

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 18 October 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Informal pre-meeting (13.00–13.30)

1 Introductions, apologies and substitutions

13.30

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

13.30–13.35

(Page 1)

LJC(6)–10–21 – Paper 1 – Statutory instruments with clear reports
Draft Affirmative Resolution Instruments

2.1 SL(6)062 – The Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021

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

13.35–13.40

Made Negative Resolution Instruments

3.1 SL(6)063 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) Regulations 2021

(Pages 2 – 7)

LJC(6)–10–21 – Paper 2 – Draft report



LJC(6)–10–21 – Paper 3 – Letter from the First Minister, 8 October 2021

[Regulations](#)

[Explanatory Memorandum](#)

3.2 SL(6)064 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2021

(Pages 8 – 12)

LJC(6)–10–21 – Paper 4 – Draft report

LJC(6)–10–21 – Paper 5 – Letter from the Minister for Health and Social Services, 8 October 2021

[Regulations](#)

[Explanatory Memorandum](#)

4 Papers to note – Legislation, Justice and Constitution Committee

13.40–13.45

**4.1 Correspondence from the Minister for Finance and Local Government:
Meeting of the Finance Ministers' Quadrilateral**

(Page 13)

LJC(6)–10–21 – Paper 6 – Letter from the Minister for Finance and Local Government, 11 October 2021

4.2 Correspondence from the Chair of the Local Government and Housing Committee: Legislative Consent Memoranda on the Building Safety Bill

(Pages 14 – 15)

LJC(6)–10–21 – Paper 7 – Letter from the Chair of the Local Government and Housing Committee, 13 October 2021

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

13.45

- 6 Legislative Consent Memorandum on the Advanced Research and Invention Agency Bill – consideration of draft report**
13.45–13.55 (Pages 16 – 25)
LJC(6)–10–21 – Paper 8 – Draft report
- 7 Legislative Consent Memorandum on the Public Service Pensions and Judicial Offices Bill – consideration of draft report**
13.55–14.05 (Pages 26 – 30)
LJC(6)–10–21 – Paper 9 – Draft report
- 8 Legislative Consent Memorandum on the Health and Care Bill**
14.05–14.20 (Pages 31 – 44)
[Legislative Consent Memorandum – Health and Care Bill](#)

LJC(6)–10–21 – Paper 10 – Legal advice note
LJC(6)–10–21 – Paper 11 – Research Service briefing
- 9 Legislative Consent Memorandum on the Elections Bill**
14.20–14.35 (Pages 45 – 80)
[Legislative Consent Memorandum – Elections Bill](#)

LJC(6)–10–21 – Paper 12 – Legal advice note
LJC(6)–10–21 – Paper 13 – Research Service briefing
LJC(6)–10–21 – Paper 14 – Electoral Commission briefing: UK Government Elections Bill – impact on elections in Wales
LJC(6)–10–21 – Paper 15 – Letter from the Counsel General and Minister for the Constitution, 12 October 2021
- 10 Legislative Consent Memorandum on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill**
14.35–14.45 (Pages 81 – 86)
[Legislative Consent Memorandum – Rating \(Coronavirus\) and Directors Disqualification \(Dissolved Companies\) Bill](#)

LJC(6)-10-21 - Paper 16 - Legal advice note

Statutory Instruments with Clear Reports 18 October 2021

SL(6)062 – The Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021

Procedure: Affirmative

The Historic Environment (Wales) Act 2016 (“the 2016 Act”) amended the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) by introducing heritage partnership agreements for listed buildings in Wales¹.

A heritage partnership agreement is a voluntary arrangement for the long term management of one or more designated historic assets. In relation to listed buildings, such agreements may be entered into between the owner of a listed building and either the local planning authority or the Welsh Ministers.

Although the initial legislative framework for heritage partnership agreements was set out in the 2016 Act, it required the Welsh Ministers to make further provision regarding the content of such agreements and the procedures for agreeing and terminating them.

These [Regulations](#) make specific provision regarding heritage partnership agreements for listed buildings in Wales, supplementing the provisions of the 1990 Act.

A previous version of these Regulations were laid on 28 September 2021 and considered by the Committee at its meeting on 11 October 2021. The previous version was subsequently withdrawn by the Welsh Government.

Parent Act: Planning (Listed Buildings and Conservation Areas) Act 1990

Date Made:

Date Laid:

Coming into force date: 01 January 2022

¹ The 2016 Act also introduced heritage partnership agreements for scheduled monuments. These are covered in the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021, which have been laid by the Welsh Government.



Agenda Item 3.1

SL(6)063 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021 (“the No. 17 Regulations”).

These Regulations amend the principal Regulations to:

- Clarify that a person may leave isolation to prevent illness, injury or other risk of harm to another person (“A”) where it is not possible or practicable for somebody else to assist A, the person is not assisting A as part of the person’s work or through providing voluntary services, and the risk of harm to A is greater than the risk of harm to A that arises from being in the same place as the person who would otherwise have to isolate, or to move to a different place to live to prevent illness to another person;
- Make clear, for the purpose of data protection law, the basis on which contact tracers may access information about a person’s vaccination status;
- Clarify that regulation 57(9) of the principal Regulations, which makes provision in relation to when a gathering or event is not to be treated as being “outdoors”, applies to all gatherings and events; and
- Omit the spent transitional provision in regulation 10A of the principal Regulations (which related to ending certain persons’ isolation on 7 August 2021 if they were within an isolation period and met certain conditions on that date, such as having completed a course of doses of an authorised vaccine, or being a child).

These Regulations also amend the No. 17 Regulations so that the regulation 16A (the COVID-pass requirements) that has been inserted into the principal Regulations is amended to:

- Clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations. In practice, this means that those requirements do not apply to any religious services held in premises ordinarily used as a place of worship;
- Provide consistency with the International Travel Regulations by adding additional countries to the list of acceptable vaccinations for the purposes of the COVID pass.

These Regulations are aimed at providing clarity and ensuring consistency in the principal Regulations,



rather than imposing special restrictions or requirements. Therefore, the negative resolution procedure applies to these Regulations.

Procedure

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 three points are 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 the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 8 October 2021. In particular, we note the following in the letter:

“The Regulations come into force on 9 October 2021, within 21 days of their laying. Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity. This is necessary in order to amend the new regulation 16A that is to be inserted into the principal Regulations on 11 October 2021, before that regulation comes into force. Regulation 16A(1), commonly known as the COVID-pass provision. [...] The amendments are required to maintain consistency with regulation 2A of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, as amended from 4 October 2021 and 11 October 2021. Regulation 2A provides that a person arriving in Wales from outside the common travel area is subject to reduced coronavirus testing requirements if they have been vaccinated with a qualifying vaccine, and regulation 16A of the principal Regulations provides that evidence of vaccination with the same qualifying vaccine is acceptable for the purposes of regulation 16A(1).

Not adhering with the 21-day convention also allows the Regulations to come into force at the earliest opportunity to a. provide an exception for a person to leave isolation to prevent illness, injury to other risk of harm to another person or to make to a different place to live to prevent illness to another person; b. make clear, for the purpose of the general data



protection Regulation (GDPR), the basis on which contact tracers may access information about a person's vaccination status; c. clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations; and omit the spent transitional provision at regulation 10A."

2. 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 the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the state's positive obligations under Article 2 (right to life). The adjustment of the requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of coronavirus, taking into account the scientific evidence."

3. 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 there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including



the Information Commissioner's Office and the Equalities Division of the Welsh Government."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

13 October 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 5



Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

08 October 2021

Dear Elin,

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 18) Regulations 2021

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. I intend to lay these and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force at on 9 October 2021, less than 21 days after it has been laid. A copy of the statutory instrument and the Explanatory Memorandum that accompanies it are attached for your information.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the principal Regulations") and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021.

The Regulations come into force on 9 October 2021, within 21 days of their laying. Not adhering to the 21-day convention allows these Regulations to come into force at the earliest opportunity. This is necessary in order to amend the new regulation 16A that is to be inserted into the principal Regulations on 11 October 2021, before that regulation comes into force. Regulation 16A(1), commonly known as the COVID-pass provision, requires the person responsible for certain premises to take reasonable measures to ensure that an adult is permitted to be present on the premises only if they have evidence of particular matters, including vaccination with an authorised vaccine. The amendments are required to maintain consistency with regulation 2A of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, as amended from 4 October 2021 and 11

¹ Regulation 16A is to be inserted by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 17) Regulations 2021.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

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.

October 2021. Regulation 2A provides that a person arriving in Wales from outside the common travel area is subject to reduced coronavirus testing requirements if they have been vaccinated with a qualifying vaccine, and regulation 16A of the principal Regulations provides that evidence of vaccination with the same qualifying vaccine is acceptable for the purposes of regulation 16A(1).

Not adhering with the 21-day convention also allows the Regulations to come into force at the earliest opportunity to a. provide an exception for a person to leave isolation to prevent illness, injury or other risk of harm to another person or to move to a different place to live to prevent illness to another person; b. make clear, for the purpose of the general data protection Regulation (GDPR), the basis on which contact tracers may access information about a person's vaccination status; c. clarify that people participating in a religious service in premises ordinarily used as a place of worship are considered to be seated for the purposes of regulation 16A(1) of the principal Regulations; and omit the spent transitional provision at regulation 10A.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD

Agenda Item 3.2

SL(6)064 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 11\) Regulations 2021](#) (“the Regulations”) amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”). The Public Health (Control of Disease) Act 1984, and regulations made under it, provide a legislative framework for health protection in England and Wales, and the Regulations are made in reliance on the powers in sections 45B, and 45P(2) of that Act.

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Regulation 3 of the Regulations makes amendments to regulation 2A (exemptions for vaccinated travellers and others) of the International Travel Regulations, including extending the recognition of vaccinations to further countries and territories as well as the United Nations vaccination programme, and making further technical amendments.

Regulation 4 of the Regulations amends regulation 6A (requirement to possess notification of a negative test result) of the International Travel Regulations relating to the evidence that may be provided of predeparture tests.

Pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations, non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A (countries and territories subject to additional measures) to those regulations within the last 10 days of arrival.

Regulation 5 of the Regulations amends Schedule 3A to remove various countries from the list of countries or territories to which regulation 12E applies.

Procedure

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 3 points are 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 the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 8 October 2021. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

And we further note the following explanation in the Explanatory Memorandum:

“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK.”

2. 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 the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.”

3. 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 there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



“Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

12 October 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

8 October 2021

Dear Elin

Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force on 11 October 2021 less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- **Afghanistan, Angola, Argentina, Bolivia, Botswana, Brazil, Burundi, Cape Verde, Chile, Congo (Democratic Republic), Costa Rica, Cuba, Eritrea, Eswatini, Ethiopia, French Guiana, Georgia, Guyana, Indonesia, Lesotho, Malawi, Mayotte, Mexico, Mongolia, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Paraguay, Philippines, Reunion, Rwanda, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Suriname, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Uganda, Uruguay, Zambia and Zimbabwe** are removed from the “red list” of countries and territories.
- **Albania, Bahamas, Bangladesh, Bosnia & Herzegovina, Brazil, Chile, Columbia, Egypt, Georgia, Ghana, Grenada, Hong Kong, India, Indonesia, Jamaica, Jordan, Kenya, Kosovo, Maldives, Moldova, Montenegro, Morocco, Namibia, Nigeria, North Macedonia, Oman, Pakistan, Serbia, South Africa, St Kitts & Nevis, St Lucia, St Vincent & The Grenadines, Thailand, The Philippines, Turkey, Ukraine and Vietnam** are added to the list

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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.

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of countries where their vaccination programmes and certification meet the requirements such that an individual is recognised as being fully vaccinated.

- Those who are fully vaccinated under the United Nations vaccination programme are also recognised as fully vaccinated.
- enable the EU Digital COVID Certificate to be used to demonstrate negative test status
- Further technical and consequential amendments.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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

Agenda Item 4.1



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

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

11 October 2021

Dear Huw

I am writing to inform you that a meeting of the Finance Ministers' Quadrilateral will take place on 14 October.

The agenda will cover the UK Government's proposals for the Spending Review and will be an opportunity to convey Welsh priorities for the Spending Review as outlined in my Written Statement - [Written Statement: Welsh Government's priorities for the UK Government Spending Review 2021 \(14 September 2021\) | GOV.WALES](#)

The agenda also includes an item on the UK Internal Market Act and use of the Financial Assistance Powers within it.

Ahead of COP 26 in November we will be taking the opportunity to share updates and experience in relation to Net Zero.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

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Local Government and Housing Committee

Huw Irranca-Davies MS
Legislation, Justice and Constitution Committee
Welsh Parliament

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddTai@senedd.cymru
senedd.cymru/SeneddTai
0300 200 6565

—

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
SeneddHousing@senedd.wales
senedd.wales/SeneddHousing
0300 200 6565

13 October 2021

Dear Huw

Legislative Consent Memorandum (LCM) and Supplementary Legislative Consent Memorandum (SLCM) on the Building Safety Bill

At the meeting of the Local Government and Housing Committee on 6 October we considered three LCMs, including the LCM and SLCM on the Building Safety Bill. I am writing to you as Chair of the Legislation, Justice and Constitution Committee to share the concerns of some Members of my Committee at the increased use of UK Bills and the legislative consent convention to legislate in devolved areas, rather than via Senedd legislation.

The Building Safety Bill was seen as a prime example of where the Welsh Government could bring forward its own legislation. Reforming building safety is a priority policy area for the Welsh Government. Some Members therefore felt it regrettable that these reforms are not being made through a Senedd Bill. Making such reforms in a UK Bill was viewed as denying the Senedd the ability to fully exercise its functions of holding the Welsh Government to account and legislating for Wales.

Whilst it is appreciated that the provisions in the Bill which fall within devolved competence are largely bespoke to Wales and consistent with the Welsh Government's White Paper "Safer Buildings in Wales", concerns were expressed by some Members that important changes to the law will not be subject to all stages of the legislative process, including detailed scrutiny by all Members and stakeholders. The LCM process and current reporting deadlines provide very little time for meaningful

scrutiny. We appreciate that the UK Bill “presents an opportunity to take earlier action”, but greater scrutiny makes for better law and a Welsh Bill would certainly allow for greater scrutiny.

We are also writing to the Minister for Climate Change expressing these concerns and will share any response with you for information.

Yours sincerely

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 6

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

Document is Restricted

Agenda Item 7

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

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Briefing: UK Government Elections Bill – impact on elections in Wales

September 2021

Welsh Government has sought views on the proposals set out in the UK Government's Elections Bill. The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity. A key part of our role is to provide advice to governments and parliaments on legislation relating to elections and the regulation of campaigners.

This briefing considers the clauses of the Bill for which we understand the UK Government is seeking legislative consent from the Senedd. It also highlights provisions in the Bill which relate to UK Parliament elections and would therefore have an impact on voters, campaigners and electoral administrators in Wales, including through a resulting divergence of rules for different elections in Wales. It reflects our current understanding of the Bill and of the associated secondary legislation which will follow. We will continue to support Welsh Government as the parliamentary process proceeds.

Bill provisions directly relevant to the Senedd and local government elections in Wales

This section of the briefing is about the parts of the Elections Bill that the UK Government has proposed should apply to the whole elections framework, including Senedd and local government elections in Wales. It has asked the Senedd to consent to some of these changes where the Senedd has competence over the relevant part of the law.

Campaigner regulation and registration

Digital imprints

Digital campaigning accounts for an increasingly large proportion of spending reported by campaigners after elections. Following the 2019 UK general election and European Parliament election, political parties reported that spending on digital advertising represented 53% of their total advertising spending. Party spending returns for the 2021 Senedd elections are due to be submitted in August and November 2021 (dependent on the level of spending) and we will publish this data in due course.

The introduction of digital imprint rules has been a long standing Electoral Commission recommendation, which would improve transparency and voter confidence. It was also a recommendation in our [recent report on the 2021 elections in Wales](#).

Our research after the election confirmed that people continue to value transparency about who is responsible for political campaign activity online at elections with a majority (69%) of

people agreeing that it is important for them to know who has produced the political information they see online, and three in five agreeing (59%) they would trust digital campaigning material more if they knew who produced it. To ensure voter confidence in digital campaign regulation, the law should provide for swift action to deal with any campaign material that does not comply with the new imprint requirements. The Bill would create a new duty for social media and digital advertising providers to provide information to the Commission and the police about who has supplied and paid for material, which would help us to secure compliance with the law. It also sets out duties for social media and digital advertising providers, including to remove material without an imprint once a court has found a conviction or the Commission has imposed a sanction on a campaigner.

Key considerations for Welsh Government

- Whether the Senedd decides to consent to the proposals in the Elections Bill or introduce separate legislation, we recommend that digital imprint rules should become a legal requirement at all elections across the UK.
- We understand that the UK Government as well as Welsh and Scottish Governments are currently considering questions of competence relating to the digital imprint proposals. If it is decided that the digital imprint proposals in the UK Government's Bill are a reserved matter, then we understand that the provisions would apply to all elections held in both Wales and Scotland if passed.
- The Commission understands from the recently published legislative consent memorandum that Welsh Government regards imprint policy as a devolved matter and does not plan to recommend that the Senedd give consent to the UK Government's legislation applying to Senedd and Welsh local government elections. If that is the case, we would recommend that Welsh Government legislates on a digital imprint law as soon as possible.
- If the Elections Bill proposals do not apply to Senedd and Welsh local government elections, Welsh Government would need to make a decision on the best way to introduce a digital imprint law in Wales. It should consider the proposals being made by the UK Government on a new digital imprint law, and also the rules that have been already implemented in Scotland.
- Transparency could be improved for voters if future imprint requirements in Wales were to cover all digital material from campaigners including those not registered with us, even if they had not paid to promote it. The proposed UK Government rules would only require imprints to be placed on digital material from unregistered campaigners if it was a paid-for advert. Welsh Government may wish to consider the difference in scope between the existing regime for devolved Scottish elections and that proposed in the UK Government Bill. We think there are benefits for transparency in both approaches – the UK Government's intention to make imprint rules apply generally to digital political material rather than solely to election material, will mean that a broader range of materials promoting parties or candidates will have to include an imprint. But the approach that requires imprints on all digital election material by unregistered campaigners in the Scottish rules provides more transparency than the UK Government's proposals would bring, and is more consistent with the imprint rules for printed election material.

- The digital imprint proposals in the Elections Bill will include takedown provisions for material without an imprint, but they are unlikely to apply swiftly. They could only be used after a court or the Commission has formally determined an offence.
- If the Senedd and the UK Parliament both pass legislation for digital imprint rules, it will be important to avoid the risk of separate legislative regimes applying to the same offence. That result could cause confusion for campaigners, regulators, and prosecutors. For example, depending on the scope of any proposals Welsh Government develops in future, it is possible that two separate imprint regimes could apply to a single piece of digital election material which promotes a candidate or party at a Senedd election, and to a piece of digital political material which promotes a candidate or party more generally. If the campaigner did not include an imprint, the Commission and the Crown Prosecution Service would potentially have to consider which offence should be investigated, and whether a campaigner in that scenario could actually have committed two offences under two separate regimes.

Registration of political parties and non-party campaigners

Requiring new political parties to set out any assets or liabilities they hold over £500 when they apply to register would address a gap in the current rules for party accounts. It should give voters greater transparency by allowing them to see from the outset the level of funds or debts that a new party has.

The Bill will also introduce a prohibition on entities being registered as political parties and registered non-party campaigners at the same time. So far, this situation has been rare, but this proposal would reduce the effective spending limit of parties and other campaigners considering electoral pacts and alliances in future. While there have been past instances of individuals being involved in some capacity in a party and a non-party campaigner simultaneously, there has only been one example in the past ten years of the same entity being registered as both a political party and non-party campaigner at the same time ahead of a UK Parliament general election.

Key considerations for Welsh Government

- The proposed ban on entities being registered as political parties and registered non-party campaigners at the same time is likely to reduce some types of campaign activity at future elections. It would reduce the amount that political parties can choose to spend on supporting or opposing another party or its candidates, including at elections where a party is not fielding any candidates itself. It could have an impact on parties and other campaigners considering electoral pacts and alliances in future.
- The amendment to ban entities being registered as political parties and registered non-party campaigners at the same time would change two sections of PPERA: one is reserved (s22) and the other is devolved (s88). If the Senedd decided not to consent to this amendment, then it appears that the law will apply differently for UK Parliamentary elections compared to Senedd elections. It would mean that a registered non-party campaigner would not be permitted to become a registered political party in any circumstances (s22), but the rules on whether a registered party can be a registered non-party campaigner would be different (s88). It appears that

would be allowed for Senedd elections but not for UK Parliamentary elections. This could be confusing for voters and campaigners and have implications for how the statutory register is maintained. (See the section below on “controlled expenditure by non-party campaigners” for further details.)

A non-party campaigner has to submit a notification when it intends to spend over the legal threshold. When accepting notifications as part of our role as the statutory registrar, the Commission checks if the notifying entity is eligible. It will be important to ensure the law provides clarity and certainty about how to determine when a political party and a non-party campaigner are “the same” entity, so that those applying to register and the Commission can understand and apply the new requirement consistently.

Notional expenditure of candidates and others

Rules about notional spending ensure that campaigners properly account for and report all goods, services and materials that are donated to them, and which they use to help them in any way with their campaign activities.

There is a considerable level of notional spending reported by candidates at elections. [Data on spending from the 2019 UK general election](#) shows the total amount of notional spending reported was £7 million, nearly 40% of the total amount of reported candidate spending.

Candidates, agents and party or campaigner staff need a clear understanding of when something is “notional spending” or “election expenses” because it counts towards their total campaign spend, which must not exceed the specified spending limit. The current law on notional spending is long established and has operated in practice for elections for many years.

The UK Government wants to change the legal test for when a candidate or agent authorises someone else to use benefits in kind on their behalf. The Bill would amend the rules so that candidates only need to report benefits in kind which they have “made use of” themselves or have authorised, directed or encouraged someone else to “make use of” on their behalf. The Bill would also allow an agent to authorise another campaigner to pay for expenses that count towards the candidate’s spending limit (currently, only an agent can pay for these expenses).

These changes would operate alongside existing rules for campaigners which allow them to spend a permitted sum on promoting a candidate in a constituency separately from the agent (e.g. up to £700 at a UK general election).

Key considerations for Welsh Government

- There should be a clear understanding of how expenses or support for a candidate should be treated under the law. Candidates and other campaigners need to be clear how any expenses for campaigning in a constituency should be treated under the proposed changes and the existing legislation.
- Governments should set out how they have tested the proposed changes with campaigners at the elections for which they have legislative responsibility, to help

ensure that there is a common view about how support for a candidate should be authorised and accounted for, whether it is paid for by the agent or someone else. This will also enable the Commission to provide clear guidance for campaigners and update the statutory Codes of Practice on election spending. In the event that the changes proposed in the Bill are not applied to elections in Wales, campaigners may have to plan and account for the same kind of activity and spending differently for different elections. We would ensure that any Commission guidance or Code of Practice best enabled this.

- Any differences in the rules would also affect how voters and the media can access information about this kind of spending. While Returning Officers are responsible for providing public access to candidate spending returns, the Commission would continue to publish summary candidate spending information in the most accessible and transparent way and will continue to encourage others to do the same.
- The rules for spending at devolved elections in Wales are the responsibility of the Senedd. We understand that the UK Government is seeking consent from Welsh Government to apply these amendments to devolved elections in Wales. If Welsh Government wants these changes to apply for Senedd and local government elections in Wales, then they will need to consider how the changes would be made to existing devolved legislation that sets out the rules for candidates, and how changes should be prepared for and implemented.
- There are parallel versions of these provisions set out in S.64 of the National Assembly for Wales (Representation of the People) Order 2007 for Senedd elections. Welsh Government will want to consider whether, and if it wants, to align these with the definition in the UK Government's Bill. (For example, it may be possible for the UK Parliament to amend the rules for Welsh local government elections in the RPA at the same time as amending the rules for elections in UK competence, or it may be required or preferred that all such amendments are made by the Senedd.)

Controlled expenditure by non-party campaigners

Non-party campaigners are a vital part of a healthy democracy and play an important role in sharing information with voters. It is important that these groups can easily participate in the UK's elections. Controls in election law help voters to see and understand how these groups receive and spend money when they are intending to influence an election outcome.

Over recent years, there has been an increase in the number of non-party campaigners. Spending by these groups has risen too. At the 2019 UK general election, there were 61 registered non-party campaigners, and those who were required to report their spending recorded a total spend of more than £6m. Our [recent public attitudes research](#) showed some concerns about the risks of foreign interference. When we asked people to prioritise their concerns from a list of issues, two fifths (40%) said "foreign interference on UK elections results" was a problem.

Reductions to the limits on unregistered campaigning would make it clear that foreign interference in UK elections is not acceptable. During the regulated period before an election, only specific categories of individuals and organisations would be allowed to spend

more than £700 on activities that are intended to influence the election outcome. This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered.

Extending the rules on joint spending so they apply to political parties who spend jointly with a non-party campaigner would increase transparency and help ensure the effectiveness of the spending limits. It would need to be clear in practice how this additional rule will sit alongside other spending rules for parties. Parties must be able to clearly tell when the joint spending rule applies, and when other limits or controls apply, such as the existing targeted spending or notional spending rules.

Key considerations for Welsh Government

- Non-party campaigner rules are a devolved policy area. The UK Parliament can amend these rules and how they apply to UK Parliamentary elections, but the Senedd has competence for the rules in relation to Senedd elections. Currently, the rules for non-party campaigners in the Political Parties, Elections and Referendums Act 2000 are broadly the same for all types of elections. If the Senedd or the Scottish Parliament decides not to consent to the proposals in the Elections Bill or to introduce separate legislation with different aims, there will be new kinds of divergence between the rules.
- We would encourage governments to consider with us the implications of future divergence in the non-party campaigner rules and the impact on the statutory register of non-party campaigners. The proposals raise questions such as whether the statutory register of non-party campaigners would better function as four separate registers for each election, what changes to the legal framework would be needed for this to be done and what legislative opportunity could be used if desired.
- It is important for voter confidence to require transparency and to set limits on campaign spending that is intended to influence election outcomes, including where it is done by actors that are not candidates or political parties.
- The changes would provide greater transparency about who intends to campaign, but will not require any additional amounts of non-party campaigner spending to be reported compared to the current rules.
- The proposals mean there would be three separate levels of rules for non-party campaigners that apply to unregistered campaigning, registration of campaigners, and registration and reporting of campaigner spending. In practice, the two upper levels will be the same for campaigners targeting voters in Wales because the Bill proposes a new registration only threshold of £10,000 which is the same as the existing threshold for registration and reporting in Wales. These tiers could add to perceptions of complexity. The rules were last amended by legislation in 2014 and campaigners have highlighted that the changes were complex and deterred some from participating.
- Any government considering applying restrictions on overseas spending should set out how they intend for the restrictions on overseas spending to be enforced. We are not able to take any enforcement action against organisations or individuals outside

the UK that don't follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas.

- It will be important to ensure that the proposed changes to these rules are proportionate and do not discourage campaigners from participating and informing voters.

Oversight of the Electoral Commission

Strong accountability to, and effective scrutiny by the UK's parliaments are essential for the Electoral Commission to secure confidence in its work across the political spectrum. The role of the Senedd, as well as UK and Scottish Parliaments, is important in achieving this. The Commission must also be able to decide on its priorities and work independent of government influence or controls. It is vital that there should be no actual or perceived involvement from government in our operational functions or decision-making.

The proposed Strategy and Policy Statement would give current and future UK Government Ministers a new and broad scope to align the Commission's activities with the UK Government's strategic objectives, and to shape the exercise of the Commission's functions in relation to future elections and referendums. The proposals, as currently worded, go beyond accountability and scrutiny of the Commission and its decision making by enabling the UK Government to issue statutory guidance for the Commission, therefore, directing and guiding how those decisions are made.

Key considerations for Welsh Government

- The existence of an independent regulator is fundamental to maintaining confidence in our electoral system when the laws that govern elections are made by a small subset of the parties that stand in elections. Our independence must be clear for voters and campaigners to see and preserved in electoral law, as this underpins fairness and trust in the electoral system.
- There is a requirement in the Bill for the Secretary of State to consult with Welsh Ministers before designating a Strategy and Policy Statement. There is also a requirement to consult with the Speaker's Committee of the UK Parliament, to which the Commission is accountable. However, the Secretary of State will not need to amend the statement in response to that consultation, and there is no equivalent requirement to consult with the Llywydd's Committee or the Scottish Parliament Corporate Body to whom the Commission also accounts. It is important for the Commission's accountability and independence to have parity for consultation with all three legislatures.
- Under the Bill proposals, it appears that the Commission will be able to depart from the statement if it reasonably considers that other considerations justify doing so. However, to make this practical, realistic and be upheld in the Courts would need further drafting in the Bill. We would welcome changes to the Bill that reflect the UK Government's commitment to the independence of the Commission, including its independence to act in the interests of voters across the UK.

Offences

Undue influence

Undue influence is a complex electoral offence that is not easy for voters to understand. Simplifying and defining this offence more clearly would help to protect voters against exploitation and would make clear what is and is not acceptable behaviour.

It would also make it easier for the police and prosecutors to enforce the law where appropriate. There is [widespread support for reforming this offence](#) among campaigners, electoral administrators, police and prosecutors.

We understand that the newly defined offence of undue influence would apply to local government elections in Wales but that anyone found guilty of a corrupt practice would be restricted from standing at both local government and Senedd elections. A separate provision for undue influence in relation to Senedd elections is set out in Part 3, Article 81 of the National Assembly for Wales (Representation of the People) Order 2007. When Welsh Government come to review and update the Order ahead of the 2026 Senedd election, there will be opportunity to review that definition of the undue influence offence.

Disqualification of offenders for holding elective office, etc

Following [the 2019 UK general election](#), more than half of the candidates who took part in our post-election research said they were concerned about standing for election because of the risk of intimidation, threats and abuse. Three quarters of respondents said that they had experienced this type of behaviour.

It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners. Proposals in Part 5 of the Bill would enable the courts to impose a ban on standing for elected office. This would be a further sanction in addition to a prison sentence or fine, for example that a court could apply when finding offences under existing criminal law. While this would strengthen the range of sanctions available against those who carry out this type of behaviour, its practical effect as a deterrent will need to be monitored.

Bill provisions directly relevant to reserved elections only

This section of the briefing is about the parts of the Elections Bill that the UK Government has proposed should apply to *reserved* elections. These are: UK Parliamentary elections, Police and Crime Commissioner elections, local government and mayoral elections in England, Northern Ireland Assembly elections and NI local government elections. If the UK Parliament passes the Bill, these changes would apply to UK Parliamentary Elections and PCC elections happening in Wales.

Voter identification

The UK has low levels of proven electoral fraud, and voters should feel confident about their vote. However, our research has highlighted that it is an issue that concerns voters. Two-thirds of people in our [recent public opinion tracking research](#) said they would feel more confident in the security of the voting system if there was a requirement to show identification.

There are already checks in place to confirm a voter's identity when they register to vote and vote by post. However, there are no similar checks in place at polling stations in Great Britain to prevent someone claiming to be someone else and voting in their name. This means that polling station voting in Great Britain is vulnerable to fraud. In Northern Ireland, there has been a requirement to show ID when voting since 1985, updated to a photo ID requirement since 2003.

At the 2018 and 2019 local elections, the UK Government trialled voter ID in a number of areas in England. We undertook [independent, statutory evaluations](#) in both years. Based on the evidence collected, we identified three key areas that need careful consideration if a voter ID requirement is introduced:

- A voter ID requirement should deliver clear improvements to current security levels. It should improve public confidence in the voting system by protecting voters from the risk of personation.
- Any new requirement should ensure accessibility for all voters. This must be considered for all voters, particularly those who are less likely to already have an accepted form of photo ID. The introduction of an ID requirement must not prevent these people from voting.
- The introduction of any ID requirement should be realistically deliverable for local electoral administrators, with manageable timescales and adequate funding.

The Bill sets out proposals for a photo-based identification requirement for polling station voters at UK Parliament elections in Great Britain, Police and Crime Commissioner elections in England and Wales, and local elections in England. Of the approaches tested at the pilots, this provided the greatest improvement in security.

To make sure voting at polling stations remains accessible, this security measure must be balanced with other options for people who do not already have an accepted form of photo ID. The Bill makes clear that a proposed Voter Card must be issued free of charge.

Our recent public opinion tracking research found that 4% of people who were eligible to vote said they do not currently have any of the identification documents that would be required under these proposals. This was higher among some more disadvantaged groups including unemployed people, people who rent from a local authority or housing association, and people with disabilities. The application and issuing process for the proposed Voter Card will be key to ensuring the accessibility of a voter identification requirement, particularly for those people that don't have the required identification.

Ensuring there is no charge for a Voter Card will be important, but significant further details about the application process will be set out in secondary legislation. The UK Government

should set out during the passage of the Bill how it will make sure that applying for the new Voter Card is easy for people who need it.

Electoral Registration Officers will be required to administer applications for a voter card. UK Government will need to consider how this additional responsibility will be funded.

Key considerations for Welsh Government

- If the proposals in the Bill are passed then voters will be required to show ID for UK Parliament elections and Police and Crime Commissioner elections, but not Senedd or local government elections. There is potential for voter confusion, particularly if UK and Welsh elections (including by-elections) are held in close proximity, or indeed on the same day. In undertaking its public awareness activities, the Commission would seek to reduce the risk of voter confusion.

Postal and proxy voting

Postal voting is a useful and popular voting method. Proxy voting is also an important option for people who can't vote in person. Just under 250,000 people appointed a proxy at the 2019 UK general election.

The Bill proposes banning campaigners from handling postal votes, which would formalise the current approach encouraged by a [voluntary Code of Conduct for Campaigners](#). The Bill also proposes extending ballot secrecy rules to include postal votes. These changes should improve trust and confidence in the system without reducing access to voting. Our [recent public opinion research](#) has shown that while 90% of people say they feel voting in a polling station is secure, this compares to 68% of people who believe postal voting is secure and 11% who don't know.

The Bill would also require those voters registered for a postal vote for UK Parliament elections to re-apply for a postal vote after three years, instead of being required to re-provide their personal identifiers after five years as is currently the case. This will help to ensure that postal voters' signatures are up-to-date and accurate, and should reduce the risk of postal votes being rejected because these identifiers don't match when voters return postal ballot packs. However, those voters registered for a postal vote for devolved elections in Wales will continue to be required to re-provide their identifiers after five years unless Welsh Government chooses to legislate to align the processes.

Many postal voters are registered to vote by post at both UK and devolved elections in Wales. Therefore, if the rules are not aligned this will likely lead to voter confusion over when they have re-applied and for which elections. Without an aligned system, there will also be an added burden placed upon electoral administrators, as they will be required to process postal vote applications at different times for the same voters, depending on type of election.

It is not clear how new limits on handing in postal votes at polling stations, and on the number of voters for whom a person may act as a proxy, would offer significant additional protection for voters. Campaigners handing in postal votes would commit an offence under the proposed ban on handling postal ballot packs, and the reformed offence of undue

influence would also apply if voters were forced against their will to hand over their postal votes to someone else or to appoint someone as a proxy.

Key considerations for Welsh Government

- A divergence in regimes being used for postal and proxy voting at elections taking place in Wales, will require clear support for voters to navigate the rules and to avoid the possibility of voter confusion. It would be important to ensure that differences in the rules between elections that fall under the various governments remits, would not create a barrier to participation.
- If postal voters are required to reapply every three years for their UK Parliament postal vote and to re-provide their identifiers every five years for their devolved election postal vote, this could increase the burden on voters to remain registered for their preferred way of voting and increase the risk of them inadvertently failing to ensure a postal vote for a specific set of elections. It would also create an additional burden on Electoral Registration Officers in Wales to maintain the two timetables. Welsh Government should consider whether to align the rules for devolved elections in Wales with the proposals in the UK Government's Bill.
- Changes to limit who can hand in postal votes at polling stations, and the number they can hand in, could create barriers for some voters who genuinely need assistance. They would also add complex new procedures for polling station staff.
- Security would be improved by the Bill's proposal to record who handed in postal votes, without risking an impact on the accessibility by placing new limits on the ability to hand them in.
- Limiting the number of voters for whom a person may act as a proxy could disadvantage some people who rely on someone else to vote on their behalf, including disabled voters.

Assistance with voting for disabled people

These changes would give disabled voters more flexibility in how they are supported at polling stations. Providing a wider range of equipment at polling stations should make it easier for disabled voters to access appropriate support to be able to cast their vote on their own and in secret.

Replacing the current specific requirements set out in law with a broader duty for electoral administrators to provide reasonable equipment would allow disabled voters to use new equipment or technology to support them. This could support innovation and speed up the process of providing different types of support when new ways to meet voters' needs are identified.

[Disabled voters have also highlighted](#) that it can be difficult to find someone who is eligible to help them cast their vote at their polling station. Removing restrictions on who can act as a companion would give disabled voters more flexibility and choice in how they are supported.

The Bill would give electoral administrators a broader responsibility to identify what equipment would be reasonable to provide to support disabled voters at UK Parliament elections. It will be important for the UK Government to make sure there is appropriate funding for local administrators so that this support has the right impact for disabled voters.

Our guidance will help electoral administrators to consider how best to identify and provide the right kind of support to disabled voters under this new responsibility, ensuring that voters are able to receive a consistent level of service wherever they live.

Key considerations for Welsh Government

- There should be no barriers to disabled voters participating in elections and it is right that governments are considering how accessibility can be approved. However, to support disabled voters confidence in participating in elections it will be important to ensure the support they can expect to receive, throughout the registration and voting process at all elections, is clearly communicated and the risks of any divergence across sets of election carefully considered.

Overseas voters at UK Parliament elections

The UK Government is proposing the removal of the 15 year limit on voting rights at UK Parliament elections for British citizens living overseas.

This would mean that any British citizen living abroad who has previously lived in or been registered to vote in the UK would have the right to vote at UK Parliament elections.

Decisions over the franchise for Senedd and local government elections, along with any referendum legislated for by the Senedd, are devolved. However, anyone who is registered to vote in the UK can make donations to political parties and campaigners.

EU Citizens local voting and candidacy rights

The Bill introduces provisions to restrict the criteria for EU citizens who may wish to vote in or stand for local elections, to only include those covered by one of two protected groups; either they were resident before 31 December 2020 or they are covered by a treaty (ie a bilateral agreement).

Local elections in Wales and Scotland are devolved to the Senedd and Scottish Parliament, and the amendments have no application to local elections in Wales or Scotland. No Legislative Consent Motion will therefore be sought with either Welsh or Scottish Government.

However, as Welsh Government outlined in its [Legislative Consent Memorandum](#), the suggested amendments in the Bill would change the current provisions in the Representation of the People Act 1983 in such a way that those provisions applying to the devolved franchise would be repealed, therefore changing those entitled to register for and vote at local government and Senedd elections.

We note that the UK Government has now tabled [amendments](#) for the Committee Stage of 22 September to rectify this and to clarify that changes affecting the rights of EU citizens to vote in local government elections in England and Northern Ireland do not affect the position in relation to local government and Senedd elections in Wales.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/CG/3305/21

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

John Griffiths MS
Chair
Local Government and Housing Committee

Senedd Cymru

SeneddLJC@senedd.wales
SeneddHousing@senedd.wales

12 October 2021

Dear both,

The UK Government introduced the Elections Bill to the UK Parliament on 5 July, and I subsequently laid a Legislative Consent Memorandum (LCM) before the Senedd on 9 September. The memorandum confirmed the Welsh Government would not recommend consent to the Bill as introduced. Business Committee subsequently referred the LCM to both your respective Committees.

As outlined in paragraph 9 of the LCM, whilst provisions relating to European Citizens Voting and Candidacy Eligibility were intended to apply only to reserved elections, clause 11 of and Schedule 7 to the Bill as introduced, amended existing provision in the Representation of the People Act 1983 in such a way that those provisions applying to the devolved franchised were repealed and therefore changed the entitlement to register for and vote at Welsh local government and Senedd elections. Changes to the provisions to correct the unintended consequences for devolved Welsh elections have been discussed with the UK Government and amendments were laid by the UK Government on 16 September 2021, during Commons Committee stage, that limit the application of the changes to reserved elections as was the original intention. The amendments can be found here: [elections_day_pbc_0916.fm \(parliament.uk\)](https://elections.day.pbc.0916.fm/parliament.uk)

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

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.

Amendment 8 makes technical amendments to Schedule 7, which amends various provisions of the Representation of the People Act 1983, to clarify that changes affecting the rights of EU citizens to vote in local government elections in England do not affect the position in relation to local government elections in Wales. Amendment 7 is consequential on amendment 8. Amendment 9 clarifies that section 49(5)(b)(iiia) of the Representation of the People Act 1983 (as would be inserted by paragraph 1(8)(a) of Schedule 7) will apply to England only. Amendment 10 clarifies that section 49(5)(b)(iv) of the Representation of the People Act 1983 will continue to apply, but to Wales only.

The Welsh Government is supportive of these amendments to correct the unintended consequences of provisions included in the Bill as introduced.

In my view, as the effect of the amendments is that only the franchise for reserved elections would now be changed, they make provision which is consequential to matters outwith the legislative competence of the Senedd, and does not require Senedd consent by virtue of the exception in Standing Order 29.1(i). I have therefore not laid a supplementary LCM in relation to them. However, given that the provisions to be amended were identified in the LCM as requiring Senedd consent, I wanted to inform you of these changes.

I will continue to keep you updated as the Bill progresses.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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