

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 20 September 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV

Informal pre-meeting (13.00–13.30)

1 Introductions, apologies, substitutions and declarations of interest

2 Scrutiny session with the Counsel General and Minister for the Constitution

13.30–14.45

(Pages 1 – 53)

Mick Antoniw MS, Counsel General and Minister for the Constitution

Christopher Warner, Deputy Director, Constitutional Affairs & Inter-Governmental Relations, Welsh Government

James Gerard, Deputy Director, Justice and Constitutional Affairs, Welsh Government

LJC(6)–06–21 – Briefing

LJC(6)–06–21 – Paper 1 – Committee remit: Monitoring report



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

14.45–14.50

(Pages 54 – 55)

LJC(6)–06–21 – Paper 2 – Statutory instruments with clear reports

Made Negative Resolution Instruments

3.1 SL(6)043 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021

3.2 SL(6)045 – The School Teachers’ Pay and Conditions (Wales) Order 2021

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

14.50–14.55

Made Negative Resolution Instruments

4.1 SL(6)042 – The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) (No. 2) Regulations 2021

(Pages 56 – 57)

LJC(6)–06–21 – Paper 3 – Draft report

[Regulations](#)

[Explanatory Memorandum](#)

Composite Negative Resolution Instrument

4.2 SL(6)046 – The Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2021

(Pages 58 – 59)

LJC(6)–06–21 – Paper 4 – Draft report

[Regulations](#)

[Explanatory Memorandum](#)

5 Papers to note

14.55–15.00

5.1 Correspondence with the First Minister: Scrutiny of regulations arising from the UK's exit from the European Union – Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

(Pages 60 – 62)

LJC(6)–06–21 – Paper 5 – Letter from the First Minister, 10 September 2021

LJC(6)–06–21 – Paper 6 – Letter to the First Minister, 16 July 2021

5.2 Correspondence from the Minister for Finance and Local Government: Finance Ministers' Quadrilateral Meeting

(Page 63)

LJC(6)–06–21 – Paper 7 – Letter from the Minister for Finance and Local Government, 14 September 2021

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

15.00

7 Scrutiny session with the Counsel General and Minister for the Constitution – consideration of evidence

15.00–15.20

8 Legislative Consent Memorandum on the Professional Qualifications Bill – consideration of draft report

15.20–15.35

(Pages 64 – 88)

LJC(6)–06–21 – Paper 8 – Draft report

LJC(6)–06–21 – Paper 9 – Legal advice note

LJC(6)–06–21 – Paper 10 – Letter from the Minister for Education and the Welsh Language, 10 September 2021

**9 Legislative Consent Memorandum on the Environment Bill –
consideration of draft report**

15.35–15.45

(Pages 89 – 102)

LJC(6)–06–21 – Paper 11 – Draft report

**10 Legislative Consent Memorandum on the Police, Crime,
Sentencing and Courts Bill**

15.45–16.00

(Pages 103 – 149)

[Legislative Consent Memorandum – Police, Crime, Sentencing and Courts Bill](#)

LJC(6)–06–21 – Paper 12 – Legal advice note

LJC(6)–06–21 – Paper 13 – Letter from the Llywydd, 16 July 2021

LJC(6)–06–21 – Paper 14 – Letter to the Llywydd, 2 July 2021

LJC(6)–06–21 – Paper 15 – Correspondence from the Travelling Ahead:
Gypsy, Roma and Traveller Advice & Advocacy Service

LJC(6)–06–21 – Paper 16 – Briefing from Friends, Families and Travellers

LJC(6)–06–21 – Paper 17 – Written evidence to the UK Parliament from the
Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service

**11 International agreements considered on 13 September 2021 –
consideration of draft report**

16.00–16.10

(Pages 150 – 158)

LJC(6)–06–21 – Paper 18 – Draft report

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

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Agenda Item 3

Statutory Instruments with Clear Reports 20 September 2021

SL(6)043 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021

Procedure: Made Negative

These [Regulations](#) amend the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”).

The 2020 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 to allow, in certain circumstances relating to the incidence or transmission of coronavirus:

- (a) Appeal panels of two members, and
- (b) Appeal panels to hold hearings by remote access or to decide appeals on the basis of written information.

Regulation 2(2) of the 2020 Regulations provided that those amendments cease to have effect on 31 January 2021. That date was amended to 30 September 2021 by the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2020.

The main effect of regulation 2 of these Regulations is that the date of 30 September 2021 in the 2020 Regulations is amended to 30 September 2022. This means that the amendments made by the 2020 Regulations continue to have effect until 30 September 2022.

Parent Act: Schools Standards and Framework Act 1998

Date Made: 06 September 2021

Date Laid: 08 September 2021

Coming into force date: 29 September 2021



Statutory Instruments with Clear Reports

20 September 2021

SL(6)045 – The School Teachers’ Pay and Conditions (Wales) Order 2021

Procedure: Made Negative

This [Order](#) makes provision for the determination of the remuneration of school teachers (within the meaning of section 122 of the Education Act 2002 (c. 32)) in Wales and other conditions of employment of school teachers in Wales which relate to their professional duties and working time. The Order makes this provision by reference to section 2 of a document entitled “School Teachers’ Pay and Conditions (Wales) Document 2021 and guidance on school teachers’ pay and conditions” (“the Document”). It can be found on the Welsh Government website: www.gov.wales. The Order makes retrospective provision, under section 123(3) of the Education Act 2002, to provide that the provisions set out in section 2 of the Document have effect on and after 1 September 2021 notwithstanding that the Order comes into force after that date (article 2). The Order revokes the School Teachers’ Pay and Conditions Order (Wales) 2020 (article 3).

The Document relates to teachers employed by a local authority or by the governing body of a foundation, voluntary aided or foundation special school in the provision of primary or secondary education. The document confirms that a 1.75% uplift has been applied to all statutory scale points and allowances and all pay uplifts will be from 1 September 2021.

Parent Act: Education Act 2002

Date Made: 08 September 2021

Date Laid: 09 September 2021

Coming into force date: 30 September 2021



Agenda Item 4.1

SL(6)042 - The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) (No. 2) Regulations 2021

Background and Purpose

These [Regulations](#) are made in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379).

The purpose of these Regulations is to extend the temporary removal of the requirement for meat preparations imported into Wales from establishments situated in EEA member States, the Faroe Islands, Greenland or Switzerland to be deep frozen. These Regulations amend the date in regulation 3(1) of the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 in order to extend the effect of those regulations. These Regulations extend the suspension until midnight on 31 December 2021. The date had previously been amended to 30 September 2021 by the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/376).

Procedure

Made Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 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 Senedd

We note that no public consultation has been undertaken given the urgent nature of these changes. In particular, we note the following paragraphs in the Explanatory Memorandum:



“Given the urgent nature of these changes, no public consultation has been undertaken; however, there has been GB-wide extensive stakeholder engagement with the Agri-Food industry and with delivery partners with responsibilities over SPS border controls (such as local border authorities, the Animal and Plant Health Agency and the Foods Standards Agency), since January 2021.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 September 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 4.2

SL(6)046 – The Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2021

Background and Purpose

The [Education \(Student Loans\) \(Repayment\) \(Amendment\) \(No. 3\) Regulations 2021](#) (“the 2021 Regulations”) amend the Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”).

The 2009 Regulations provide the basis for the repayment of student loans made by the Welsh Ministers and include provision for interest to be charged on student loans.

The 2021 Regulations amend the 2009 Regulations to set a maximum interest rate on student loans, resulting in a lower rate of interest being charged to Welsh borrowers with Plan 2 or Plan 3 loans. Plan 2 loans are post 2012 undergraduate loans and Plan 3 loans are postgraduate degree loans. The rates will apply for a fixed period of three months, when they will be re-assessed.

Repayment of student loans is provided for in the 2009 Regulations which are made on a composite basis. This means that they are made by the Secretary of State and, in respect of those functions transferred to them, by the Welsh Ministers. The Welsh Ministers legislate in relation to Wales in respect of those functions transferred to them and the Secretary of State in relation to England and, insofar as the Secretary of State retains functions, Wales. The 2021 Regulations are also composite regulations.

The 2021 Regulations are also made by the Welsh Ministers in order to comply with their duty to ensure that the student loan interest rate is either below the prevailing market rate (‘PMR’), or equal to the PMR with better terms and conditions. By keeping interest rates below the PMR, the 2021 Regulations also seek to ensure that student loans remain exempt from the Consumer Credit Directive, meaning that they will not show up on a borrower’s credit file and potentially affect their credit rating.

Procedure

Composite negative.

The 2021 Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament. The Senedd can annul the 2021 Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd. The United Kingdom Parliament can also annul the 2021 Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.



Technical Scrutiny

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

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh

The 2021 Regulations have been made as a composite instrument, meaning the 2021 Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament.

As a result, the 2021 Regulations have been made in English only.

The Explanatory Memorandum explains that:

“The 2021 Regulations are composite regulations. As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. Therefore, the amending regulations are made in English only.”

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 September 2021





Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff
CF99 1SN

SeneddLJC@senedd.wales

10 September 2021

Dear Huw,

I am writing in response to your letter of 16 July regarding a proposed renewal of the protocol on the scrutiny of regulations arising from the UK's exit from the European Union.

I understand that committee officials have recently shared a revised draft of the protocol with officials of the Welsh Government.

I agree in principle the protocol should be renewed and I am asking my officials to engage in discussions to produce a document that is, as you indicated, fit for purpose given the current circumstances.

Yours sincerely,

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Mark.Drakeford@llyw.cymru
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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.

Rt Hon Mark Drakeford MS

First Minister of Wales

16 July 2021

Dear Mark

Scrutiny of regulations arising from the UK's exit from the European Union - Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

The Committee met this week to discuss and agree our ways of working and early business for this Sixth Senedd. We agreed that one of our early priorities is to seek to re-establish the Protocol that was put in place by our predecessor Committee in the Fifth Senedd and the Welsh Government relating to the scrutiny of regulations arising from the UK's exit from the European Union.

In the process of revising the Protocol late in the autumn of 2020, I note that you wrote to the Chair of our predecessor Committee welcoming the Protocol's positive contribution to effective working between the Welsh Government and the Senedd. I would very much welcome a Protocol that is fit for purpose in the Sixth Senedd continuing to facilitate such productive working relationships.

My purpose in writing is therefore to seek your in principle agreement to resurrect the Protocol and, if so, to suggest that the Clerking team contact relevant officials in the Welsh Government to explore any changes that may be necessary. I look forward to hearing from you at the earliest opportunity.

Yours sincerely,



Huw Irranca-Davies

Chair



Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Agenda Item 5.2



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: RE-585-21

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

14 September 2021

Dear Huw,

Further to my recent letter advising you of the Finance Ministers' Quadrilateral Meeting on 20 July, I write to briefly report on the discussions.

There was a robust conversation around the agenda items including the upcoming Spending Review, Covid response and recovery, as well as economic growth and investment in Wales, and arrangements for future Quadrilateral meetings.

I continued to press for early certainty and enhanced transparency around UK Government financial decision making to enable us to plan more effectively for the future and reflected on how the Barnett guarantee had been a useful tool to assist with budgetary management and planning last year.

I also took the opportunity to emphasise the need for a flexible approach to UK-wide Covid support schemes, including the Coronavirus Job Retention Scheme to ensure they are able to continue to help shield our economies and protect our communities, and to make permanent the £20 uplift to Universal Credit.

Following last week's announcement by the Chancellor that the Spending Review will conclude on the 27 October alongside an autumn budget I am seeking an urgent Quadrilateral meeting of the UK Finance Ministers to discuss the Welsh Government's priorities.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

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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.

Agenda Item 8

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

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

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Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language



Llywodraeth Cymru
Welsh Government

10 September 2021

Dear Huw,

Thank you for your letter of 12 August regarding the Legislative Consent Memorandum on the Professional Qualifications Bill.

I attach a response to the questions you have raised.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a wavy line and a short horizontal stroke.

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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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.

1. *The Bill was introduced into the House of Lords on 12 May 2021. The Legislative Consent Memorandum was not laid until 17 June 2021, approximately 5 weeks later. Standing Order 29.2(i) requires a Legislative Consent Memorandum such as this to be laid normally no later than two weeks after the introduction of the Bill. Can you provide reasons for the delay on this occasion?*

In the Welsh Government's view, the Standing Order deadline is potentially achievable for Bills on which the two governments have worked closely together and are in agreement; the "normally" qualification recognises the realities of what is a highly variable process. In this case, the Bill is not one on which the UK Government had been working with us throughout in a meaningful way (see below); and production of the Legislative Consent Memorandum was hampered both by the complexity of the issues at play in the Bill as well as by machinery of government delays following the Senedd election on 6 May 2021.

2. *At paragraph 30 of the Memorandum you state that "The Welsh Government is unconvinced that the majority of the measures contained in this Bill are necessary."*

- a. What was the Welsh Government's role during the development of the Bill?*
- b. When did you become involved in the development of the Bill?*
- c. How would you describe intergovernmental relations on the development of this Bill?*
- d. Why is the Welsh Government unconvinced that "the majority" of the measures contained in the Bill are necessary?*
- e. Which provisions does the Welsh Government consider are necessary and why?*

The Welsh Government's role has been to ensure that the Welsh Government's and key stakeholder's concerns with the Bill are raised formally with the UK Government at official and Ministerial levels. The Welsh Government has also worked to ensure there is recognition and agreement on the professions for which regulations are devolved, as well as devolved regulators, that are impacted by the Bill.

The UK Government started engagement on this Bill during late January and early February 2021, and progressed with detailed development of the Bill during the Senedd pre-election period. I have committed to working constructively and positively with UK Government Ministers and officials to develop mutually acceptable amendments to the Bill, but unfortunately this is now in the context of inadequate engagement ahead of introduction.

The Welsh Government is not convinced that the Bill is necessary. The Welsh Ministers and devolved regulators already have the powers needed to deliver current and future policy and regulations within areas of devolved competence, including powers to recognise all overseas qualifications on a case by case basis.

We do acknowledge that some of the provisions of the Bill may be necessary. Clause 5 of the Bill contains a power for the "appropriate national authority" to modify legislation as a consequence of the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015. This power will enable the Welsh Ministers to make amendments to Welsh legislation where these are considered to be appropriate as a consequence of the revocation of the 2015 regulations.

3. *At paragraph 41 of the Memorandum you state that “the Welsh Government will not be in a position to recommend that consent be given unless the Bill is substantially amended to address our significant concerns.”*

What specific amendments to the Bill have you requested?

What is the current status of your discussions with the UK Government regarding the changes you will need to see made to the Bill before you would recommend that consent is given?

If no specific amendments have been requested, what changes would you need to see made to the Bill in order to address your concerns?

I wrote to UK Government Minister Lord Grimstone on 18 June to express my concerns with the Bill, and highlighted my concerns on the inclusion of concurrent powers. The Counsel General and Minister for the Constitution has also written to Baroness Bloomfield on concerns with the concurrent powers.

I am pressing for an amendment to the Bill which would ensure that the powers of the Secretary of State and Lord Chancellor could not be exercised in areas devolved to Wales without obtaining the consent of the Welsh Ministers. I am also pressing for an amendment which would provide for a specific carve out from the requirements of Schedule 7B. I made Lord Grimstone aware of this in a meeting I had with him on 19 July.

4. *At paragraphs 32 to 35 of the Memorandum you set out how, without the consent of the Senedd or the Welsh Ministers, the Secretary of State or Lord Chancellor would be able to exercise regulation-making powers to amend primary legislation, including Senedd Acts. Can you confirm whether it is your understanding that the powers in the Bill would enable the Secretary of State or Lord Chancellor to amend the Government of Wales Act 2006 (the 2006 Act)?*

The Secretary of State and Lord Chancellor have powers under the Bill to make regulations which can amend primary legislation (see clause 13(1) and the definitions of “legislation” and “modify” in clause 16(1)). There is no restriction on these powers so it is our view that they could indeed be used to amend the Government of Wales Act 2006.

5. *At paragraph 35 you note that the UK Government has stated that “it does not intend to use concurrent powers in the areas of devolved competence without the agreement of the relevant [Devolved Administrations]”.*

Where and when did the UK Government make this statement?

Have any discussions taken place as to the inclusion of this commitment on the face of the Bill?

Lord Grimstone wrote to Ken Skates MS in his capacity as then Minister for Economy, Transport and North Wales on 11 May and stated that the UK Government does not intend to use the concurrent powers in the areas of devolved competence without the agreement of the relevant Devolved Governments.

In my letter to Lord Grimstone on 18 June, I noted that this commitment does not feature in the Bill, and as such is only binding for as long as the current UK Government decides to abide by it.

6. *At paragraph 36 and 37 of the Memorandum you set out how the Bill includes a “restriction unique to the Welsh Minister’s powers”, whereby the restrictions imposed by paragraphs 8 to 11 of Schedule 7B to the 2006 Act are effectively imported into the regulation-making process. What specific discussions have you had with the UK Government about this restriction on the exercise of regulation-making powers conferred on the Welsh Ministers?*

What explanation have you received as to why this particular “unique” restriction is imposed on the Welsh Minister’s powers?

The provision in question, clause 14(5) of the Bill, states that the Welsh Ministers may not make any provision using their regulation making powers in the Bill without the consent of a Minister of the Crown, where such provision would, if made in an Act of the Senedd, require Minister of the Crown consent. Is there anything outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue in this regard?

The Counsel General has had correspondence about this restriction with Baroness Bloomfield, UK Government Minister.

The explanation received was as follows:

Paragraph 12 of Schedule 7B to the Government of Wales Act 2006 Act (GoWA) provides that where an enactment (in this case the Bill) refers to provisions within the legislative competence of the Senedd, this does not include provision which could only be made by an Act of the Senedd with the consent of a UK Minister (under paragraphs 8, 10 or 11 or otherwise). This means that Welsh Ministers cannot make regulations which impose, confer or otherwise modify the functions of a reserved authority, unless there is specific provision to the contrary. This would therefore have been the default position in relation to powers conferred on Welsh Ministers by the Bill.

The words in parenthesis at the end of clause 14(2) of the Bill (“(ignoring any requirement for the consent of a Minister of the Crown)”), however, set aside the default position established by paragraph 12 of GoWA. The effect is that Welsh Ministers may make regulations using powers in the Bill that are in line with the legislative competence of the Senedd, even if the consent of a Minister of the Crown is required. Together, 14(2) and 14(5) place the regulation-making powers of Welsh Ministers on a footing that mirrors that of the legislative competence of the Senedd – maintaining the position in the Welsh devolution settlement.

In answer to your question about the effect of clause 14(5), the only restriction is on the Welsh Ministers’ powers to make regulations which impose, confer or otherwise modify the functions of a reserved authority. There is nothing outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue.

7. *At paragraph 38 you outline a range of policy concerns arising from the Bill. One concern relates to scope and you state that “the definition used in the Bill fails to clearly define scope” and you are unclear whether further education is in the scope of the Bill. Which definition are you referring to?*

What are the implications for the Welsh Government if further education is within the scope of the Bill?

If this issue is not resolved, how will this impact on whether or not you recommend consent?

This refers to definitions in Clause 16 of the Bill which have to be considered when assessing whether a profession is regulated, and whether a body is a regulator, for the purposes of the Bill. We understand that the UK Government will shortly be issuing guidance on the interpretation of these definitions.

The Welsh Government is of the opinion that the Further Education sector in Wales is in scope of the Bill. Plainly this would be problematic if the UK Government were to exercise its powers to make changes to regulations in Wales which were not consistent with our policy. The decision on recommending consent will depend on an amendment to the Bill which would ensure that the powers of the Secretary of State and Lord Chancellor could not be exercised in areas devolved to Wales without obtaining the consent of the Welsh Ministers.

8. *Another concern outlined in paragraph 38 relates to how the Bill links professional qualifications and trade policy which you state “reduces Welsh Minister’s powers further since decisions could be badged as ‘trade’ rather than ‘professional qualification’ decisions and imposed on Wales in contravention of the Sewel Convention”. You further state “Whilst assurances from UK Government Ministers and published guidance state this is not the intention, this is a clear risk due to the drafting of this Bill.”*

Where and when did the UK Government provide the assurances you refer to in the Memorandum?

In what published guidance does it state that it is not the UK Government’s intention to badge relevant decisions as trade-related rather than relating to professional qualifications? What discussions has the Welsh Government had with the UK Government regarding the inclusion of provisions on the face of the Bill to give effect to the “assurances” ?

The assurances referred to are those in the letter to Ken Skates MS referenced in the response to question 5 above.

The guidance is the “Arrangements to facilitate the recognition of professional qualification: guidance for regulatory and professional bodies” published in May 2021 by the Department for Business, Energy and Industrial Strategy.

The guidance states:-

“Where professions are regulated separately in the individual nations of the UK, there are additional factors which may be considered for recognition arrangements for those professions, subject to the right of each devolved government to regulate professions within their devolved competence as they see fit. In some cases, there are differences in the way in which professions are regulated across the UK, and as a result regulatory bodies in different parts of the UK will need to consider how to pursue consistent access for international professionals in all parts of the UK internal market”

There is a risk that the drafting of the concurrent functions in the Bill would enable the UK Government to override “the right of each devolved government to regulate professions within their devolved competence as they see fit”.

9. *As regards financial concerns you state in paragraph 38 that there will be an “impact on Welsh Government budget considerations” and that the situation “could ultimately impact on costs for the Welsh Government”. Please can you explain how the Welsh Government could be impacted financially and how the costs relate to those identified for devolved regulators (as identified in paragraph 39)?*

If the provisions in the Bill mean that regulators have to commit additional spend to comply, the costs for that spend will ultimately be the responsibility of the Welsh Government through the funding arrangements in place with the devolved regulators.

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Huw Irranca–Davies MS

Chair, Legislation, Justice and Constitution Committee

16 July 2021

Dear Huw

Legislative Consent Memorandum – Police, Crime, Sentencing and Courts Bill

Thank you for your letter of 2 July 2021 in relation to the referral of the LCM on the Police, Crime, Sentencing and Courts Bill to your committee for scrutiny.

Business Committee initially discussed this LCM at its meeting of 29 June, referring it to your committee only as, in deciding the committee remits, we wished to ensure that you are able to consider the future devolution of justice and policing as part of your wider constitutional affairs remit. However, in the light of your letter of 2 July, we did suggest at our meeting of 6 July that your committee may wish to invite the Chair of the Equality and Social Justice Committee to attend any meetings at which this LCM may be discussed.


As was the case in the Fifth Senedd, the remits of policy and legislation committees are not prescriptive or restrictive. We have deliberately allowed them to remain broad and we decided not to provide a definitive list of subjects attached to each committee. As in the previous two Seneddau, we believe that providing committees with the ability to pursue issues across portfolios and subject areas makes for better scrutiny and avoids the risk of too narrow an approach.

Business Committee specifically considered where the responsibility for justice should sit within the committee structure at its meeting of 13 July. We agreed that high–level justice policy matters, such as the devolution of justice and policing, and any matters which relate to law–making, should be assigned to the LJC Committee. Other matters which relate to the practical application of justice



policy should be open to scrutiny by appropriate policy and legislation committees. In the same vein, LJC Committee is not expected to consider the wider policy interactions with the justice system and policing that currently exist.

Yours sincerely

A handwritten signature in blue ink that reads "Elin Jones".

Elin Jones MS

Y Llywydd and Chair of the Business Committee



Elin Jones MS
Llywydd
Chair, Business Committee

2 July 2021

Dear Llywydd

Legislative Consent Memorandum - Police, Crime, Sentencing and Courts Bill

On 29 June 2021, the Business Committee referred the Legislative Consent Memorandum (LCM) on the Police, Crime, Sentencing and Courts Bill to the Legislation, Justice and Constitution Committee for scrutiny with a reporting deadline of 14 October 2021. In doing so I note that the Business Committee did not also refer the LCM to either the Equality and Social Justice Committee or the Local Government and Housing Committee.

I understand that the remits of the new Senedd Committees have been designed in a way so as not to preclude committees from undertaking work that may be cross-cutting in nature. Further, the remit of certain committees do appear to have intentionally been drawn with overlap in some areas. As such, to help improve understanding and transparency around our remit and, as a consequence, our relationship with other committees, I would be grateful if you could provide further clarity on the reasons for the referral of this particular LCM to us only.

Yours sincerely,



Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee

Correspondence from Trudy Aspinwall, Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service on the Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill, 15 September 2021

Legislation, Justice and Constitution Committee - Police, Crime, Sentencing and Courts Bill

Further to recent correspondence I am writing regarding the Committee's consideration of the 'Police Bill' with particular reference to Part 4 – the criminalisation of trespass proposals and their likely impact on Gypsy, Traveller and nomadic communities of Wales.

We provided a briefing earlier in the year (attached again for ease of reference) which has been shared with the Committee previously and have been invited to send in any additional points. Now that the Bill has gone to the House of Commons we thought it would be helpful for the Committee to see the most recent briefing from Friends, Families and Travellers prepared for the House of Lords where the Bill is currently being considered - please see attached. The briefing draws on data from England but the content reads across to Wales with the exception that in Wales you do not need to show proof of travelling for planning purposes.

We very much welcome and support the Welsh Government commitment of their intention to challenge the proposals in the Bill relating to encampments on constitutional, human rights and public sector equality duty grounds. As stated in our previous briefing we believe that there is a legislative conflict here particularly between the duties on local authorities under the Housing Act to meet the residential and transit needs of nomadic families in Wales, but also the duty under human rights legislation to respect and facilitate the nomadic way of life, the duty to protect and promote children's rights under the Rights Measure and the proactive intentions of the Wellbeing of Future Generations Act; as such the proposals in the Bill very much come under the legislative competence of the Welsh Government and indeed cuts across, and would undermine some of the most positive, proactive legislation and policy that exists in the whole of the UK to support Gypsy and Traveller communities.

Part 4 of the Police Bill, if enacted, will place nomadic families in Wales in the insidious position of potentially being criminalised for the failure of public authorities to meet their own legal duties as there remain no transit sites or provision in Wales and a continuing shortfall of permanent residential pitches for Gypsies and Travellers.

I am writing on behalf of an informal coalition of Welsh organisations and individuals who are working together on this issue which includes TGP Cymru, BASW Cymru, Race Alliance Wales, Shelter, Tai Pawb, Romani Cultural and Arts Association, CLINKS, Gypsies and Travellers Wales and we would urge the Committee to recommend that Senedd members do not give consent to Part 4 of the Bill

Thank you
Best wishes

Trudy Aspinwall
Team Manager

[Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service](#) / Teithio Ymlaen: Gwasanaeth Cyngor ac Eiriolaeth Sipsiwn, Roma a Theithwyr

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**FRIENDS,
FAMILIES &
TRAVELLERS**

September 2021

**House of Lords second reading
briefing:
Part 4 Police, Crime, Sentencing and
Courts Bill**

**Abbie Kirkby,
Friends, Families & Travellers**

Briefing for House of Lords second reading PCSCB: Part 4

Abbie Kirkby, Friends, Families and Travellers | September 2021

Introduction

Part 4 of the Police, Crime, Sentencing and Courts Bill (PCSCB) outlines measures to introduce a new criminal offence of trespass with the intent to reside, and extend existing powers in the Criminal Justice and Public Order Act 1994 (CJPOA). The Bill emerges from the House of Commons unchanged, despite a number of amendments being tabled that sought to abolish Part 4 or mitigate the inevitable harm caused by the measures to already marginalised Gypsy and Traveller communities.

The proposals are being put forward despite the existence of a range of other eviction powers for encampments, and despite the range of alternative solutions grounded in a humane and common sense approach, such as the provision of more sites and stopping places. This briefing outlines some context to encampments in England and the likely impact of the criminalisation of trespass for Gypsies and Travellers.

Key points

- There are already a wide range of eviction powers for encampments, which can be exercised as swiftly as in an hour and can be triggered if incidents of anti-social behaviour occur. These enable a response based on conduct.
- The measures outlined in the PCSCB will compound the inequalities experienced by Gypsies and Travellers, and push people into the criminal justice system.
- The powers will disproportionately affect specific minority and ethnic communities and are likely to be in conflict with equality and human rights legislation.
- The subjective nature of the language in Part 4 leaves the powers open to abuse.
- The new role of a private individual in triggering a criminal offence could mean the powers are misused, particularly where prejudicial views exist.
- An enforcement approach to addressing the number of encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
- There are other solutions to managing encampments, such as negotiated stopping, whereby arrangements are made on agreed times for stopping and to ensure the provision of basic amenities such as water, sanitation and refuse collection¹.
- The definition of a Gypsy or Traveller in planning terms² requires proof of travelling – without that you are not assessed as needing a pitch or get planning permission – but the communities' ability to travel will be severely impeded.
- Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass.

¹ <https://www.negotiatedstopping.co.uk/>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

Overview of the proposed new police powers and specific concerns with the measures

Introduction of a new criminal offence where trespassers have the intent to reside

This will apply when a person:

- is residing, or intending to reside, on land without consent and has been asked to leave by the occupier, their representative or the police;
- has at least one vehicle with them on the land;
- has caused, or is likely to cause, significant damage, disruption or distress;
- has failed to comply with this request as soon as reasonably practicable and has no reasonable excuse for doing so.

Failure to comply without 'reasonable excuse' can lead to the police exercising powers to seize a vehicle (someone's home and possessions) as well as imprisonment and a fine. These measures are disproportionate, as described throughout this submission, but it is crucial from the outset, to stress the severity of the seizure of a home. The impacts of these measures will be catastrophic for an individual and a family – suddenly without a home or possessions and with potentially any family member over 18 years of age thrown into the criminal justice system. Beyond the immediate impact, this will also affect the long-term prospects and welfare of the family and severely impact children who would lose their home and face Children's Services intervention, possibly breaking up the family.

What constitutes 'significant damage, disruption or distress' is wildly subjective and could potentially capture many encampments, particularly as the threshold for vehicle numbers is reduced to one. The fact remains that there is widespread hostility and prejudice towards Gypsies and Travellers and many people claim to be distressed by a Traveller camp, which can be based only on presence, not any particular behaviour. The terms are open to abuse. The 'intends to' elements are also concerning, based on supposition without any proof or evidence of certain behaviours actually occurring.

The new role of the private individual is also one of real concern. Once the occupier of the land or representative of the occupier has requested those on the land to leave, if they do not comply, they committing an offence. Existing CJPOA powers can only be exercised by the Police, with a person only facing criminalisation once they have not complied with the instruction of a law enforcement official. Under the new offence, a person can be criminalised for disobeying the instruction of a private citizen whose interest could be underpinned by prejudice or a misguided understanding of the legislation.

Amendments to current police powers of eviction in CJPOA

Further measures, as outlined in the PCSCB, are to:

- Amend section 61 to broaden the types of harm that can be caught by the power to direct trespassers under that provision, to include damage, disruption and distress;

- Amend sections 61(4)(b), 62B(2) and 62(C) to increase the period in which trespassers directed away from the land under sections 61 and 62A must not return from 3 months to 12 months;
- Amend section 61(9)(b) to enable police to direct trespassers with a common purpose of residing on land to leave land that forms part of a highway.

Again, the inclusion of the subjective categories ‘damage, disruption and distress’ could trigger use of these powers in instances where an encampment merely exists, not because of any particular behaviour. The proposed exclusion period from an area for 3 months quadruples to 12 months, making it nearly impossible for families without a site to live on, for example, to keep their places at school or attend medical appointments.

Current enforcement powers for unauthorised encampments

There are already a range of eviction powers available for police, local authorities and landowners, including powers in the CJPOA and possession proceedings under Part 55 of the Civil Procedure Rules. A wide range of powers are summarised in the 14 page MoJ/HO/DCLG document ‘Dealing with illegal and unauthorised encampments: A summary of available powers’³. This document ‘sets out the robust powers councils, the police and landowners now have to clamp down quickly on illegal and unauthorised encampments’ and states ‘Councils and the police have been given strong powers to deal with unauthorised encampments’ (2015). So why, if all of these powers already exist, do we need more?

Some powers, such as Section 61 of the CJPOA, can be triggered easily and enforce eviction as quickly as in an hour:

Section 61: Power to remove trespassers on land.

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land...

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—

³ <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

We believe the powers to already be too strong. However, current powers do allow for discretionary use and a proportionate response.

Debates around the need for measures has focussed on the conduct of a minority of individuals. However specific powers exist relating to waste management and crime, as well as legislation addressing specific forms of anti-social behaviour, should they apply. It is wholly disproportionate to introduce new legislation based on the actions of a small minority, when the danger is that the measures could capture all, not least through a chilling effect.

Impact of the criminalisation of trespass on Gypsies and Travellers

The harm created by this legislation which criminalises trespass will be felt immediately and for generations to come. It will push Gypsies and Travellers into the criminal justice system, a factor of which will be living nomadically. It will put communities who have been widely recognised as being amongst the most marginalised and disadvantaged groups at further risk and compound the inequalities experienced.

The Equality and Human Rights Commission expressed their concern about more powers to evict or ban encampments, stating in their submission to the 2018 'Powers for dealing with unauthorised development and encampments' consultation⁴:

'We would remind the Government that all powers to remove unauthorised encampments must be exercised with a full awareness of the occupiers' welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers.'

There is a direct correlation between accommodation insecurity and health outcomes. With Gypsy and Traveller communities having life expectancies between 10 and 25 years shorter than the general population, more needs to be done to improve these outcomes, not to exacerbate the inequalities. The constant cycle of being moved on, criminalised, and cut off from services also limits the potential of those families wishing to secure education for their children and employment for themselves.

⁴ <https://www.equalityhumanrights.com/sites/default/files/consultation-response-powers-for-dealing-with-unauthorised-development-and-encampments-june-2018.pdf>

Criminalisation of trespass and the conflict with human rights protections

Criminalisation of trespass is in direct conflict with the positive duty imposed on the UK to 'facilitate the Gypsy way of life' (by the European Court of Human Rights ruling: *Chapman v UK*, 2001). Furthermore, there was a landmark ruling passed down by the Court of Appeal on the 21st of January 2020 in which the London Borough of Bromley were refused an application for an injunction banning Gypsies and Travellers from the borough⁵. The judge points out that in cases where local authorities lack adequate site provision they will inevitably have instances of encampments, and where local authorities attempt to criminalise those encampments, this would likely leave local authorities in breach of human rights legislation, stating:

'It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.'

'Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act . . .'

The Joint Committee on Human Rights (JCHR), in their legislative scrutiny report on Part 4 of the PCSCB, outlined how it 'gives rise to several human rights concerns'⁶. The report outlined 'concerns that there is a significant risk that the Bill could be found to be in contravention of the requirement that all human rights and freedoms be secured without discrimination under Article 14 ECHR, as read with Article 8 and other relevant human rights.' A number of amendments were tabled by JCHR Chair Harriet Harman during the House of Commons Report Stage (as outlined in the JCHR report).

Police views on criminalisation of trespass

In recognition of the equality and human rights implications of criminalising trespass, the majority of the Police Forces and Police and Crime Commissioners that responded to the Home Office consultation opposed the proposal to criminalise trespass⁷. Only 21.7% of police bodies supported criminalisation of trespass, with 93.7% calling for site provision as the solution to unauthorised encampments. The views of the National Chief Police

⁵ Court of Appeal in the case of *The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown and Others* [2020] EWCA Civ 12.

⁶ <https://committees.parliament.uk/publications/6554/documents/70980/default/>

⁷ <https://www.gypsy-traveller.org/wp-content/uploads/2020/10/Full-Report-Police-repeat-calls-for-more-sites-not-powers-FINAL.pdf>

Council and the Association of Police and Crime Commissioners were made plain in their joint submission to the 2018 Government consultation⁸:

‘Trespass is a civil offence and our view is that it should remain so. The possibility of creating a new criminal offence of “intentional trespass” or similar has been raised at various times over the years but the NPCC position has been – and remains – that no new criminal trespass offence is required. The co-ordinated use of the powers already available under the Criminal Justice and Public Order Act 1994 allows for a proportionate response to encampments based on the behaviour of the trespassers. Unauthorised encampments occupied by known individual families where there are small numbers in acceptable locations, not causing anti-social behaviour or crime, can be allowed to remain in that location longer than would otherwise be the case if the law were different. This approach leads to the Gypsies and Travellers having a real incentive to act in a responsible manner.’

Their submission refers to one of the numerous powers already available to the police, local authorities and private landowners wishing to evict an encampment. The NPCC’s position was again made clear in the House of Commons Bill Committee evidence session with NPCC Chair Martin Hewitt, and by NPCC Gypsy and Traveller Lead Janette McCormick during the Joint Committee on Human Rights evidence gathering sessions – they do not seek or desire these new powers in the PCSCB Part 4.

Shortage of Gypsy and Traveller sites

Support for more draconian enforcement powers and opposition to the existence of roadside camps is often coupled with opposition to the provision of permanent and transit sites in local areas. Gypsies and Travellers face hostility to their existence in either circumstance. This presents continual barriers to the provision of sites despite the fact that, for many Gypsies and Travellers, living in a caravan as part of a community is an integral part of cultural identity⁹.

The existence of encampments needs to be understood not only in terms of the age old cultural traditions of Gypsies and Travellers but in terms of the historic failure of local authorities to properly assess and meet the accommodation needs of Gypsy and Traveller communities. The families that will be adversely affected by this legislation have been failed by the planning system.

Friends, Families and Travellers conducted research into compliance with Planning Policy for Traveller Sites¹⁰ and assessed need and supply of Gypsy and Traveller pitches

⁸ <https://surrey-pcc.gov.uk/wp-content/uploads/2018/06/GRT-submission.pdf>

⁹ The 2011 Census found nearly a quarter of Gypsies and Travellers live in caravans or other mobile accommodation, with the January 2020 Ministry of Housing, Communities & Local Government’s (MHCLG) Caravan Count listing 694 caravans on ‘unauthorised encampments’ (caravans on land not owned by Gypsies/Travellers).

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

in 2016¹¹ and again in 2019¹², analysing Gypsy and Traveller accommodation assessments and Local Plans from all local planning authorities in the South East of England. The most recent findings revealed shockingly low numbers, with only 8 out of 68 local authorities meeting their identified need for Gypsy and Traveller pitches. There is a similar picture across the country¹³.

There has been an overall 8.4% decrease of pitches on local authority Traveller sites 2010-2020, as highlighted here using the Ministry of Housing Communities and Local Government figures:

Local authority/Registered Social Landlord Gypsy and Traveler pitches:

	January 2010 ¹⁴	January 2020 ¹⁵	% difference
Transit pitches	253	354	+ 39.9%
Permanent pitches	4665	4149	- 11.1%
Total pitches	4918	4503	- 8.4%

Whilst there has been a 39.9% increase in transit pitches alone, this only amounts to an increase of 101 pitches, the equivalent to 10 per year over 10 years, with an overall decrease of 11.1% of permanent pitches on local authority/Registered Social Landlord sites.

There is also the problem that to meet the Government's planning definition of a Traveller you need to prove that you travel – without which you won't be assessed as needing a pitch or be able to get planning permission for a site. Yet the PCSCB will make travelling problematic.

The existence of encampments is often referred to as a 'problem', but there are solutions available which have proven benefits for Gypsy and Traveller communities, the settled community and local authorities. In addition to the provision of sites, local authorities and nomadic communities can enter into negotiated stopping arrangements, where agreements are made for stopping periods on suitable land and for provision of basic amenities, such as a water supply, sanitation and refuse collection. This addresses

¹¹ <https://www.gypsy-traveller.org/wp-content/uploads/2016/12/Five-Year-Supply-Research-Findings-Statement-FINAL.pdf>

¹² <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Research-on-the-five-year-supply-of-deliverable-Gypsy-and-Traveller-sites-in-the-South-East-of-England.pdf>

¹³ http://www.nationalgypsytravellerfederation.org/uploads/3/7/5/2/37524461/research_into_gypsy_and_traveller_pitch_supply_2016_.pdf

¹⁴ <https://www.gov.uk/government/statistics/gypsy-and-traveller-caravan-count-january-2010>, See Table 2 / 'England' tab

¹⁵ <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2020>, Count of Traveller Caravans: Live tables / 'Live Table 2' tab

concerns raised over waste management and use of unsuitable land. Negotiated stopping models are also proven to save local authorities money¹⁶.

Summary of key points

- There are a wide range of eviction powers for encampments, which can be exercised as swiftly as in an hour and can be triggered if incidents of anti-social behaviour occur, including already existing legislation to deal with waste management issues.
- The measures outlined in the PCSCB will further compound the inequalities experienced by Gypsies and Travellers, pushing people into the criminal justice system.
- The powers will disproportionately affect specific minority and ethnic communities and are likely to be in conflict with equality and human rights legislation.
- The subjective nature of the language in Part 4 leaves the powers open to abuse.
- The new role of a private individual in triggering a criminal offence could mean the powers are misused, particularly where prejudicial views exist.
- An enforcement approach to addressing the number of encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
- There are other solutions to managing encampments, such as negotiated stopping, whereby arrangements are made on agreed permitted times for stopping and to ensure the provision of basic amenities such as water, sanitation and refuse collection¹⁷.
- The definition of a Gypsy or Traveller in planning terms¹⁸ requires proof of travelling – without which you are not assessed as needing a pitch or able to get planning permission, but the communities' ability to travel will be severely impeded.
- Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass.

¹⁶ [De Montfort University Faculty of Business and Law, Negotiated Stopping & ABCD, Excerpt from the final evaluation report, Leeds GATE Asset Based Community Development \(ABCD\) Project](#)

¹⁷ <https://www.negotiatedstopping.co.uk/>

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

About us

Friends, Families and Travellers is a leading national charity that works on behalf of all Gypsies, Roma and Travellers regardless of ethnicity, culture or background.

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Response to the Police, Crime, Sentencing and Courts (PCSC) Bill

May 2021

Perspectives from Wales: Written evidence based on focus group discussions on Part 4 of the Bill held on 21 May 2021 with Wales-based organisations and individuals

The contributors to this evidence included individual representatives and advocates from the Gypsy and Traveller communities in Wales alongside or representing a number of civil society advocacy, social justice, legal, cultural and criminal justice agencies:

[TGP Cymru](#) is a Wales wide children and families advocacy charity and its [Travelling Ahead](#) project provides advocacy and support to Gypsy, Roma and Traveller communities across Wales; [Race Alliance Wales](#) is a collective of organisations working to tackle racial injustice; [BASW Cymru](#) is the Welsh arm of the British Association of Social Workers; [The Gypsy, Roma and Traveller Social Workers Association](#) aims to improve social work competence and confidence when working alongside GRT communities and the [Romani Cultural and Arts Association](#) is a community-led organisation working through the arts with Gypsy, Roma and Traveller communities across Wales. Contributions also received from [Gypsies and Travellers Wales](#) and founding members of the **Association of Gypsies and Travellers in Wales**.



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1. Key points

- a. We oppose the introduction of Part 4 of this Bill in Wales; it is designed to directly target Gypsy and Traveller communities and their distinct nomadic culture and way of life without providing any of the solutions that are needed to address the continuing shortfall of site provision.
- b. The proposals cut across and conflict with the legislative, policy framework and direction of the Welsh Government and its devolved powers and responsibilities. It is likely to give rise to constitutional legislative issues and/or challenges unless modified. If not, then legal challenges in Wales might render the Bill unworkable, not just in Wales, but across England as well
- c. **We strongly urge the Committee to recommend removal of Part 4 from the Police, Crime, Sentencing and Courts Bill and to instead follow the Welsh example by re-introducing a statutory duty on local authorities to move towards provision of sufficient residential site provision together with quality transit sites and stopping places.**
- d. We believe that under current human right protections (including children's rights) the right to family life and to enjoy and practice culture and traditions of minority groups, should be not just *respected* but *facilitated* as part of a diverse Wales and United Kingdom
- e. The punitive nature of this Bill which will undoubtedly criminalise people specifically from these two ethnic groups is discriminatory and a clear breach of the Equality Act 2010 and does not address the real needs of the communities i.e., provision of sufficient and quality accommodation and stopping places both permanent and transit to support and facilitate nomadic traditions.
- f. Part 4 as currently drafted, could result in families with no other legal place available to park their vehicle(s) resulting in homes and possessions being seized, rendering them not only homeless but without any of their domestic facilities, transport, or employment resources. 'Families' include children, elders and otherwise vulnerable people - increasing risk and vulnerability to communities facing already well documented inequalities, driving families into the criminal justice system, poverty and presenting social care agencies with increased demand at a time of unprecedented need with an under-resourced social care system.
- g. Increased discrimination and hostility towards Gypsy and Traveller communities – negative media, increase in hate crime and a loss of opportunity to enhance cohesive communities and embrace diversity in what should be an inclusive society, not a divisive one.
- h. Sufficient police powers already exist to respond to any encampments that genuinely cause disturbance and damage – indeed the majority of police forces across England and Wales said as much in their responses to the pre-legislative consultations and do not support these new powers - nevertheless the government has chosen this route.

2. Gypsies and Travellers in Wales – a brief background

- a. Gypsies and Travellers have been a part of our diverse Welsh society for over 500 years; both Romani Gypsies and Irish Travellers (each are ethnic groups protected under the Equality Act 2010) are long established in Welsh society in communities, towns and villages across all parts of Wales and live permanently and /or travel in and through our cities and rural areas.
- b. Irish Travellers have been recorded in Britain as early as the 8th Century originally as travelling metal workers and are long established in Wales, as well as Wales being an important route for travel to and from Ireland through its ports in the north and the south of the country.

Welsh Romany Gypsies are more correctly called Welsh Kale and have been living in Wales since the 1700's, the ancestors of the original Welsh Gypsies still live in Wales, along with English Romany families all contributing to Welsh society. Welsh Gypsies have been particularly influential in poetry and music, particularly the Harp and have their own indigenous language which is in the process of being promoted and protected for future generations, as a distinct and unique characteristic of Welsh Gypsy culture and identity through the 'Shikawa Romanus'¹

- c. Unlike England, Wales has a wide umbrella definition in law of 'Gypsies and Travellers' that encompass ethnic, cultural (i.e., 'New' Travellers) and occupational groups (i.e., Showmen, Circus people) – all are distinct – all share the traditions and culture of nomadism. In contrast to England where the recently amended planning definition requires people to prove that they travel in order to be recognised as Gypsies or Traveller for planning purposes - the Welsh definition below applies across all aspects of devolved legislation and policy:

(a) Persons of a nomadic habit of life, whatever their race or origin, including – (i) Persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently, and (ii) Members of an organised group of travelling show people or circus people (whether or not travelling together as such); and (b) All other persons with a cultural tradition of nomadism or of living in a mobile home. (S108 Housing (Wales) Act 2014)

- d. It wasn't until the 2011 census that Gypsy and Traveller citizens had the opportunity to identify by their ethnicity – the data collected ten years ago suggested a population of 2,785 in Wales although this is considered to be an under-estimation in part due to a reluctance to self-ascribe ethnicity for fear of discrimination; this was again seen in the most recent census process with community advocates reporting '*many wouldn't self-identify in the 2021 census because they didn't want to be identified as the current environment is too hostile and they feared persecution.*'

¹ <https://shikawaromanus.thinkific.com/courses/shikawa-romanus-learning-romany>

Nevertheless, the varied and diverse communities make up a small percentage of Welsh residents probably around 0.1%

3. Welsh context

- a. This Bill will impact on communities in Wales and whilst criminal justice is a non-devolved matter there are provision within the Bill that fall within Wales's devolved legislative competence. The timing of the introduction of the Bill coinciding as it did with the Senedd elections in Wales has not allowed for full scrutiny of the fit with Welsh law and policy making or to fully assess the impact on Wales through the Senedd engaging with Welsh citizens.
- b. The Welsh Government nevertheless laid a Legislative Consent Memorandum² in March 2021 accompanied by a written statement³ and stated it is unable to support the proposals in Part 4 regarding 'unauthorised encampments' stating:

Welsh Government's approach to managing unauthorised encampments has focussed on engagement with communities and investment for adequate provision of authorised sites and enabling local authorities to meet the accommodation needs (residential and transit) of Gypsy, Roma and Traveller communities. This area of work is prioritised again in the forthcoming Race Equality Action Plan, which contains a standalone goal on better addressing accommodation needs of these communities. The proposed clauses put forward by the UK Government focus on enforcement and criminalisation, which undermine and jeopardise the semi-nomadic way of life of Gypsies, Roma and Travellers who may not have anywhere appropriate to station their trailers.

We welcome the stance taken by the Welsh Government and would ask the Committee to note the following points on Welsh legislation and policy already in place which provides a proactive and positive framework to support Gypsy and Traveller communities. The Welsh Government approach in our view provides a model that the Westminster Government should be following:

- c. Part Three of the Housing (Wales) Act 2014⁴ places a legal obligation and brought back a statutory duty (repealed by the CJPOA 1994) on local authorities in Wales to both assess (S 101) and provide (S103) for residential and transit provision for *Gypsies and Travellers residing in or resorting to its area*. A definition of a residential site and a transit site are in the footnote below⁵

² <https://senedd.wales/media/f0qbuavra/lcm-ld14256-e.pdf>

³ <https://gov.wales/written-statement-police-crime-sentencing-and-courts-bill>

⁴ <https://www.legislation.gov.uk/anaw/2014/7/part/3>

⁵ Residential site: A permanent residential site can be privately owned or owned by the Local Authority. This site will be designated for use as a Gypsy and Traveller site indefinitely. Residents on these sites can expect to occupy their pitches for as long as they abide by the terms of their pitch agreements, under the Mobile Homes (Wales) Act 2013. Working space may also be provided on, or near, sites for activities carried out by community members.

- d. This Welsh legislation makes clear the commitment of the devolved government to providing permanent sites so that Gypsy and Traveller families have access to a legal place to station their vehicles, have secure, quality accommodation that enables them to access facilities, health, education, and work whilst living in traditional extended family groups. It also makes clear that transit provision is necessary *'in order to provide a route for Gypsies and Travellers to maintain a nomadic way of life'* a right enshrined in Article 8 of the ECHR.
- e. The Welsh Government also provides a significant Capital Sites grant (26.4 million to 2021) for local authorities to apply for to support the development of sites and local authorities (under Welsh planning law) are also required to facilitate Gypsies and Travellers to engage with the planning process to develop their own sites, if they are themselves landowners.
- f. This is not a fast process though - prior to the 2014 duty no public sites had been built in Wales for 17 years and between 2014-18 the Welsh Government had invested in 60 new or refurbished residential pitches. However, the assessed unmet need in Wales remains at over 100 for the shortfall of residential pitches and there remain NO transit pitches or provision across the whole of Wales, at this time.
- g. Whilst we are not expert in constitutional law it seems to make no sense to have a legislative duty which drives a process in Wales to create sites and places to stop for Gypsies and Travellers to facilitate the nomadic way of life; and then to create new offences and police powers which will criminalise families living or travelling nomadically in Wales before that legal duty has delivered site provision across Wales.

The point has already been made that this not only leaves Gypsies and Travellers going about their legal way of life in an innocuous position it also opens up the potential for legal challenges which may well both hinder progress in Wales and make the proposals themselves unworkable.

- h. Indeed in Wales we can foresee a number of situations where a family could be caught by this new criminal offence precisely because the legal duty in Wales has not yet delivered permanent or temporary accommodation for them i.e. having had their need assessed under the Housing Act by their local council - still waiting for their local council to meet

Transit sites: are permanent facilities designed for temporary use by occupiers. These sites must be designated as such and provide a route for Gypsies and Travellers to maintain a nomadic way of life. Individual occupiers are permitted to reside on the site for a maximum of 3 months at a time. Specific terms under the Mobile Homes (Wales) Act 2013 apply on these sites. Working space may also be provided on, or near, sites for activities carried out by community members (<https://gov.wales/sites/default/files/publications/2019-03/undertaking-gypsy-and-traveller-accommodation-assessments.pdf>)

that need so having no other choice than to encamp on land in their local or neighbouring authorities or to encamp short term while travelling for work and cultural reasons. This is neither just nor fair.

- i. Furthermore Welsh Guidance on Managing Unauthorised Encampments⁶ already sets clear guidelines for local authorities to respond to encampments in their area, including the need to carry out a welfare check and link in the family with any services needed; establish reasons for the encampment and the suitability and availability of the land (or alternatives that can be identified) with a view to establishing agreement with the encamped family(ies) as to length of stay, facilities needed and any other agreements to ensure the encampment can continue. This pre-date and is similar to the ‘Negotiated Stopping’⁷ model’ adopted or being explored by some local authorities in England and provides a humane and proportionate response to respect nomadic traditions and to acknowledge the lack of any alternatives available to Gypsies and Travellers at this time. Most local authorities have implemented this guidance locally with individual or regional protocols which work alongside those of the four Welsh police Forces.
- j. The 2018 Welsh Government Plan ‘Enabling Gypsies, Roma and Travellers’⁸ confirms a clear commitment and actions to:
 - continue to focus on ensuring sufficient culturally appropriate Gypsy and Traveller residential and transit sites are created in Wales.
 - challenge engrained health and education outcomes which prevent these communities from fulfilling their potential.
 - foster good relations between Gypsy, Roma and Traveller communities and wider society.
- k. Rights of Children: The pre-amble to the Convention on the Rights of the Child sets out the duty of states to “take account of the importance and cultural values of each people for the protection and harmonious development of the Child”.

Wales Rights of Children and Young Person’s Measure⁹ places a duty on Welsh Ministers when carrying out their functions to have due regard to the rights of children as set out under the UNCRC. In fact, the 2014 Welsh duty to provide sites is a direct implementation of a long-standing recommendation by the Committee on the Rights of the Child to provide culturally appropriate accommodation.

⁶ <https://gov.wales/managing-unauthorised-camping-guidance>

⁷ <https://www.negotiatedstopping.co.uk/>

⁸ https://gov.wales/sites/default/files/publications/2019-02/enabling-gypsies-roma-and-travellers_0.pdf

⁹ <https://www.legislation.gov.uk/mwa/2011/2/contents>

- I. In our view the proposals in Part 4 are a clear violation of and in breach of the UNCRC and Welsh Ministers will be required to give due regard to the following:
- Article 2: The right to non-discrimination (this is targeted at Gypsies and Travellers, who include ethnic groups protected by the Equalities Act)
 - Article 3: The Best interests of Children – the proposals seek to criminalise parents, seize children’s homes rendering them potentially homeless and vulnerable to entering state care and further raising barriers to accessing health and education rights.
 - Article 30: a child belonging to such a minority shall not be denied the right, in a community with other members of his or her group, to enjoy his or her own culture, to progress and practice his or her own religion or language

4. Entrenching inequalities

Many of the responses to the original government consultations, oral evidence to the recent Joint Committee on Human Rights as well as submissions to this Committee have highlighted the huge inequalities already experienced by many from Gypsy and Traveller communities.

We believe this Bill will magnify these and deepen the hostility experienced on a day-to-day basis by so many Gypsies and Travellers including at school, in communities, in the media and even in our democratic institutions where racial slurs and stereotyping are regularly allowed to go unchallenged.

Creating a new criminal offence which effectively targets Gypsies and Travellers only, risks increasing the percentage prison population of Gypsy, Roma and Travellers disproportionality in a system that already sees prisoners for these communities experiencing discrimination and poor outcomes, as reported in the Lammy Review. Barriers created by holding a criminal record will also impact on employment and other opportunities disproportionally, as highlighted by Jannette McCormick in her evidence to the JCHR Committee on May 19th, 2021.

The power to seize vehicles (even one vehicle) if ‘intent’ to reside can be proved which are in the majority of cases going to be people’s homes for the whole family, will result in increased homelessness and families unable to draw on their own resources to care for their families. The Association of Gypsy, Roma and Traveller Social Workers and BASW highlight the increased risks this puts on families of social work and other interventions - separating children from their parents due to their traveling culture was a common practice of the state still within living memory for many in Wales as well as elsewhere in the UK.

The issue of disproportionality has been raised by many others arguing against Part 4 of the Bill – Liberty, Friends, Families and Travellers, the Community Law Partnership and evidence given by Marc Willer QC at Garden Court Chambers highlight that to potentially

lose your home when the level of evidence needed to trigger the offence i.e. 'intent' to reside, 'likely to cause' disturbance, damage or distress is so widely open to interpretation, that Liberty have argued 'These measures are a disproportionate...interference in the [nomadic] way of life.'

5. Impact statements - community voices

These are a selection of individual contributions gathered from focus group participants and wider community consultations in Wales:

"Culture is fading because we are getting forced to leave it behind. We can't live our way of life. They can't provide sites; they won't put planning on private sites through so what do they want us to do. We can't live on side of the roads anymore; they just want us in houses. The culture of Travelling is going. It's not our proper culture living in a house that is not how we live. I know some do, but it is not for me. A house stops us living in our community; we don't have the support of everyone around us. On a site if you need anything you can go to anyone. It's not like that in a house, you feel like you are on your own"

"I live a semi nomadic life in the United Kingdom. I spend my winters on a site in North Wales but in the summer, I ground stop in different places across the United Kingdom and I also pull from site to site, mostly privately owned Gypsy owned sites. Not only am I worried about not being able to stop on bits of grounds in the summer, but I'm also worried about shifting from site to site. Sometimes we pull over for the night or two nights, in between pulling off the sites. I am worried that the police will use this law to fine me and to criminalise me. Even for short stays like one night. Because sometimes it's hard to get onto sites and it takes a couple of days to get onto these sites, if you can even get on at all. Also I am worried that this government is trying to ethnically cleanse me by making my nomadic lifestyle harder to live in the hope of me giving in my lifestyle and my culture. Thank you very much." (B Cooney)

"It's almost impossible for Travellers to travel around like they did before. Laws and discrimination make it so much harder. Yes, there are the odd ones that leave behind a mess but the majority respect the places they pull onto and leave the place as they found it, but you won't hear about that in the press because it doesn't sell papers or court interest. It's a massive shame as travelling was a huge part of my upbringing and a huge part of a Traveller culture. Whilst councils are finding money to build new houses to try and meet demand how about considering the travelling community and consider building transit sites where Travellers could pull on and pull off obviously paying rates and what have you."

"The Travelling life in my family goes back over two hundred years in Wales, they had stopping places where local people would gather to hear their story-telling and dance to the Gypsy fiddles and harps. All over Wales you can see 'Y Ion Sipsy' or 'Gypsy Lane' the 'achin tans' where our families stopped. By outlawing these culturally rich practices of stopping places an entire legacy of Welsh culture is threatened with silence and erasure. Without 'place' there

will be no meaning to our Welsh Romani cultural identity and our contributions to Welsh culture will become empty and blown away like leaves in the wind” (Allison Hulmes: Director BASW Cymru and Founder members Association of Gypsy, Roma and Traveller Social Workers)

“The problems people get when they are roadside and their homes getting broke up. What is being done about that? Travellers always getting the bad name but their homes being destroyed is ok. There needs to be transit sites..... it’s hard to get planning permission so people are left with nowhere to go, then we get forced into houses. Even when you have your own land, you still have nowhere to go. Councils can’t provide you with anywhere to go and you can’t provide anywhere for yourself to go either, I really don’t know what they expect us to do.”

“We need more sites to pull on to stop newspapers and websites causing racists to get vexed at us.”

“Every single day you see houses getting built but no Travellers sites that’s racist. Get us more sites or let us have our own sites and help with that.”

“Whilst councils are finding money to build new houses to try and meet demand how about considering the travelling community and consider building transit sites where Travellers could pull on and pull off obviously paying rates and what have you.”

“A view from a community member who grew up roadside

To Think living roadside is an easy lifestyle / Choice, or to in fact think that this way of life somehow is a cop out from the stresses of a “Modern Life “is a gross misrepresentation of the true nature of living roadside, and could not be further from the truth, it’s a hard way of life and it’s always been that way for our people.

It’s difficult to explain to someone who hasn’t lived roadside how stressful it is to get evicted or shifted on 6 times in one day.

This is definitely not as simple as pick up and go, there are a lot of things to think about, children, access to water, food, showers, work and the most obvious is finding somewhere safe, these are all things the settled community take for granted.

A question I’ve had and heard a lot is well “why live like that if it’s so difficult”

And it’s a good question, but it’s difficult to answer I normally say

If I was to ask you why you stayed in a house, you would pause for a moment a most likely say

“I’m not sure...that’s how I grew up... my parents lived in a house”.

It's as odd for us to answer as it is for you, being in a trailer for us just feels right, that's not to say living in a trailer is right for everyone in the community, there a now a lot of modern responsibility's that make living nomadically very difficult.

This is where I've noticed people's prejudice's and good old fashioned racism kick in, It's definitely a challenge but I can cope with the problems and stresses that modern life poses to Gypsy's and Travellers for example access to doctors, proof of address, access to banks, schooling, and the 1000's of forms that get shoved under your nose in the name of the greater good, But what we shouldn't have to cope with is elected members, individuals who should in practice know more about equality and diversity and the rights of person than any other, activity propose legislation that criminalizes and persecutes ethnicity and nomadic way of life protected by UK law." (Tom Tom Hendry: Advocate, Trainer and Founder Association of Gypsies and Travellers Wales)

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Agenda Item 11

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

Document is Restricted