

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 27 November 2017	Committee Clerk
Meeting time: 15.00	0300 200 6362
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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

## 2 Public Health (Minimum Price for Alcohol) (Wales) Bill: Evidence from the Cabinet Secretary for Health and Social Services

15.00 (Pages 1 – 12)

Vaughan Gething AM, Cabinet Secretary for Health and Social Services

Tracey Breheny, Welsh Government

Bethan Roberts, Welsh Government

Janine Hale, Welsh Government

**CLA(5)–28–17 – Paper 1** – Letter from the Cabinet Secretary for Health and Social Services regarding policy intent

**CLA(5)–28–17 – Paper 2** – Welsh Government Written Statement Supreme Court judgment in the matter of Scotch Whisky Association and others v The Lord Advocate and another

**CLA(5)–28–17** – Legal Services briefing

[Public Health \(Minimum Price for Alcohol\) \(Wales\) Bill, as introduced](#) (PDF 126KB)

[Explanatory Memorandum](#) (2MB)



### **3 Papers to note**

#### **3.1 Welsh Government Written Statement: Update on the Commission on Justice in Wales**

(Pages 13 – 14)

CLA(5)–28–17 – Paper 3 – Welsh Government Written Statement: Update on the Commission on Justice in Wales

#### **3.2 A Stronger Voice for Wales: Letter from the First Minister**

(Pages 15 – 18)

CLA(5)–28–17 – Paper 4 – Letter from the First Minister, 20 November 2017

CLA(5)–28–17 – Paper 5 – Letter from the Chair to the First Minister, 23 October 2017

#### **3.3 European Union (Withdrawal) Bill: Letter from the Chair of the External Affairs and Additional Legislation Committee**

(Pages 19 – 21)

CLA(5)–28–17 – Paper 6 – Letter from the Chair of the External Affairs and Additional Legislation Committee to the Cabinet Secretary for Finance

#### **3.4 European Union (Withdrawal) Bill: Legislative Consent Memorandum: Letter from the Llywydd**

(Page 22)

CLA(5)–28–17 – Paper 7 – Letter from the Llywydd, 23 November 2017

#### **3.5 SL(5)144 – The Private Water Supplies (Wales) Regulations 2017: Welsh Government Response**

(Pages 23 – 25)

CLA(5)–28–17 – Paper 8 – Welsh Government response

CLA(5)–28–17 – Paper 9 – Report

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

**5 Public Health (Minimum Price for Alcohol) (Wales) Bill:  
Consideration of evidence**

**6 European Union (Withdrawal) Bill 2017**

**6.1 EU (Withdrawal) Bill: Progress of European Union (Withdrawal) Bill**

(Pages 26 – 30)

CLA(5)–28–17 – Paper 10 – Research Briefing

**6.2 EU (Withdrawal) Bill: Private meeting note of meeting with House of Lords  
Constitution Committee and Scottish Parliament Finance and Constitution  
Committee**

(Pages 31 – 32)

CLA(5)–28–17 – Paper 11 – Private meeting note of meeting with House of  
Lords Constitution Committee and Scottish Parliament Finance and  
Constitution Committee

**7 Trade Bill**

(Pages 33 – 47)

CLA(5)–28–17 – Paper 12 – Research and Legal Briefing

**8 SL(5)150 – The Agricultural Wages (Wales) Order 2017: Welsh  
Government Response**

(Pages 48 – 52)

CLA(5)–28–17 – Paper 13 – Welsh Government Response

CLA(5)–28–17 – Paper 14 – Committee Report

Our ref MA P L RE 607 17

Dai Lloyd AM  
Chair  
Health, Social Care and Sport Committee  
National Assembly for Wales  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

23 October 2017

Dear Dai,

**Public Health (Minimum Price for Alcohol) (Wales) Bill**

Following the introduction of the Public Health (Minimum Price for Alcohol) (Wales) Bill into the National Assembly for Wales today, please find attached a copy of the Statement of Policy Intent for Subordinate Legislation to be made under the Bill. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

*Rebecca*

**Rebecca Evans AC/AM**  
Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol  
Minister for Social Services and Public Health

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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.



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Supreme Court judgment in the matter of *Scotch Whisky Association and others v The Lord Advocate and another*

**DATE** 15 November 2017

**BY** Vaughan Gething, Cabinet Secretary for Health and Social Services

The Welsh Government has been closely monitoring developments in the long-running legal case surrounding the Scottish minimum pricing legislation and is delighted that the Supreme Court has today issued its unanimous judgment dismissing the appeal brought by the Scotch Whisky Association and others and upholding the Scottish legislation.

The judgment by the Supreme Court unanimously upholds the Court of Session's finding that the introduction of a minimum price for alcohol in Scotland is compatible with EU law. It considers that minimum pricing is a proportionate means of addressing alcohol related harm. The judgment confirms the question of where the balance ought to be struck between protecting health and trade matters is a matter for the devolved, democratically-elected legislature to decide and states, in the clearest terms, that the courts should not second-guess the value which a domestic legislature puts on health.

Alcohol-related harm is a significant public health problem in Wales. Tackling excessive alcohol consumption is a priority for this Welsh Government. Figures recently published show that in 2016, there were 504 alcohol-related deaths in Wales, all of which were avoidable.

As part of our overall approach to tackling alcohol-related harm, we have long recognised that action to combat the availability of cheap and high-strength alcohol has been missing in our strategy, which is why we introduced the Public Health (Minimum Price for Alcohol) (Wales) Bill – a piece of legislation, which is specifically concerned with the protection of life and health.

The Welsh Government will now consider any detailed implications of the judgment for the Public Health (Minimum Price for Alcohol) (Wales) Bill, which was introduced to the National Assembly for Wales on 23 October. In the meantime, we welcome this clear, unanimous judgment that minimum pricing is an appropriate and proportionate means of tackling hazardous and harmful drinking.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **Update on the Commission on Justice in Wales**

**DATE**            **20 November 2017**

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

On 18 September I informed members I had decided to establish a Commission on Justice in Wales that would be chaired by Lord Thomas of Cwmgiedd when he stepped down in October from his responsibilities as Lord Chief Justice of England and Wales; and would provide members with details of the Commission's membership and terms of reference later in the autumn.

I am pleased to announce the other members of the Commission and its terms of reference as follows:

**Membership**

Simon Davies  
Professor Elwen Evans QC  
Dr Nerys Llewelyn Jones  
Juliet Lyon CBE  
Sarah Payne CBE  
Professor Rick Rawlings  
Peter Vaughan QPM CStJ DL  
Sir Wyn Williams

**Terms of reference**

To review the operation of the justice system in Wales and set a long term vision for its future, with a view to:

- promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation;



- ensuring that the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as distinct issues that arise in Wales;
- promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales.

It is expected the Commission will begin its work in December and will publish a report of its findings and recommendations during the course of 2019.

A link to the biographical details of the members is attached for information.

<http://gov.wales/docs/legislation/justice/171120-membership-en.pdf>

Ein cyf/Our ref: MA-P/FM/4067/17

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales

20<sup>th</sup> November 2017

Dear Mick

I am writing in response to a letter from your predecessor dated 23 October, relating to your Committee's inquiry 'A Stronger Voice for Wales'.

We set out our views on the operation of the Joint Ministerial Committee structures in 'Brexit and Devolution' which we published in June this year. It remains our view that the JMC's role and working arrangements are inadequate for the new challenges we face, and that the UK's inter-governmental machinery must be reformed with a new UK Council of Ministers, served by an independent secretariat, and supported by a dispute resolution mechanism.

In the meantime, we want to see a step change in the way in which JMC operates. It is right to acknowledge that October's JMC (EN) was more positive in tone than has hitherto been the case. The four administrations were able to agree a set of principles for the development of the UK frameworks, which we have always recognised will be essential if we are to ensure that no new barriers to the effective free movement of goods and services within the UK are created as a result of EU withdrawal. We now expect to see this progress maintained with regular JMC (EN) meetings which are genuinely collaborative in nature, and we also need a further meeting of JMC(P), as we approach the anniversary of the last meeting which we hosted in Cardiff. As matters go forward, I anticipate that there will be regular reporting to the Assembly and/or its Committees on the outcomes of JMC(EN) and JMC(P) meetings.

Looking ahead to the longer term challenges of how the Devolved Administrations and the UK Government will relate to each other and work constructively outside the EU, it is clear to me that the cumulative effect of the Frameworks we intend to agree will inevitably lead to more substantive inter-governmental relations within the UK. We will need to significantly rethink how we conduct business on matters where there are common areas of interest, both in respect of devolved matters where there is a collective UK interest, and matters which are non-devolved but in respect of which the Devolved Administrations have

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

legitimate interests. We set out our thoughts on these issues in 'Brexit and Devolution', but we emphasised that neither we nor anyone else has a monopoly on good ideas, and it is now vital that we have an open discussion about how the future relations within the UK should look. I look forward to receiving the views of the Committee on these matters.

Yours sincerely

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

**CARWYN JONES**

Rt Hon Carwyn Jones AM  
First Minister

23 October 2017

Dear First Minister

I am writing in relation to the Constitutional and Legislative Affairs Committee's inquiry on 'A Stronger Voice for Wales'. I am very grateful for the evidence you provided in relation to this inquiry. We are currently in the stages of drafting our report and aim to publish this over the next few weeks.

One area of interest in considering the effectiveness of intergovernmental relations is the mechanisms that support this, and in particular the Joint Ministerial Committee (JMC). We are aware of a recently established written agreement between the Scottish Parliament and Scottish Government. The Written Agreement represents the agreed position on the information the Scottish Government will, where appropriate, provide the Scottish Parliament. One specific outcome from this is following every meeting of the JMC, the Scottish First Minister will write to the Scottish Parliament's Finance and Constitution Committee to report on the outcomes of the meeting, along with any actions for the Scottish Government and a copy of the Joint Communique. This agreement is something we will be considering carefully as part of our report.

I would be grateful if you were able to provide us with your thoughts on how JMCs are functioning generally post the Wales Act 2017. I would also be interested to know how you feel the meeting is evolving, if at all, as we move deeper into negotiations around the UK exiting the European Union.

I'm certain your insight will prove very useful and I look forward to hearing from you.

Yours sincerely

*Huw Irranca-Davies*



**Huw Irranca-Davies**

Chair



**Mr Mark Drakeford AM**  
Cabinet Secretary for Finance  
Welsh Government

21 November 2017

Dear Mark

### **Common UK policy frameworks: “deep dive” exercises**

Thank you for attending the External Affairs and Additional Legislation Committee’s meeting yesterday.

At the meeting, committee members asked you questions about the development of common UK policy frameworks.

You explained that the Welsh, Scottish and UK Governments are jointly undertaking three “deep dives” to explore the feasibility of agreeing common UK policy frameworks in relation to agriculture; justice and public health. You stated that each of these would involve two-days of meetings and that such meetings in relation to the ‘deep dive’ on agriculture had already taken place.

The Committee believes that this significant process must also be subject to appropriate scrutiny.

For the agriculture “deep dive”, will you provide further details to the committee, including:

- terms of reference for this exercise;
- names and titles of those present at the two-days of meetings;
- dates of the meetings;



- outputs from the meetings and the “deep dive” (e.g. reports, draft text, minutes or similar); and
- a summary of any decisions taken, including the next steps agreed.

In terms of the public health “deep dive”, can you please provide: details of when meetings are planned; the terms of reference that have been agreed; and who you expect to be in attendance.

You explained that the justice “deep dive” is more a bilateral exercise between the Scottish and UK Governments. I would like to request details of when this exercise is to be undertaken and how the Welsh Government is to be involved.

I am sure you would agree that the pace with which this process is moving poses some challenges for the scrutiny process – particularly as we are only weeks away from the next JMC (EN) meeting. The support of the Welsh Government and its willingness to ensure such scrutiny is achieved is welcome.

In terms of the agenda for the next JMC (EN) meeting, I would hope that you are able to share this with the Committee as soon as it is confirmed. In particular, I would like to know whether you foresee any decisions being taken on common UK policy frameworks or the EU (Withdrawal) Bill at this meeting.

The transparency of these inter-governmental arrangements is important – a point that has been made in clear terms to the Committee by its stakeholders. I intend to write to you separately with a broader request regarding the level of information the Committee will need in future to effectively scrutinise these Brexit-related inter-governmental processes.

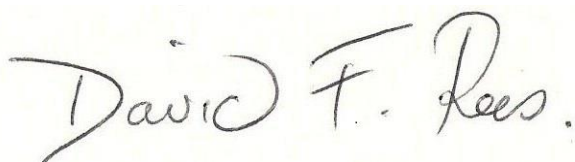
As most of the above information is likely to be in your possession already, I would be grateful for a swift response. If at all possible, I would like to include it in the Committee’s meeting papers for 4 December 2017. To that end, I would need a response by 29 November 2017.



I am copying this letter to Mike Hedges AM, Chair of the Climate Change, Environment and Rural Affairs Committee, Dr Dai Lloyd AM, Chair of the Health and Social Services Committee and Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee.

Thank you for considering this request. I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large 'D' and 'R'.

**David Rees AM**

Chair of the External Affairs and Additional Legislation Committee





David Rees AM

Chair, External Affairs and Additional Legislation Committee

23 November 2017

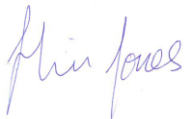
Dear David,

Business Managers discussed at Business Committee on 21 November 2017 your letter to me of 17 November in which you requested an extension of the deadline for reporting on the European Union (Withdrawal) Bill LCM to 19 January 2018. Business Managers agreed that their preference would be to extend the deadline to 13 December 2017, to allow for a Plenary debate early in the new year if required, and to avoid the committee reports being overtaken by events. The Government indicated that they would look to table further LCMs on new substantive amendments as necessary.

I would be grateful if you could consider this proposal and provide feedback in time for Business Committee to return to this matter on 28 November if necessary.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee, to which the revised deadline will also apply.

Yours sincerely,



**Elin Jones AM**

Y Llywydd and Chair of the Business Committee

cc Chair, Constitutional and Legislative Affairs Committee



# Agenda Item 3.5

## **The Private Water Supplies (Wales) Regulations 2017**

The draft Regulations needed to be changed in response to issues raised in response to the consultation. This led to some delay in finalising the regulations. The Regulations were laid in Wales on the 30<sup>th</sup> October 2017, Defra have not yet laid their Regulations.”

# SL(5)144 - The Private Water Supplies (Wales) Regulations 2017.

## Background and Purpose

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These Regulations revoke and replace the Private Water Supply (Wales) Regulations 2010 transposing additional requirements of Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787.

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption and lay down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

These Regulations apply to private water supplies (as defined in regulation 2) intended for human Consumption.

Part 1 of the Regulations makes provision in relation to water standards for private water supplies.

Part 2 of the Regulations places a duty on local authorities to monitor private water supplies and to ensure that each sample taken is analysed in a prescribed manner.

## 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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Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. These Regulations are made under section 2(2) of the European Communities Act 1972. The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to these Regulations. The negative procedure has been chosen, which seems appropriate given that they do not amend any provision of an Assembly Act or Measure. [21.3 (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]
2. These Regulations are made to ensure the transposition of Commission Directive 2015/1787. The transposition deadline for this Directive was 27<sup>th</sup> October 2017. Late implementation of a directive can give rise to infraction proceedings. The European Commission is responsible for ensuring that Community law is correctly applied. The Commission has the option of commencing infringement proceedings under Article 258 (ex Article 226 TEC) of the Treaty on the Functioning of the European Union whenever it considers that a Member State has breached Community law. Given the very slight delay this is highly unlikely. However the Welsh Government have not given reasons for the late implementation of Directive 2015/1787. [21.3 (iv) that it inappropriately implements European Union legislation.]



## Implications arising from exiting the European Union

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The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

## Government Response

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A government response is required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**14 November 2017**



# Agenda Item 6.1

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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