

Legislation, Justice and Constitution Committee

Monitoring Report: March 2023

Contents

Introduction.....	3
1. UK-EU relations	3
2. Intergovernmental relations.....	4
3. UK Internal Market Act	5
4. Common frameworks	6
5. Legislation.....	6
5.1. Welsh Government legislation	6
5.2. Law Commission Annual Report	7
5.3. Scottish legislation	7
5.4. UK legislation	7
6. Legislative consent	8
7. Constitution.....	9
7.1. Independent Commission on the Constitutional Future of Wales	9
7.2. Scottish leadership election	9
8. Senedd reform and elections	9
9. Justice	10
9.1. Wales	10



9.2. UK Government.....11

10. Annex: Glossary12

Introduction

The Legislation, Justice and Constitution Committee has a broad remit covering a wide range of areas. This monitoring report is intended to provide Members of the Committee with an update on key policy developments related to the Committee's remit. The report covers the period to **15 March 2023**.

The Committee will consider these issues and any actions that it wishes to take in response. This report is being published to inform stakeholders of some of the issues currently under consideration by the Committee.

A glossary of key terms is included as an Annex.

1. UK-EU relations

UK and EU agree changes to the Northern Ireland Protocol in the Windsor Framework

On 27 February, the UK and EU introduced the Windsor Framework ("the Framework") to change parts of the Northern Ireland Protocol. The main changes relate to the Protocol's governance, trade and Northern Ireland's place in the UK but include other important related developments.

The First Minister welcomed the Framework as a "step forward" in UK-EU relations and that he hopes it will ease barriers to trade at Welsh ports.

As a result of the Framework:

- The UK Government will not proceed with the Northern Ireland Protocol Bill, for which the Senedd withheld consent in November;
- The EU will not proceed with the **seven infringement proceedings** it has against the UK, shown in this table by Senedd Research; and
- The EU will proceed with granting the **UK access to EU science and research programmes**, including Horizon. European Commission President, Ursula von der Leyen, said this would happen "as soon as the Framework is implemented".

EU warns that the UK's new immigration Bill "violates international law"

The EU's Home Affairs Commissioner, Ylva Johansson, has told Home Secretary Suella Braverman that the UK Government's Illegal Migration Bill violates

international law. The Bill would result in the detention and deportation of arrivals to the UK, including to Rwanda. The United Nations says the Bill as introduced breaches the Refugee Convention.

Human rights are embedded in the new UK-EU relationship so that their cooperation is contingent on 'respect for human rights'. This applies to the TCA and to future UK-EU agreements.

The European Convention on Human Rights (ECHR) plays an important role in the TCA and emphasis is placed on giving effect to ECHR rights and freedoms domestically. For the UK, this is a clear reference to the Human Rights Act 1998 (HRA). Among some of the TCA's conditions is that, if the UK or EU denounces the ECHR or some of its Protocols, Part 3 on law enforcement and judicial cooperation can be terminated within 15 days.

More information is available in this Senedd Research guide to the TCA and human rights.

2. Intergovernmental relations

Senedd Research analysis **has shown that around half of the portfolio level interministerial groups (IMGs) outlined in the January 2022 intergovernmental agreement are yet to meet or be properly established.**

Of the groups that have been established, the IMG on Environment, Food and Rural Affairs is the most active. It is also the group that publishes the most detailed communiques. Other IMGs, such as the IMG on Net Zero, have very low commune word counts on policy detail, suggesting that intergovernmental relations in some areas is still being conducted on an informal, rather than a formal, basis.

Despite this mixed pictures of intergovernmental relations (IGR), several meetings under the IGR agreement have taken place in the period since the last Monitoring Report in January 2023. These include:

- The Counsel General and Minister for the Constitution, Mick Antoniw, chaired the third meeting of the Interministerial Standing Committee (IMSC) on 1 February. The Counsel General raised concerns at the meeting about the UK Government's approach to the Sewel Convention and retained EU law. A joint cost of living working group was also established at the meeting. A written statement from the Counsel General was published, alongside a joint communique.

- The first meeting of the IMG for Safety, Security and Migration met on 1 February. The Minister for Social Justice, Jane Hutt, attended. The meeting was chaired by the UK Home Secretary. A written statement from the Minister was published, alongside a joint communique.
- The second meeting of the IMG for Elections and Registration (see Section 8).

3. UK Internal Market Act

The Legislative Consent Motion on the Genetic Technology (Precision Breeding) Bill was not agreed by the Senedd on 17 January 2023.

The Legislation, Justice and Constitution Committee's report on the Legislative Consent Memorandum concluded that the Senedd's consent was not required for the Bill as it does not make relevant provision "in relation to Wales". The Committee agreed with the Welsh Government's analysis about the effect of the UK Internal Market Act on existing Welsh law following the changes proposed for England in this Bill but that this was outside the scope of Standing Order 29.

The Office for the Internal Market published its first report since its establishment in September 2021, which examined the impact that a proposed ban on horticultural peat in England would have on intra-UK trade.

The report, which was requested by the Secretary of State for Environment, Food and Rural Affairs, concluded that while the ban may lead to some changes in patterns of buying and selling of peat-containing compost that could have an impact on individual business, these are likely to be modest in the context of the overall market.

The Scottish Government has published correspondence relating to its request for an exclusion from the UK Internal Market Act's market access principles for its proposals to introduce a Deposit Return Scheme (DRS).

The First Minister of Scotland wrote to the Prime Minister seeking assurances that the UK Government is working towards an exclusion for the DRS scheme, following press coverage that suggested that the UK Government is not minded to agree to one. When asked about the exclusion in Parliament, the Secretary of State for Scotland noted that the bar for the UK Government to add exclusions to the UK Internal Market Act is "very high".

4. Common frameworks

Two new provisional common frameworks have been published for scrutiny by governments in the UK.

The Resources and Waste Provisional Framework was laid in the UK Parliament in December 2022. The framework covers waste prevention programmes including target setting, product environmental labelling, the use of levies or deposit return schemes, banning of specific wastes from landfill or of certain inputs from products e.g. single use plastics, resources and waste taxes and international waste shipments and is underpinned by extensive areas of retained EU law.

The UK Emissions Trading Scheme Provisional Framework was published on 28 February 2023. It sets out the framework within which decisions relating to the UK emissions trading scheme will be made.

Both frameworks are being considered by the Senedd's Climate Change, Environment and Infrastructure Committee.

5. Legislation

5.1. Welsh Government legislation

There are six Bills being considered by the Senedd, two at Stage 1, two at committee amending stage and two at post-Stage 4.

- The Environmental Protection (Single-use Plastic Products) (Wales) Bill was introduced on 20 September, and is at Post-Stage 4.
- The Social Partnership and Public Procurement (Wales) Bill was introduced on 7 June, and is at Post-Stage 4.
- The Historic Environment (Wales) Bill was introduced on 4 July, and is currently going through its Detailed Committee Consideration stage.
- The Agriculture (Wales) Bill was introduced on 26 September, and is currently at Stage 2.
- The Health Service Procurement (Wales) Bill was introduced on 13 February 2023, and is currently going through Stage 1 scrutiny.

- The **Food (Wales) Bill** was introduced as a Senedd Member Bill by Peter Fox MS on 17 November. The Bill is going through Stage 1 scrutiny.

The Minister for Climate Change is due to make a statement about the introduction of the **Environment (Air Quality and Soundscapes) (Wales) Bill** on Tuesday 21 March.

A consultation has been launched by the Welsh Government on proposals for a **Taxi and Private Hire Vehicle (Wales) Bill**.

5.2. Law Commission Annual Report

The Welsh Government published its annual report on its implementation of proposals of the Law Commission.

The report notes that the Welsh Government has not completed the implementation of any proposals during 2022-23 but progress has been made across a range of areas including consolidating planning law, reform of electoral administration and introducing legislation to ban the use of snares and glue traps.

5.3. Scottish legislation

The Scottish Government's future approach to the Gender Recognition Reform (Scotland) Bill is unclear in the wake of the First Minister's resignation (see section 7.2).

The Section 35 order from the UK Government blocked the legislation from becoming law. The three candidates running in the leadership contests have outlined differing approaches to the Bill.

5.4. UK legislation

The Joint Committee on Human Rights published its report on scrutiny of the Bill of Rights Bill.

The Committee concluded that the UK Government's proposals would create "large scale uncertainty and seriously damage people's ability to enforce their rights". The Committee called on the UK Government to "reconsider the majority of the Bill of Rights Bill" and questioned whether they should proceed with the Bill at all.

The Strikes (Minimum Service Levels) Bill completed its Commons stages on 30 January.

The Bill would confer regulation making powers on the UK Secretary of State to set minimum levels of service in respect of ‘relevant services’ during periods of strike action. The Welsh Government has been critical of the Bill. The Council General and Minister for the Constitution, Mick Antoniw, said that a number of devolved public services for which Welsh Ministers are responsible fall within the scope of the Bill, including health, education and fire and rescue services.

The Welsh Government laid an LCM for the Bill on 9 February, arguing that the consent of the Senedd was required for multiple clauses due to the impact of the Bill on devolved public services in Wales. The UK Government does not share the Welsh Government’s view on the need for Senedd consent, arguing that the Bill covers employment rights and duties and industrial relations, all of which are reserved areas of policy.

The Welsh Government are recommending the Senedd withholds consent to the Bill.

6. Legislative consent

LCMs for 13 new UK Bills have been laid since the Queen’s Speech in May 2022.

This takes the total number of LCMs and SLCMs in the Sixth Senedd to 77 across 32 UK Bills¹. The Senedd voted to not agree LCMs for the Trade (Australia and New Zealand) Bill on 31 January 2023, and the Genetic Technology (Precision Breeding) Bill on 17 January (see section 3). The Welsh Government continues to recommend the Senedd withhold its consent from all or part of three active UK Bills², including the Retained EU Law (Revocation and Reform) Bill.

The House of Lords Procedure and Privileges Committee agreed further measures to integrate knowledge of legislative consent decisions into Lords proceedings.

In a report from 6 March, the Committee outlined measures to tag Bills in the daily Order Paper document with italic text explaining decisions on legislative consent from devolved legislatures. It also established a tagging mechanism for Bills where a devolved legislature believes consent is required but the UK

¹ The Schools Bill LCM was withdrawn by the Welsh Government after the Bill was dropped by the UK Government, but it is included in these figures.

² This does not include the Northern Ireland Protocol Bill. The UK Government announced it was halting this Bill on 27 February 2023, as part of new arrangements under the Windsor Framework.

Government disagree. This is in addition to existing tagging of consent decisions in the House of Lords Business document, and the Ministerial oral update at third reading when consent is yet to be granted or is withheld.

7. Constitution

7.1. Independent Commission on the Constitutional Future of Wales

The Commission published a framework for analysing and appraising the three constitutional options set out in its interim report: entrenched devolution, a federal UK and independence.

The Commission intends to use the framework to “underpin its analysis of the implications of each option” and is welcoming views on the framework by 31 March 2023.

7.2. Scottish leadership election

The Scottish First Minister, Nicola Sturgeon, announced her resignation on 15 February.

Nominations for the leadership contest to replace the First Minister closed on 24 February, leaving three candidates: Kate Forbes, the current Cabinet Secretary for Finance and the Economy, Humza Yousaf, the current Cabinet Secretary for Health and Social Care; and Ash Regan, MSP for Edinburgh Eastern.

The ballot of SNP Members to elect the next leader will open on 13 March and close on 27 March, with the winner of the contest announced on the same day.

8. Senedd reform and elections

The second meeting of the Interministerial Group for Elections and Registration took place on 25 January.

The Counsel General and Minister for the Constitution, Mick Antoniw, attended the meeting. The Counsel General confirmed at the meeting that the consultation on the modernisation of the electoral system in Wales had concluded, having received around 200 submissions. The Welsh Government is currently reviewing the responses. Proposals in the consultation included the introduction of automatic voter registration and the removal of open registers.

The Counsel General and the Scottish Minister for Parliamentary Business, George Adam, also updated the group on progress towards implementing a new online service for absent vote applications, for example postal and proxy voting, replacing the paper based system. This new service was initially for reserved polls only under the UK Elections Act 2022, but both Ministers confirmed they have requested access to the system for devolved elections.

A consultation on draft rules which set out how elections should be run if a local authority adopts the single transferable vote (STV) electoral system was launched on 10 February.

The Local Government and Elections (Wales) Act 2021 gives local authorities the power to choose between the existing first past the post system or switch to an STV system. The Act also requires Welsh Ministers to set rules for the use of STV. No council in Wales has yet chosen to switch to STV. To do so in time for the next local government elections in 2027, a council would have to pass a motion before 15 November 2024.

9. Justice

9.1. Wales

The Minister for Social Justice has responded to the Equality and Social Justice Committee's request for information relating to racial disproportionality within the Welsh criminal justice system.

The response sets out how the Welsh Government is taking action to tackle racial disproportionality in the criminal justice system, including through the Criminal Justice Anti-Racism Action Plan for Wales and the work that the Race Disparity Evidence Unit is undertaking to improve the gathering and monitoring of data in the Welsh criminal justice system.

The Children, Young People and Education Committee took evidence from Sir Andrew McFarlane, President of the Family Division, and Mr Justice Francis, Family Division Liaison Judge for Wales, as part of their inquiry into services for care experienced children.

As part of his evidence, Mr Justice Francis set out how he ensures that judges, barristers and solicitors sitting in the Family Court in Wales are aware of the differences in the law between Wales and England.

9.2. UK Government

The Ministry of Justice (MoJ) has launched a review of the civil legal aid system.

The review will consider the system in its entirety, including how services are procured, how well the current system works for users and how civil legal aid impacts the wider justice system.

The Ministry of Justice has announced that 24 ‘Nightingale’ courtrooms, which were set up to boost capacity during the Coronavirus pandemic, will remain open for another year.

The 24 courtrooms are across 11 sites in England and Wales, including a Crown Court room at the Civic Centre in Swansea.

Five year projections for the prison population of England and Wales have been published.

The projections show that the prison population of England and Wales is projected to increase, with a central estimate of 94,400 by March 2025, compared to a population of 83,687 in February 2023. The populations of adult males, adult females, children and the over-50s are all projected to increase.

The Ministry of Justice has published its Welsh Language Scheme Annual Monitoring report for 2021-22.














The report highlights progress in delivering the MoJ’s actions across policy development and implementation, recruitment, and provision of services to the public.

A consultation has been launched by the Ministry of Justice on reforms to the Help with Fees scheme.

The scheme subsidises the cost of court and tribunal fees for individuals on low incomes and with little to no savings. The consultation includes proposals to change eligibility for the scheme, which the MoJ says will make the scheme “more generous, target financial assistance at those most in need, whilst providing value for money for the taxpayer”.

10. Annex: Glossary

Post-Brexit framework: key terms

International obligations		International duties and commitments of the UK
Trade agreements		Establish new trading arrangements between the UK and other countries
International agreements		Agreements between the UK and other countries or organisations
UK-EU Trade & Cooperation Agreement		Establishes the new UK-EU relationship
UK-EU Withdrawal Agreement		Sets the terms of the UK's exit from the EU
Protocol on Ireland-Northern Ireland		Part of the Withdrawal Agreement to avoid a hard border on the island of Ireland
EU (Withdrawal) Act 2018		Converted EU law to domestic law, stops new EU laws having automatic effect in the UK and gives Ministers powers to correct the statute book after leaving the EU
EU (Withdrawal Agreement) Act 2020		Implements the Withdrawal Agreement
EU (Future Relationship) Act 2020		Implements the Trade & Cooperation Agreement
Internal Market Act 2020		Establishes rules for the regulation of goods, services and qualifications across the UK
Common Frameworks		Set up UK-wide frameworks for some areas previously governed by the EU
Implementing regulations		Regulations passed in the Senedd or UK Parliament to implement the new arrangements
Correcting regulations		Regulations passed in the Senedd or UK Parliament to make EU laws retained after leaving the EU workable in a domestic context



Welsh Parliament
Senedd Research