an absolute duty as the Welsh Government is fully aware of all the qualifying landlords based in Wales and will be contacting them accordingly.

**Recommendation 3. We recommend that the existing qualified duty on the Welsh Ministers to provide every qualifying landlord with a copy of the information document (section 8(1)(c)) should only apply to landlords based outside of Wales, and that the Cabinet Secretary should table an amendment to the Bill to that effect.**

I do not consider that the Bill should be amended so that the existing qualified duty to inform landlords only applies to landlords based outside Wales. The current drafting recognises that the Welsh Government is reliant on a third party (the Homes and Communities Agency) to provide us with details of social landlords, based outside Wales, which own homes for rent in Wales.

As I mentioned in the General Principles debate, the matters covered in recommendations 2 and 3 from your Committee were also considered by the Equalities, Local Government and Communities Committee who are content with the current provisions in the Bill. I do not, therefore, propose to bring forward any amendments on these matters.

**Recommendation 4. We recommend that the Cabinet Secretary should table an amendment to the Bill to delete the words “or expedient” from section 9.**

Section 9 of the Bill confers power on the Welsh Ministers to make consequential etc provision if they consider it “necessary or expedient” to do so in consequence of provision made by the Bill, or made under it. The word “expedient” has its own meaning and allows for amendments which may be desirable, useful or have a practical benefit, but which may fail a strict “necessity” test. For instance, if a power to make consequential amendments was used to streamline an administrative procedure which was proving difficult to apply, or impractical for tenants to deal with, it might be arguable that this did not meet the “necessity” test, in that the tenants could simply live with the difficulty, undesirable though this might be. This approach would be unduly inflexible and restrictive and could prevent beneficial changes being made.

I do not, therefore, propose to bring forward an amendment on this matter.

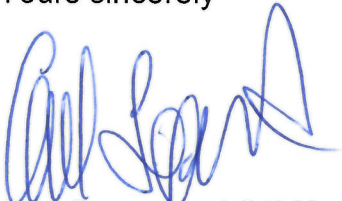
**Recommendation 5. We recommend that the Cabinet Secretary should table an amendment to the Bill to make it clear that section 10(1) applies only to the regulation-making power in section 9.**

I consider that the amendment, recommended by the Committee, would clarify the scope of the regulation making power in section 10(1) and improve the Bill as a result. I am grateful for the Committee’s recommendation on this matter and will bring forward an amendment at Stage 2 to remove any ambiguity concerning the wording of section 10(1).



In conclusion, I hope this letter is helpful in setting out the Welsh Government's response to the Committee's report and I would like to repeat my thanks to Members for their detailed consideration of the Bill.

Yours sincerely



**Carl Sargeant AC/AM**

Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children





Ein cyf/Our ref: MA-L/FM/0244/17

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

30 August 2017

Dear Huw

In December 2015, I responded to the recommendations of your predecessor committee's report, *Making Laws in Wales*. One of the commitments I made was that the Welsh Government would publish its *Legislation Handbook on Assembly Bills* once it had been updated for the Fifth Assembly.

I am today publishing the *Legislation Handbook on Assembly Bills* on the Welsh Government's website. The handbook is internal guidance for the Welsh Government Civil Service. It covers the processes and procedures involved in preparing primary legislation and supporting Ministers to take it through the National Assembly for Wales. This guidance has been updated to reflect recent changes to Standing Orders and will be updated periodically to take account of changes to the devolution settlement and other developments.

In my response to the *Making Laws in Wales* report, I noted there was a significant amount of overlap between the committee's recommendations and work in progress within the Welsh Government in preparation for the planning and management of the legislative programme in the Fifth Assembly.

I identified a number of key aspects where we had a shared vision, including:

- Comprehensive policy development at an early stage for all legislative proposals;
- Early identification and consideration of financial implications;
- Effective stakeholder engagement throughout the legislative process.

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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.

The *Legislation Handbook on Assembly Bills* sets out what is required of Bill teams at each stage of the process, from seeking inclusion in the government's legislative programme to commencing an Act of the Assembly. As such, it sets out how the Welsh Government Civil Service can support our shared vision for legislation.

The publication is a step forward in our transparent and open approach to delivering this government's legislative programme.

I am copying this letter to the Llywydd and a copy of the handbook will be placed in the library.

Yours sincerely

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

**CARWYN JONES**



The Right Honourable Lord  
Justice Bean  
Chairman  
Law Commission of England  
and Wales  
1<sup>st</sup> Floor, Tower  
52 Queen Anne's Gate  
London SW1H 9AG

19<sup>th</sup> July 2017

*Dear Sir David,*

## **FINAL RESPONSE TO THE COMMISSION'S REPORT ON THE FORM AND ACCESSIBILITY OF THE LAW APPLICABLE IN WALES**

This letter is the Welsh Government's final response to the Form and Accessibility Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015). To reiterate comments I have made to you before – the Report is very welcome and provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the laws of Wales are more accessible.

I attach a table setting out the Welsh Government's position in respect of each recommendation of the Report. I also summarise our views below.

- **A programme of consolidation and codification (Recommendations 1, 2, 3, 14 and 15)**

The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is necessary in order to ensure that the laws of Wales are easily accessible. This would also make the work of the Government in developing new laws – and the work of the National Assembly in scrutinising them – considerably more straightforward and therefore more efficient.

The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018. I recently gave evidence to the National Assembly's Constitutional and Legislative Affairs Committee on progress and next steps. This makes clear this Government's commitment to developing more orderly systems of law making and publishing. We recognise, however, that this will be a lengthy and difficult journey, particularly over the next few years given the constitutional changes that face us.

The issues that are likely to face in consequence of the United Kingdom's withdrawal from the European Union may mean postponing activity to implement your recommendations, but I am determined that notwithstanding whatever challenges emerge we make a long term commitment to the task of improving access to the law.

- **National Assembly procedures and processes for the scrutiny of consolidation Bills and Legislative Codes (Recommendations 4, 5, 6, 7, 10 and 11)**

The National Assembly's procedures and consideration of legislation are matters for the National Assembly. However the Welsh Government strongly welcomes the Business Committee's decision to proceed with developing a standing order for consolidation Bills. A procedure that facilitates consolidation by not exposing existing policy to the full political process is fundamentally important.

- **Nature of Legislative Codes (Recommendations 8 and 9)**

As I have set out in written evidence to the National Assembly's Constitutional and Legislative Affairs Committee, we have determined that our vision of a Code is different to that of the Law Commission's. In our view the word "code" implies something comprehensive, not one part of the legislative framework. As such we do not see why a Code should not be wider than a single Act, nor why it should exclude the subordinate legislation and quasi-legislation on a topic.

We consider, therefore, that our Legislative Codes should be comprehensive, in that they should contain (to the extent practicable) all of the legislation and guidance or other similar documents made under the legislation that falls within the subject matter of the Code. Further, the existing hierarchy within, and delineation between, the legislative instruments (primary, secondary, etc.) should remain. All of the content of a Code will be made in both English and in Welsh (both, of course, having equal standing).

- **Amending statutory instruments (Recommendations 12 and 13)**

The Welsh Government welcomes these recommendations and will be undertaking further work to understand the technical implications of (in particular) Recommendation 12. If the technology can adapt, and a suitable procedure be adopted, then this should save time for all involved and make for clearer legislation for the end user.

- **Establishing a Legislative Code Office (Recommendations 16, 17 and 18)**

The Welsh Government agrees that the functions of consolidation and codification (if adopted) should be carried out within government rather than establishing a new, separate or independent, body for this work. Firstly, because creation and management of legislation is primarily a matter for Government, and secondly in practical terms this is where the necessary expertise already exists.

- **Legislative standards (Recommendations 19, 20, 21, 22 and 23)**

As the Report made clear there are a number of approaches that could be taken in developing legislative standards. The Welsh Government intends to consider these further, but acknowledges the value that standards could bring.

- **Standardisation of Welsh language legal terminology (Recommendation 24)**

As I explained in the Interim Response the Welsh Government is preparing a new strategy for the Welsh language. I am also conscious that while there is no doubt a need for more consistency in Welsh language terminology to assist users, I do not wish to develop an inflexible and prescriptive system. We do not, after all, generally speaking have standardised terms in the English language and the same word can often mean different things depending on the context and how it is used. We will, therefore, be considering – along side other matters that will arise from our new strategy – what can be done to facilitate use of the Welsh language, but this will most likely fall short of the standardisation I believe the Commission envisages.

- **An Interpretation Act for Wales (Recommendation 25)**

Last month I launched a consultation document on this issue, Interpreting Welsh Law – Considering an interpretation Act for Wales. We are seeking views on whether the Welsh Government should develop a modern and bilingual interpretation act for Wales, which would set out general rules and definitions that would apply to Welsh law. The consultation closes in mid-September and our next steps will be determined in light of the consultation responses.

- **Improving publication (Recommendations 26, 27 and 28 relating to legislation.gov.uk and recommendations 29 to 32 relating to Law Wales/ Cyfraith Cymru)**

We continue to work closely with The National Archives who operate and maintain the legislation.gov.uk website. We will also continue to support and develop the Law Wales/Cyfraith Cymru website, and the recommendations of the report are consistent with our long term ambitions for the site.

I am sure we will continue to discuss progress with the recommendations of the Report in our regular meetings, however we will also ensure relevant information is included in the annual report to the National Assembly for Wales.

I am very grateful to you and to Nicholas Paines QC – and of course your officials - for your commitment to this project. I am also grateful to your predecessor as Chairman, Lord Justice Lloyd Jones, for his personal interest in the development of Welsh law.

I'm very conscious that your report, and the actions the Welsh Government and National Assembly for Wales take to pursue its recommendations, are of historic significance. I hope history will judge us well.

I am copying this letter to the Llywydd and Chair of the Constitutional and Legislative Affairs Committee of the National Assembly, and to the Queen's Printer.

Yours sincerely,



Mick Antoniw AC/AM  
Cwnsler Cyffredinol  
Counsel General

**Recommendations of the *Form and Accessibility of the Law Applicable in Wales* report of the Law Commission, and Welsh Government response**

Recommendation	Welsh Government's response	
<p><b>Recommendation 1:</b> We recommend that the Welsh Government pursues a policy of codification, executed in accordance with the recommendations that follow.</p>	<p><b>Accept</b></p>	<p>The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is desirable in order to ensure that the laws of Wales are accessible. This would also make the work of the Government and the</p>
<p><b>Recommendation 2:</b> We recommend that codification should involve:</p> <p>(1) bringing together legislation whose subject matter is within the legislative competence of the National Assembly for Wales and which is currently scattered across various pieces of legislation of the United Kingdom Parliament and/or the Assembly in a piece of Assembly legislation;</p> <p>(2) reform of the legislation as appropriate.</p>	<p><b>Accept</b></p>	<p>Assembly in developing new laws – and in scrutinising them – considerably more straightforward and therefore more efficient.</p> <p>The Welsh Government has already begun to implement this recommendation by a starting pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018.</p> <p>In accepting these recommendations, however, the Welsh Government is very conscious of the size of the task and the limited resource available to pursue it. It is very clear – not least in view of the likely implications of the UK's withdrawal from the European Union – that this will need to be a long term project for which significant resources may not always be available.</p>
<p><b>Recommendation 3:</b> We recommend that those areas in which the law is in most need of being brought together in Assembly legislation should be identified and the process of bringing the legislation together should be undertaken.</p>	<p><b>Accept</b></p>	<p>Pursuing consolidation and codification on a long term basis will require arrangements for identifying suitable areas for work will need to be put in place. The Welsh Government's position has always been that a practical and flexible solution to identifying the matters to be codified will be required, but that a programme of some sort would be sensible. The pilot programme will provide valuable learning for how such a programme could be developed, and how the suitable areas of</p>



Recommendation	Welsh Government's response	
		work can be identified and planned.
<p><b>Recommendation 4:</b> A flexible streamlined legislative procedure should be introduced into the Standing Orders of the National Assembly for</p> <p>(1) codification or consolidation Bills that include alteration or reform of the law; and</p> <p>(2) other law reform Bills prepared by the Law Commission,</p> <p>where the alterations or reforms are judged by the Assembly not to be controversial.</p>	<p><b>Accept (in principle)</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly (rather than the Welsh Government).</p> <p>The Welsh Government agrees with the Law Commission's view that if "...<i>the law is merely being restated without substantive reform, the legislature's time should not be taken up by scrutinising it in detail</i>" and that there should be an efficient means carrying such Bills into law "<i>without competing for Assembly time with other Bills</i>". The Government also agrees with the Commission that the "<i>legislature must not be prevented from scrutinising proposed reforms.</i>"</p>
<p><b>Recommendation 5:</b> Such a Bill should be accompanied by an Explanatory Memorandum endorsed by the Counsel General which should explain the effect of each of the Bill's sections and include or be accompanied by recommendations as to the suitability of sections for committee or Assembly scrutiny.</p>	<p><b>Accept (in principle)</b></p>	<p>The documentary requirements of any Standing Order for consolidation Bills are a matter for the National Assembly (rather than the Welsh Government). However the Welsh Government supports appropriate documentation being prepared for consolidation Bills, and notes the approaches taken in the UK Parliament and the Scottish Parliament.</p>
<p><b>Recommendation 6:</b> A committee of the Assembly should consider the Bill and Explanatory Memorandum and recommendations as to the suitability of sections for committee or Assembly scrutiny. The committee should determine whether particular sections of a Bill are controversial, or make significant changes to the existing law such as to require scrutiny by the full Assembly, while others are suitable for scrutiny by an appropriate committee.</p>	<p><b>Accept (in principle)</b></p>	<p>The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).</p>

Recommendation	Welsh Government's response	
<b>Recommendation 7:</b> Assembly Members should be able to call for a debate on the committee's report.	<b>Accept (in principle)</b>	The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).
<b>Recommendation 8:</b> Codes should not be formally distinct from Acts of the Assembly. An Act of the Assembly should be identified as a code by a section of that Act and its short title.	<b>Accept in principle</b>	<p>Whilst agreeing that a Code should not be formally distinct from an Act of the Assembly, the Counsel General for Wales has set out in evidence to the Constitutional and Legislative Affairs Committee that the Law Commission's recommendation is unduly limited.</p> <p>The Government's view is that a Code should not just be a single Act, but should also include the subordinate legislation and quasi-legislation on a topic. Each element would be identified as being part of a Code. For example, the Act could be described as "a principal Act of the _____ Code", and the regulations as "forming part of the _____ Code", etc.</p> <p>The Welsh Government is still considering whether there is merit in a Code having legal status or whether a Code should only be an informal mechanism used to better organise and promulgate Welsh law.</p>
<b>Recommendation 9:</b> Codes should be preserved by a rule that, where there is a code in place, further legislation within the subject area of the code should only take effect by way of amending the code.	<b>Accept</b>	Maintaining the integrity of a Code (or at least the consolidated Acts that for the Code) is important, so as to retain its cohesion and completeness. The pilot programme will allow the Government to consider how this could work in practice, and there will also need to be consideration, by the National Assembly, of any matters which may need to be addressed in Standing Orders.
<b>Recommendation 10:</b> A procedure should be	<b>Accept</b>	The approach to scrutiny of legislation (and the operation of

Recommendation	Welsh Government's response	
established by the Assembly for considering whether to allow any piece of legislation to pass through the Assembly which does not comply with the requirement to legislate within the code.	<b>(in principle)</b>	Standing Orders) is a matter for the National Assembly (rather than the Welsh Government). However the Government has indicated (see recommendation 9) that it considers maintaining the integrity of a Code, once developed, to be important.
<b>Recommendation 11:</b> The standing orders of the National Assembly should enable the Presiding Officer to put forward a motion that a Bill (in whole or part) falls within the subject area of a code and should be treated as such.	<b>Accept (in principle)</b>	
<b>Recommendation 12:</b> When secondary legislation is amended, the updated text of the statutory instrument should then be laid before the National Assembly, rather than an amending statutory instrument.	<b>Accept</b>	Recommendations 12 and 13 are suitable for accepting in the context of consolidation and codification projects, as well as amending regulations not already consolidated or forming part of a Code.
<b>Recommendation 13:</b> The resolution of the National Assembly should be limited by standing order to the changed text only.	<b>Accept (in principle)</b>	There are technical and resource implications of recommendation 12 will be considered as part of the work of the pilot programme Whilst Standing Orders are a matter for the Assembly, the Government supports recommendation 13.
<b>Recommendation 14:</b> The Welsh Government should institute regular programmes of codification.	<b>Accept</b>	Pursuing consolidation and codification of legislation over the longer term will need careful planning, and it is appropriate for a programme of activity to be developed so it can be costed, resourced and delivered. This is the approach taken in respect of law reform Bills. The pilot programme will provide useful lessons to guide the development of a programme of consolidation, which may form part of the Government's wider legislation programme.
<b>Recommendation 15:</b> The Counsel General should be obliged to present a codification programme, and report to the National Assembly on the progress of the programme at regular intervals	<b>Accept</b>	

Recommendation	Welsh Government's response	
<p><b>Recommendation 16:</b> We recommend that a Code Office should be set up to manage the process of codification and consolidation and maintain codes. The Code Office should be distinct from the existing Office of the Legislative Counsel.</p>	<b>Accept</b>	<p>We agree that a distinct office with the Welsh Government should have responsibility for developing and maintaining the Codes. For obvious reasons the Code Office should, however, be closely linked to the Office of the Legislative Counsel.</p>
<p><b>Recommendation 17:</b> We recommend that the Code Office functions should include the following:</p> <p>(1) approval or oversight of the exercise of technical maintenance of the codes;</p> <p>(2) periodic technical reviews; and</p> <p>(3) managing the process of identifying more substantive defects in codes and drafting amendments to correct them.</p>	<b>Accept</b>	<p>The Welsh Government considers there is scope to widen the functions of a 'Legislative Code Office' identified in Recommendation 17 to lead on all aspects of the accessibility programme, including developing and maintaining the Cyfraith Cymru/Law Wales website.</p>
<p><b>Recommendation 18:</b> We recommend that the Code Office should be accountable to the Counsel General and led by First Legislative Counsel.</p>	<b>Accept</b>	
<p><b>Recommendation 19:</b> We recommend that the Counsel General be responsible for publishing a set of legislative standards.</p>	<b>Accept</b>	<p>Whilst there is merit for a new legislature (and executive) in adopting legislative standards, any standards must be flexible and overseen with pragmatism. They should be a guide to good practice and principle, so as to assist debate, and to perhaps augment the existing Standing Orders for legislation.</p>
<p><b>Recommendation 20:</b> We recommend that, insofar as the standards relate to the design and content of legislation, they be reviewed by the National Assembly and, if accepted, adopted by resolution.</p>	<b>Accept in principle</b>	<p>As part of the pilot programme, further consideration will be given to recommendations 19 and 20 (and also recommendation 23 below).</p>
<p><b>Recommendation 21:</b> We recommend that the</p>	<b>This recommendation is for the National Assembly and therefore</b>	

Recommendation	Welsh Government's response	
<p>National Assembly establish a regular structure for:</p> <p>(1) pre-legislative scrutiny of Bills, including their impact on the accessibility of the statute book; and</p> <p>(2) post-legislative scrutiny of Bills, including their impact on the accessibility of the statute book.</p>	<p><b>outside the Welsh Government's response</b></p>	
<p><b>Recommendation 22:</b> We recommend that standing orders should require that the Explanatory Memorandum to a Bill disclose and justify any departure from legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly, rather than the Welsh Government or the Welsh Ministers.</p>
<p><b>Recommendation 23:</b> We recommend that standards for the content of explanatory notes be included in legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The development, and content, of legislative standards will need fuller consideration, but in principle they could include provision around Explanatory Notes</p>
<p><b>Recommendation 24:</b> The Welsh Government should be formally recognised as being responsible for standardisation of Welsh language legal terminology. An independent multidisciplinary panel should be established to advise the Welsh Government on Welsh language legal terminology.</p>	<p><b>Reject</b></p>	<p>Although much has already been done (for example through the development of the 'Term Cymru' database) the Welsh Government recognises that more could be done to facilitate Welsh as a language of the law. This will be considered as part of the Government's new overarching strategy on a million Welsh speakers by 2050. We do not believe, however that terms should be rigidly standardised – and wish to retain the same flexibility as exists in relation the English language.</p>
<p><b>Recommendation 25:</b> We recommend that the Welsh Government and the National Assembly consider, and keep under review, the practical benefits of introducing an Interpretation Act of the Assembly.</p>	<p><b>Accept</b></p>	<p>The Welsh Government has launched a policy consultation on the benefits and implications of an interpretation Act for Wales.</p>

Recommendation	Welsh Government's response	
<b>Recommendation 26:</b> The Welsh and English language versions of legislation should be capable of being viewed side by side on legislation.gov.uk.	<b>Accept in principle</b>	The Welsh Government sees merit in recommendations 26, 27, 28 and 30 but The National Archives (TNA) is responsible for the operation of legislation.gov.uk and improvements and developments with the site. Therefore the Welsh Government will work with TNA during the pilot programme to consider these matters further.
<b>Recommendation 27:</b> Online versions of legislation should identify the territorial applicability of the legislation.	<b>Accept in principle</b>	
<b>Recommendation 28:</b> We recommend that explanatory notes should be linked on legislation.gov.uk to the sections to which they relate.	<b>Accept in principle</b>	
<b>Recommendation 29:</b> The Welsh Government should work with the National Archives to continue to develop Cyfraith Cymru/Law Wales into a portal through which citizens can access legislation applying in Wales.	<b>Accept</b>	Recommendations 29, 31 and 32 are consistent with the Welsh Government's wider and longer term ambitions for the further development of Cyfraith Cymru/Law Wales. Our website currently acts as a portal to legislation.gov.uk and we would wish to expand this further, in both developing the website and in our discussions with TNA.
<b>Recommendation 30:</b> The Welsh Government should work with the National Archives to make legislation available online by subject matter.	<b>Accept in principle</b>	As noted above, the management and operation of legislation.gov.uk is a matter for TNA, but during the pilot programme the practical benefits of recommendation 30 will be considered against potential developments in relation to the Cyfraith Cymru/Law Wales website (which is organised by subject matter already).
<b>Recommendation 31:</b> The Welsh Government and the National Assembly should develop access through Cyfraith Cymru/Law Wales so that citizens can find all of the law relating to a particular code in	<b>Accept</b>	See recommendation 29 above.

Recommendation	Welsh Government's response	
one place, including primary and secondary legislation, statutory and non-statutory guidance and other sources as appropriate.		
<b>Recommendation 32:</b> Official guidance, including statutory guidance, should be available from the Cyfraith Cymru/Law Wales website	<b>Accept</b>	See recommendation 29 above.



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

## Agenda Item 6.3

Committee Chairs  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

18 August 2017

Dear Committee Chair

### **Implementation of the Wales Act 2017**

Thank you for the consideration by your Committee of the Secretary of State for Wales' consultation on the above.

Please find attached my response to the Secretary of State for Wales. In light of comments received from the Finance Committee and discussions with Welsh Government officials, I have suggested changing the day on which the reserved powers model will come into effect from 6 April 2018 to 1 April 2018, to coincide with the date on which the new devolved taxes will come on stream. The Secretary of State for Wales will specify the Principal Appointed Day in Regulations.

I will keep you informed of any further correspondence from the Secretary of State for Wales on this matter.

Yours sincerely

Elin Jones AM  
Llywydd

Enc

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

**Cynulliad Cenedlaethol Cymru**

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**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

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

Your ref: 250SUB 17  
Our ref: PO210/EJ/HG

18 August 2017

Dear Alun

Thank you for your letter dated 10 July proposing 6 April 2018 as the Principal Appointed Day on which the reserved powers model for Wales will come into effect.

I have considered the proposals you put forward, and consulted the Assembly's committees. On this basis, I agree with you that the new arrangements should come into effect in April 2018 on the same date as the new devolved taxes take effect - the Land Transaction Tax and Landfill Disposals Tax. I am advised that this will happen on 1 April 2018. I would therefore suggest that the PAD should be 1 April 2018. This would mean that the reserved powers model would come into effect on Easter Sunday.

You also indicated in your letter that your officials were considering whether the two year parliamentary session would give rise to any implications for the Legislative Consent Motions which might be required. I look forward to receiving this further information in due course.

Yours sincerely

Elin Jones AM  
Llywydd

cc Chairs of Assembly Committees

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

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Y Swyddfa Breifat

18 SEP 2017

PO 262

Private Office

Elin Jones AM  
Presiding Officer  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Ref: 414SUB 17

17<sup>fed</sup> September 2017

**Wales Act 2017: Principal Appointed Day (PAD)**

Further to your letter of 18 August, I am writing to confirm that I am content for the Principal Appointed Day (PAD) to be the 1 April 2018. I have instructed my officials to proceed on that basis. They will of course work closely with your officials to ensure a smooth transition to the new devolution settlement.

I am copying this letter to the First Minister and have written to him in similar terms.

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



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The Rt Hon Carwyn Jones AM  
First Minister of Wales  
Welsh Government  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

Ref: 414SUB 17

17 September 2017

*Alun Cairns*

**Wales Act 2017: Principal Appointed Day (PAD)**

Further to your letter of 25 August, I am writing to confirm that I am content for the Principal Appointed Day (PAD) to be the 1 April 2018. I have instructed my officials to proceed on that basis. They will of course work closely with yours to ensure a smooth transition to the new devolution settlement.

I am copying this letter to the Presiding Officer and have written to her in similar terms.

*Xairis*  
*Alun Cairns*

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



Mr Huw Irranca-Davies AM  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Mr Alun Evans  
British Academy  
10-11 Carlton House Terrace  
London  
SW1Y 5AH

25 July 2017

Dear Mr Irranca-Davies,

**Re: Constitutional and Legislative Affairs Committee: A stronger voice for Wales inquiry**

Following your letter of 25 May 2017, please find below points addressing the questions, and others, raised in your letter to us. Please accept our apologies for this late response.

The British Academy is the UK's national academy for the humanities and social sciences. Founded by Royal Charter in 1902, we are a Fellowship of the country's leading academic scholars. We exist to champion the health of our disciplines, and distribute funding to researchers at all career levels, while drawing upon the expertise of our Fellows to address some of the leading public policy challenges of the day.

While some of the points we make below are wider in scope than the three questions you posed to us, we hope they are useful in setting the wider context in which we work in Wales, and the rest of the UK.

As you may know, the British Academy works very closely with the Learned Society for Wales, and the other national academies, as well as the Royal Irish Academy and the Royal Society of Edinburgh. In our work we often draw upon the expertise and support of Fellows to respond to consultations and develop policy programmes. We have a small number of Fellows in Wales; the majority of these Fellows are also Fellows of the Learned Society for Wales, and we generally work in collaboration with them in Wales or they may take the lead in responding to consultations etc where more appropriate. We enjoy a close working relationship with the LSW, and our Chief Executive and Secretary recently travelled to Cardiff to meet with senior colleagues there, alongside our Head of Public Policy.

**Are there any barriers to engagement with the National Assembly?**

We have found no particular barriers to engaging with the National Assembly, but resource constraints mean we may only respond to relevant consultations if proactively contacted, but otherwise we usually only undertake reactive work with the Assembly owing to only having a small engagement team at the British Academy. We do have a desire to work with the Assembly, but hope you recognise as a publicly funded institution we have limited resources, so it is easier for us to coordinate on a cross-Academy basis, and through the Learned Society for Wales, as usual practice.

We do, however, hold events in Wales as part of our policy projects as and when necessary. For example, as part of our public policy project 'Where We Live Now', we held a roundtable meeting in Cardiff on 29 July 2016, with support from the LSW. This meeting focussed on health inequalities and public policy in south Wales, and was well attended by civil servants, health professionals, statisticians, academics and others, including the Wales Policy Institute.

**What is your perception of the process for engaging with committees in Cardiff compared to London, Edinburgh or Belfast?**

We do not perceive there to be material differences between the consultation processes across the four assemblies and parliaments. We have not found the process of engagement challenging; for the British Academy, we must prioritise what we choose to engage on, based on the expertise and capacity of our Fellows, and our constraints as staff working across a broad remit.

**What is your perception and expectation of inter-institutional working and relationships, and your thoughts on learning from other institutions?**

Our projects are UK wide and draw on evidence from all corners of the country. For example, our project 'Local Actions on Social Integration' received a lot of responses in its call for evidence from Wales, and one of the essays in our planned publication focuses on ESOL teacher training and working with migrants in South Wales. Last year we published a range of booklets on human rights, and these included 'Human Rights from the Perspective of Devolution in Wales' by Thomas Glyn Watkin. The British academy has previously held two joint conferences on Welsh devolution with the Learned Society of Wales, publishing reports as a result. We are always keen to learn from other institutions, and have not generally experienced anything negative from doing so. We expect our relationships to be mutually beneficial where possible, with the Academy lending expertise and resource to similar organisations where possible, and vice versa.

We also work with the other 3 UK-wide national academies - The Royal Society, the Royal Academy of Engineering, and the Academy of Medical Sciences - on events in the National Assembly on a regular basis; our materials are taken to events there where the national academies have a stall at exhibitions and science fairs, and we work collectively as a four to promote our joint calls and messages, and joint documents such as the Technopolis report and Open for Business.

Professor Sir Ian Diamond FBA FRSE FAcSS, a leading Fellow and chair of the British Academy Skills project, recently led a review of Higher Education in Wales, so at all levels our Fellows are engaging in Wales and assisting with the development of public policy. We would be delighted to talk with you in more depth at a future date if convenient.

Yours sincerely,



Alun Evans  
Chief Executive and Secretary



## THE LEARNED SOCIETY OF WALES CYMDEITHAS DDYSGEDIG CYMRU

THE NATIONAL ACADEMY — CELEBRATING SCHOLARSHIP AND SERVING THE NATION  
YR ACADEMI GENEOLAETHOL — YN DATHLU YSGOLHEICTOD A GWASANAETHU'R GENEOL

### Learned Society of Wales Response Constitutional and Legislative Affairs Committee Consultation – A Stronger Voice for Wales

September 2017

1. The [Learned Society of Wales](#) (LSW) is an independent, all-Wales, self-governing, pan-discipline educational charity that was established in 2010. As Wales's first National Academy of science and letters, the Learned Society of Wales, like similar societies in Ireland and Scotland, brings together the most successful and talented Fellows connected with Wales, for the shared purpose and common good of advancing and promoting excellence in all scholarly discipline across Wales.
2. The Learned Society of Wales welcomes this opportunity to submit comment to the Stronger Voice for Wales consultation.
3. Relations between Westminster/Whitehall and Cardiff of necessity assumed greater importance following devolution. The need for a better system of consultation and coordination grew with successive Government of Wales Acts. This development of devolution has increased the requirement for better functioning inter-governmental mechanisms.
4. In practice the process of consultation and coordination has been patchy. The lack of a coherent strategic approach to devolution hampered progress from the beginning. Additionally there was a tendency, still sometimes discernible, for parts of Whitehall to be reluctant to cede competence to devolved administrations, and even to seek to claw back powers which had been devolved. That risk is now in sharp focus in the draft EU Withdrawal Bill which by legislating for a retained EU law element would reduce and limit the exercise of powers already devolved to Wales. Additionally the public statements of some Ministers in London show scant regard or knowledge of the UK's constitutional arrangements. On the other hand devolved administrations have not always been prepared to consult more widely. Additionally Westminster serves variously as the UK and English legislature, sometimes confusing the roles.
5. A functioning system of intergovernmental relations is urgently needed. The present constitutional arrangements within the United Kingdom are complex and difficult to navigate. Moreover they are becoming increasingly sensitive as provision is made for the UK's exit from the EU. That departure raises very substantial issues as to how laws applying within the UK are to be made in areas currently within EU competence. There will be a need to preserve an internal market within the UK when we have left the EU internal market. But this will have to be ensured with due regard for the distribution of powers between the four governments and legislatures. Real economic and political interests are involved and will need to be factors considered in the formulation of policy and legal solutions.

6. Best practice will be relevant but more important is the recognition that putting in place policies to substitute for current EU policies and obligations will impose a substantial burden on the technical capacities in the four capitals. As an example, the Common Agricultural Policy will be replaced by new support arrangements in the four nations. This will be a huge task and immediately raises questions of commonalities and differences and how the arrangements in Wales will reflect Welsh interests, be part of a UK internal market, be financially sustainable, and meet the UK's evolving international obligations in new trade agreements. This example, one of many, underlines why consultation will be essential, and should extend into areas reserved for the British Government such as international trade.
7. Any mechanism for inter-governmental cooperation must be based on mutual respect and understanding and involve a real commitment by the parties to discuss challenges and seek outcomes as acceptable as possible to the parties involved. As a minimum interest should be set out, representations heard, and every effort made to find solutions. This requires a mix of the formal and informal, and at different levels. The JMC arrangements have a particular role, either to endorse policy or set strategic goals. Meetings should be more frequent and focussed to make a reality of the British Government's avowed intention, amplified in the last Queen's Speech, to have real consultations with the devolved administrations.
8. There is also a need for appropriate involvement of the devolved administrations in cross Whitehall deliberations when their interests are directly involved. Previous arrangements for determining UK positions on individual policy issues in the EU could be a model. Of course any negotiation is facilitated for a participant if the text on the table already reflects their interests. At official level and in day to day contacts there should be a flow of exchanges between officials where the voices of the devolved administrations are presented clearly and persuasively. Thus these contacts serve to lubricate and make more effective the more formal arrangements. In all cases a carefully considered and authoritative Welsh voice should set out and defend Welsh interests.

Thank you for your consideration of our response.

For further information, please contact:

Dr Sarah Morse, Senior Executive Officer, The Learned Society of Wales

[smorse@lsw.wales.ac.uk](mailto:smorse@lsw.wales.ac.uk)

[www.learnedsociety.wales](http://www.learnedsociety.wales)



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

Your ref:  
Our ref: EJ/HG

18 August 2017

Dear Huw

## **Assembly reform: disqualification, defamation, contempt of court and Assembly privilege**

As you will be aware, the Wales Act 2017 provides the Assembly with powers to determine its own internal, operational and electoral arrangements. The Commission is leading work to explore how these powers might be used to ensure that this institution is a stronger, more accessible, inclusive and forward-looking legislature that delivers effectively for the people of Wales.

Earlier this year I announced that the Commission intends to introduce legislation in 2018 to change the Assembly's name. I have also established an Expert Panel to consider matters relating to the size and electoral arrangements of the Assembly. Once the Panel has reported, the Commission will consider the full scope of the reform programme and the legislative proposals we intend to bring forward.

As part of this scoping work, the Commission is also considering whether any reform is required to the sections of the Government of Wales Act 2006 relating to the Assembly's internal arrangements which the Wales Act 2017 will bring within the Assembly's legislative competence. This includes provisions which fall within the remit of your Committee, and on which I would welcome your views.

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

## Disqualification

Sections 16 to 19 of GOWA make provision in relation to disqualification from membership of the Assembly. As part of the scoping work, my officials are giving careful consideration to the recommendations made in the Fourth Assembly's Constitutional and Legislative Affairs Committee's 2014 report on disqualification. I will write further in the autumn to seek your Committee's views on these issues.

## Defamation, contempt of court and Assembly privilege

Sections 42 and 43 of GOWA provide protections for Assembly Members from proceedings against them on the basis of defamation and, in some circumstances, contempt of court. The protection offered to Members is narrower than that offered by the principle of parliamentary privilege which operates in Westminster, although wider than the statutory protection in Scotland and Northern Ireland.

You will be aware that Assembly privilege is not a reserved matter under the Wales Act 2017. In principle, therefore, the Assembly could confer new privileges on itself, subject to the other reservations and competence tests which might apply.

I would welcome the views of your Committee on:

- the provisions in sections 42 and 43, in particular whether any legislative changes would be desirable as part of the Commission's reform work;
- whether any other reforms to the privileges of the Assembly would be desirable, and if so whether the Assembly reform legislation could be an appropriate legislative vehicle.

To ensure that your Committee's views can inform the development of the legislation, it would be helpful to receive your views on any issues which might require legislative change as part of the reform programme by the end of 2017.

Yours sincerely

Elin Jones AM  
Llywydd



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Commission on Justice in Wales**

**DATE**            **18 September 2017**

**BY**                **Carwyn Jones AM, First Minister**

During the Assembly debate in January on the Legislative Consent Motion on the Wales Bill, I referred members to the fundamental questions of justice and the jurisdiction which were left unresolved in the Bill, in spite of the Welsh Government's constructive proposals for addressing them. We argued throughout the passage of the Bill for a commission to consider the arrangements that need to be put in place to ensure we have a justice system in Wales that is fit for purpose and fit for the new devolution settlement. I said I would come back to this in coming months.

The Silk Commission made a number of carefully reasoned recommendations, based on evidence, in respect of justice, covering youth justice, the courts, probation and prisons. These remain unresolved, and there are in addition crucial issues that need to be tackled regarding the legal jurisdiction and big challenges facing the legal services sector in Wales.

I have decided to establish a Commission on Justice in Wales and I am pleased to announce that Lord Thomas of Cwmgiedd has agreed to chair the Commission when he steps down in October from his responsibilities as Lord Chief Justice of England and Wales. I will provide members with further details of the Commission's membership and terms of reference later in the autumn.

# Agenda Item 7.1

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

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# Agenda Item 8

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

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# Agenda Item 9.2

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

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