

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – The Senedd

Meeting date: 14 May 2018

Meeting time: 11.45

For further information contact:

Sarah Sargent

Committee Clerk

0300 200 6362

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- 1 Introduction, apologies, substitutions and declarations of interest**
11.45

- 2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**
11.45 (Pages 1 – 4)
CLA(5)–14–18 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments
 - 2.1 SL(5)210 – The Building (Amendment) (Wales) Regulations 2018**

 - 2.2 SL(5)211 – The Town and Country Planning (General Permitted Development)
(Amendment) (Wales) Order 2018**

 - 2.3 SL(5)212 – The Building Regulations &c. (Amendment) (Excepted Energy
Buildings) (Wales) Regulations 2018**

- 3 Papers to note**
11.50
 - 3.1 SL(5)208 – The Agricultural Wages (Wales) Order 2018**
(Pages 5 – 6)
CLA(5)–14–18 – Paper 2 – Letter from the Chair of the Climate Change,
Environment and Rural Affairs Committee to the Cabinet Secretary for Energy,
Planning and Rural Affairs



3.2 Scrutiny of regulations made under the EU (Withdrawal) Bill

(Pages 7 – 8)

CLA(5)–14–18 – Paper 3 – Letter from the Llywydd to the First Minister

4 Correspondence with the UK Government – Civil Service

(Pages 9 – 15)

CLA(5)–14–18 – Paper 4 – Letter from Chloe Smith MP, Minister for the Constitution

CLA(5)–14–18 – Paper 5 – Letter to Chloe Smith MP, Minister for the Constitution

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

11.55

6 Supplementary Legislative Consent Memorandum: EU (Withdrawal) Bill: Draft Report

(Pages 16 – 28)

CLA(5)–14–18 – Paper 6 – Draft Report

Break until 1.30pm

Public session

7 Draft Legislation (Wales) Bill: Evidence session with the Counsel General

13.30

(Pages 29 – 38)

Jeremy Miles AM, Counsel General;

Dylan Hughes, First Legislative Counsel, Welsh Government

Neil Martin, Office of the Legislative Counsel, Welsh Government.

CLA(5)–14–18 – Briefing

[Welsh Government Consultation: Draft Legislation \(Wales\) Bill](#) (752KB)

[Draft Legislation \(Wales\) Bill](#) (155KB)

8 Childcare Funding (Wales) Bill: Evidence session with the Member in Charge

14.30

(Pages 39 – 50)

Huw Irranca-Davies AM, Minister for Children and Social Care;

Owain Lloyd, Welsh Government;

Tracey Hull, Welsh Government

CLA(5)–14–18 – Briefing

[Childcare Funding \(Wales\) Bill, as introduced](#) (PDF 79KB)

[Explanatory Memorandum](#) (PDF 1MB)

[Statement of Policy Intent](#) (PDF 229KB)

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

15.30

10 Draft Legislation (Wales) Bill: Consideration of evidence

11 Childcare Funding (Wales) Bill: Consideration of evidence

12 Forward Work programme

(Pages 51 – 53)

CLA(5)–14–18 – Paper 7 – Forward work programme

13 Correspondence from the Business Committee

(Pages 54 – 58)

CLA(5)-14-18 - Paper 8 - Letter from the Business Committee

CLA(5)-14-18 - Paper 9 - Background paper

Date of the next meeting

21 May 2018

Statutory Instruments with Clear Reports

14 May 2018

SL(5)210 – The Building (Amendment) (Wales) Regulations 2018

Procedure: Negative

These Regulations amend the Building Regulations 2010 (“the 2010 Regulations”).

Regulation 3(1) amends regulation 36 (water efficiency of new dwellings) to introduce a new requirement that where a dwelling is erected the potential consumption of wholesome water by persons occupying the dwelling must not exceed 110 litres per person per day. The current requirement of 125 litres remains where there is a material change of use such that a building is used as a dwelling or contains a flat, in either case where previously it did not.

Regulation 3(3) adds paragraph G2A (water efficiency of new buildings other than dwellings and healthcare buildings) to Part G (sanitation, hot water safety and water efficiency) of Schedule 1 (requirements relating to building work). The new requirement does not apply to dwellings or healthcare buildings.

Regulation 4 has the effect of designating regulations 23 (requirements for the renovation or replacement of thermal elements), 25B (nearly zero-energy requirements for new buildings) and 26 (CO₂ emission rates for new buildings) for the purposes of section 35 of the Building Act 1984 (penalty for contravening building regulations) in so far as those regulations apply to Crown buildings or to building work carried out or proposed to be carried out by Crown authorities.

Regulation 5 adds Part Q (security) to Schedule 1. This new requirement only applies to the erection of dwellings.



Regulation 6 contains transitional provision.

Some minor and consequential changes have also been made.

Parent Act: The Building Act 1984

Date Made: 30 April 2018

Date Laid: 04 May 2018

Coming into force date: 01 November 2018

SL(5)211 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2018

Procedure: Negative

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”) in relation to Wales. Article 3 of and Schedule 2 to the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

Class A of Part 24 of Schedule 2 to the GPDO permits certain development by electronic communications code operators provided it does not fall within A.1 (development not permitted) and subject to any relevant conditions and limitations in A.2 and A.3.

Paragraph A.2(4A) sets out conditions in relation to the construction, installation or replacement of telegraph poles, cabinets or lines for fixed line broadband services in relation to categories of land identified in article 1(5) of and Part 2 of Schedule 1 to the GPDO. If all the relevant conditions are satisfied, such development does not require prior approval under paragraph A.3. One of those conditions is that the development must be completed on or before 30 May 2018.

Article 2 of this Order extends that date to 30 May 2019



Parent Act: the Town and Country Planning Act 1990

Date Made: 02 May 2018

Date Laid: 04 May 2018

Coming into force date: 30 May 2018

SL(5)212 – The Building Regulations &c. (Amendment) (Excepted Energy Buildings) (Wales) Regulations 2018

Procedure: Negative

These Regulations amend the Building Regulations 2010 (“the Building Regulations”) and the Building (Approved Inspectors etc.) Regulations 2010 (“the Approved Inspectors Regulations”) in relation to excepted energy buildings in Wales.

Functions under the Building Act 1984 (“the 1984 Act”) to make building regulations and associated matters were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 which came into force on 31 December 2011. An exclusion from the transfer was made in relation to “excepted energy buildings” (as defined in that Order).

Amendments to the Building Regulations and the Approved Inspectors Regulations made by the Secretary of State from 31 December 2011 applied in relation to England and to excepted energy buildings in Wales.

Amendments to those Regulations made by the Welsh Ministers from 31 December 2011 applied in relation to Wales other than to excepted energy buildings.

Section 54 of the Wales Act 2017 removes the exclusion in relation to excepted energy buildings by making the necessary provision for the transfer of functions under the 1984 Act for that category of buildings from 1 April 2018.

The effect of the amendments made by these Regulations is to bring provisions in the Building Regulations and Approved Inspectors Regulations



in relation to excepted energy buildings in Wales in line with provisions applying to other buildings in Wales.

Parent Act: European Communities Act 1972; The Building Act 1984

Date Made: 30 April 2018

Date Laid: 04 May 2018

Coming into force date: 08 June 2018



Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
Welsh Government

30 April 2018

Dear Lesley,

Agricultural Wages (Wales) Order 2018

The Committee discussed this Order at its meeting on 26 April 2018. Members of the Committee suggested I should write to you to seek further information about two matters.

Firstly, there appears to be a lack of clarity in relation to the exact amount which employers are entitled to deduct from an agricultural worker's minimum wage for accommodation. Could you provide further information on this matter and explain how you plan to address any potential lack of clarity with employers and employees who are affected by the Order?

Secondly, could you explain to the Committee the reasons why this Order was laid so close to the coming into force date?

I understand the Constitutional and Legislative Affairs Committee has also considered this Order and has raised similar issues.



The Committee has agreed to undertake a short review of this subject next year and I will write to you in due course to seek further information to inform that review.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style with a large initial 'M'.

Mike Hedges AM

Chair of Climate Change, Rural Affairs and Environment Committee





Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Agenda Item 3.2

Rt Hon Carwyn Jones AM
First Minister of Wales
National Assembly for Wales
Cardiff Bay
CF99 1NA

01 May 2018

Dear Carwyn,

On 7 March the Assembly unanimously agreed to endorse the recommendations of the Constitutional and Legislative Affairs (CLA) Committee to amend the UK Government's EU (Withdrawal) Bill to include specific subordinate legislation scrutiny arrangements for the Assembly as set out by the Committee. On 22 March, I wrote to the Secretary of State for Wales drawing his attention to the Assembly's resolution which sets out the Assembly's position on the amendments required to the Bill in this area.

As you will be aware, this included the recommendation that the sifting committee recommendations should be binding, save where the Assembly resolves otherwise. I am therefore concerned that you chose subsequently to communicate directly to the UK Government a Welsh Government view which differed from that agreed by resolution of the Assembly.

This is especially disappointing as the Welsh Government rightly acknowledged that such matters are for the Assembly itself to decide, and chose neither to amend nor to vote against the motion which resulted in that resolution.

I fully support the views expressed by the CLA Committee about this issue in correspondence to both of us and I note the strength of feeling expressed by Members of the Committee in the Chamber during the Chair's Statement on this matter on 25 April. I do, however, acknowledge and welcome your apology to the Committee in your letter of the same date.

It would aid clarity and transparency in future, for Members, stakeholders and the public, if the Welsh Government's support or otherwise for proposed resolutions of the Assembly is reflected in how it votes on these matters.

On the substantive matter of the Assembly's position on the sifting committee procedure, I would expect the Government to support, subject to the final text of the Withdrawal Bill and the further detailed work the CLA Committee is currently

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Elin Jones AM, Presiding Officer

National Assembly for Wales

undertaking, changes to Standing Orders that mean the practical application of any new procedure does reflect the recommendations the Assembly endorsed.

I am copying this letter to the Chair of the CLA Committee.

Yours sincerely,

Elin Jones AM
Llywydd

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

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Our Ref: MFC/1274

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

National Assembly for Wales

Cardiff Bay

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10 May 2018

Dear Chair,

Thank you for your letter of 26 April 2018 to the Minister for the Constitution regarding the UK Government's understanding of devolution. We are writing with a joint response to your request.

We agree that it is critical that UK civil servants understand the unique nature of the devolution settlements. The *Devolution and You* programme addresses this need through a cross-administration campaign led by the UK Government in partnership with the Welsh and Scottish Governments. Close collaboration with Welsh and Scottish Government colleagues has led to the development of quality assured training materials which are utilised across Whitehall. Devolution learning is promoted across the UK Government, through online learning, departmental workshops and induction programmes. Over 2000 civil servants have taken part in the *Devolution and You* programme in 2017, in addition to the many training programs operated by UK Government departments. *Devolution and You* also provides civil service interchange opportunities through the One Civil Service Interchange programme, which is now in its third year. Interchange provides a unique opportunity for civil servants of all administrations to immerse themselves in the structures and cultures of another administration, building their network across the Civil Service and improving their confidence in engaging across different administrations. We are confident that departments and the UK Government as a whole understand the new Welsh devolution settlement. The Wales Office worked intensively with all UK Government departments to develop the Wales Bill, including working through particular reservations with individual departments following publication of the draft Bill. We have been raising awareness of the new devolution settlement through the *Devolution and You* programme since the Wales Act was passed in January 2017. The Wales Office is also rolling out a programme of bespoke training sessions across Whitehall in the coming weeks, specifically covering the new devolution settlement

in Wales so that as many officials as possible across departments are aware of the key changes that took place on 1 April. There will be teams and individuals within departments who would benefit from further training sessions about the new settlement and our departments are targeting our engagement to particular teams, such as those working on policy areas with regular engagement with the Welsh Government or Bill teams who's Bills are likely to involve a Legislative Consent Motion.

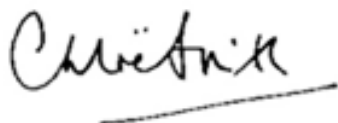
In recent months we have also worked extensively with officials across UK Government departments, and consulted officials in the Welsh Government and Assembly Commission, to develop specific guidance for UK Government departments regarding working with the new reserved powers model, Devolution Guidance Note 18. This guidance has been published on GOV.UK. We will continue to prioritise this work through the *Devolution and You* programme and targeted interventions on the Wales Act 2017 in particular.

In relation to representation of the Wales Office in the UK Government, the Wales Office is a Department of State in its own right and the Director is the Accounting Officer for the Department. The Secretary of State for Wales remains accountable to the Prime Minister alone and through attendance at Cabinet and EU Exit Committee meetings can feed the views of stakeholders in Wales directly into the heart of Government.

As a part of UK Governance Group, the Wales Office is represented at Permanent Secretary meetings by Philip Rycroft, Permanent Secretary at the Department for Exiting the European Union. This role acts as an important link, ensuring coordination of constitutional matters across the UK and especially the UK's exit from the European Union. The need to coordinate our policy and approach makes it only sensible that there is a UK Governance Group, comprising parts of the Cabinet Office, the Wales Office, Scotland Office and Office of the Advocate General for Scotland. This enables the departments to work together on challenging cross-cutting issues and allows for greater coordination and cohesion of policy. This arrangement in no way dilutes or deflects the purpose and priorities of the Wales Office: it remains Wales's voice within the UK Government and the UK Government's voice in Wales.

Finally, we believe the rationale for One Civil Service supporting the UK Government, the Welsh Government and the Scottish Government remains strong. Civil servants working for all of our administrations carry out their roles to the highest standard and in accordance with the Civil Service Code's core values: integrity, honesty, objectivity and impartiality. By supporting the UK Government in matters which affect all of the UK as well as in relation to one or more of its constituent parts, civil servants working for UK Government departments can ensure that it works to benefit people in every part of our country.

Yours sincerely,



CHLOE SMITH MP
Minister for the Constitution



RT HON ALUN CAIRNS MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Chloe Smith MP
Parliamentary Secretary (Minister for the Constitution)
Cabinet Office

26 April 2018

Dear Minister

Understanding of devolution

On 2 February 2018 we published our report **UK governance post-Brexit**. A summary report of the evidence will be published shortly.

Our report made nine recommendations; the first four recommendations concern strengthening the existing Joint Ministerial Committee (JMC) followed by a more fundamental reform to create a decision-making UK Council with an independent dispute resolution, arbitration and adjudication mechanism.

Our report also considered the understanding of devolution by civil servants in Whitehall and indicated that we would write to the UK Government to seek clarification on how devolution is supported across Whitehall.

Many witnesses to our inquiry highlighted the poor knowledge and understanding of devolution that exists in parts of Whitehall, despite some laudable efforts to remedy the situation by successive administrations.

One of the drivers for our inquiry was our experience of, and a desire to learn lessons from, the UK Government's handling of the Wales Bill (our summary report will identify some of the evidence we heard on this issue). We had become concerned that Whitehall departments were able to exert too much influence over the architecture of devolution, despite partial and inconsistent understanding and knowledge. In our view this was the root cause of the problems that surrounded the draft Wales Bill and the Bill itself, which



meant that our extensive work on this legislation was largely focused on highlighting problems and identifying potential solutions, rather than contributing positively as part of a constructive constitutional dialogue.

We recognise that training is made available to civil servants on devolution. However it was surprising to hear in our evidence sessions that there is some way to go before there is a clear understanding within the civil service of the way in which powers are now held in the different nations of the UK. As if to emphasise this point, we were told that training on the new reserved powers model under the *Wales Act 2017* would be rolled out across the Civil Service prior to the Act's introduction. Given the central role of Whitehall departments in shaping the Act, these comments added to our sense that many Whitehall departments may have been making decisions on reserving powers without a clear understanding and knowledge of devolution, or the implications of the decisions that they were making.

Regrettably, the legislative outcome is that in our view the *Wales Act 2017* is an unnecessarily complex and restrictive settlement.

The lack of understanding about devolution was highlighted to us as recently as this week with the publication of a supplementary memorandum concerning the delegated powers in the European Union (Withdrawal) Bill relating to amendments tabled by the UK Government on 23 April. Paragraph 28 of the memorandum concerning the sifting of statutory instruments made under the Schedule 2 powers by the Welsh Ministers appears to confuse the roles of the National Assembly and Welsh Government as legislature and executive, stating:

“The UK Government has consulted the devolved administrations on where additional scrutiny requirements applied to UK ministers in the Bill should be extended to the corresponding powers for devolved authorities. The Welsh Government, having sought the views of the National Assembly for Wales, has requested the sifting committee procedure should apply where the Welsh Ministers lay negative instruments under their Schedule 2 powers.”

This text appeared despite the UK Government receiving notification of the National Assembly's formal position on these issues in a letter from the Llywydd on 22 March.



In light of our concerns, I would welcome clarification on the following points:

- The new devolution settlement came into force on 1 April. Are you satisfied that all civil service departments are fully conversant with the new reserved powers model in the *Wales Act 2017*?
- Recommendation 4 of our report included a call for Devolution Guidance Notes to be subject to a thorough overhaul and public consultation. In the meantime, it would be helpful to know the status of any revised Devolution Guidance Note that accompanies the new reserved powers model. The existing Devolution Guidance Note 9 was intended to help Whitehall departments have an understanding of the conferred powers model so that UK Government Bills were developed with devolution in mind. What guidance has been available to Whitehall departments over the last few months in respect of developing Bills on the basis that devolution in Wales would be moving to a reserved powers model?

Our observations not only influenced our recommendations advocating reform of the JMC, but also suggest that the civil service machinery that supports UK governance needs to adapt and change to the new UK constitutional position that will emerge as we leave the European Union.

In our report we said that the internal Civil Service apparatus supporting devolution as described to us appears complex and muddled. In order to help improve our understanding of how the civil service machinery works, it would be helpful to have your observations on the following:

- The staffing structure does not appear to mirror the political structure, with both Wales and Scotland having Secretaries of State but not Permanent Secretaries, while Northern Ireland has both. Why is this the case?
- What are your observations on our view that it is problematic for the most senior official in the Wales Office with the most direct contact with the Secretary of State for Wales and potentially knowledge and understanding of devolution, not to be involved in important discussions at Permanent Secretary level that may impact on Wales?
- Whether it is appropriate for the Head of UK Governance Group (with responsibilities for Wales and Scotland) and Permanent Secretary at the Department for Exiting the EU to be the person to whom the Head of the Wales Office is ultimately accountable? Is there a danger of blurring the lines of accountability and how are conflicts of interest resolved?



Another theme that emerged in our work and which is relevant to understanding of governance in the UK is that the Civil Service supports the UK Government in its role as the executive for the UK and, in devolved areas, England. We would welcome your observations on this anomaly and what plans the UK Government has to address it post-Brexit.

I am copying this letter to Rt Hon Alun Cairns MP, the Secretary of State for Wales and Philip Rycroft CB, Head of UK Governance Group and Permanent Secretary at the Department for Exiting the European Union.

I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

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



Agenda Item 6

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

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Agenda Item 13

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